

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H.R.** \_\_\_\_\_

To revise, codify, and enact certain general and permanent laws, related to domestic security, as title 6, United States Code, “Domestic Security”.

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IN THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_, 20\_\_

Mr. GOODLATTE (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

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## **A BILL**

To revise, codify, and enact certain general and permanent laws, related to domestic security, as title 6, United States Code, “Domestic Security”.

1 *Be it enacted by the Senate and House of Representatives of the United*

2 *States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Enactment of title 6, United States Code.
- Sec. 4. Conforming amendments to other laws.
- Sec. 5. Transitional and savings provisions.
- Sec. 6. Repeals.

1 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

2 (a) PURPOSE.—The purpose of this Act is to revise, codify, and enact cer-  
3 tain existing laws relating to domestic security as title 6, United States  
4 Code, “Domestic Security”.

5 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws  
6 by this Act, the intent is to conform to the understood policy, intent, and  
7 purpose of Congress in the original enactments, with such amendments and  
8 corrections as will remove ambiguities, contradictions, and other imperfec-  
9 tions, in accordance with section 205(c)(1) of House Resolution No. 988,  
10 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C.  
11 285b(1)).

12 **SEC. 3. ENACTMENT OF TITLE 6, UNITED STATES CODE.**

13 Certain general and permanent laws of the United States, related to do-  
14 mestic security, are revised, codified, and enacted as title 6, United States  
15 Code, “Domestic Security”, as follows:

16 **TITLE 6—DOMESTIC SECURITY**

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1                                   **Subtitle I—Homeland Security**  
2   **Organization**  
3   **Chapter 101—General**

Sec.  
10101. Definitions.  
10102. Construction; relationship to other laws.

4                   **§ 10101. Definitions**

5           In this subtitle:

6                   (1) AMERICAN HOMELAND; HOMELAND.—Each of the terms “Amer-  
7                   ican homeland” and “homeland” means the United States.

8                   (2) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term “appro-  
9                   priate congressional committee” means a committee of the House of  
10                  Representatives or the Senate having legislative or oversight jurisdic-  
11                  tion under the Rules of the House of Representatives or the Senate,  
12                  respectively, over the matter concerned.

13                  (3) ASSETS.—The term “assets” includes contracts, facilities, prop-  
14                  erty, records, unobligated or unexpended balances of appropriations,  
15                  and other funds or resources (other than personnel).

16                  (4) CRITICAL INFRASTRUCTURE.—The term “critical infrastructure”  
17                  has the meaning given that term in subsection (e) of the Critical Infra-  
18                  structures Protection Act of 2001 (42 U.S.C. 5195c(e)).

19                  (5) DEPARTMENT.—The term “Department” means the Department  
20                  of Homeland Security.

21                  (6) EMERGENCY RESPONSE PROVIDERS.—The term “emergency re-  
22                  sponse providers” includes Federal, State, and local governmental and  
23                  nongovernmental emergency public safety, fire, law enforcement, emer-

1 agency response, emergency medical (including hospital emergency facili-  
2 ties), and related personnel, agencies, and authorities.

3 (7) EXECUTIVE AGENCY.—The term “executive agency” means an  
4 executive agency and a military department, as defined, respectively, in  
5 sections 105 and 102 of title 5.

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

9 (9) INTELLIGENCE COMPONENT OF THE DEPARTMENT.—The term  
10 “intelligence component of the Department” means an element or en-  
11 tity of the Department that collects, gathers, processes, analyzes, pro-  
12 duces, or disseminates intelligence information within the scope of the  
13 information sharing environment, including homeland security informa-  
14 tion, terrorism information, and weapons of mass destruction informa-  
15 tion, or national intelligence, as defined under section 3(5) of the Na-  
16 tional Security Act of 1947 (50 U.S.C. 3003(5)), except—

17 (A) the United States Secret Service; and

18 (B) the Coast Guard, when operating under the direct authority  
19 of the Secretary of Defense or Secretary of the Navy under section  
20 3 of title 14, except that nothing in this paragraph shall affect or  
21 diminish the authority and responsibilities of the Commandant of  
22 the Coast Guard to command or control the Coast Guard as an  
23 armed force or the authority of the Director of National Intel-  
24 ligence with respect to the Coast Guard as an element of the intel-  
25 ligence community (as defined under section 3(4) of the National  
26 Security Act of 1947 (50 U.S.C. 3003(4)).

27 (10) KEY RESOURCES.—The term “key resources” means publicly or  
28 privately controlled resources essential to the minimal operations of the  
29 economy and government.

30 (11) LOCAL GOVERNMENT.—The term “local government” means—

31 (A) a county, municipality, city, town, township, local public au-  
32 thority, school district, special district, intrastate district, council  
33 of governments (regardless of whether the council of governments  
34 is incorporated as a nonprofit corporation under State law), re-  
35 gional or interstate government entity, or agency or instrumentality  
36 of a local government;

37 (B) an Indian tribe or authorized tribal organization, or in Alas-  
38 ka a Native village or Alaska Regional Native Corporation; and

39 (C) a rural community, unincorporated town or village, or other  
40 public entity.

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

4 (13) PERSONNEL.—The term “personnel” means officers and em-  
5 ployees.

6 (14) SECRETARY.—The term “Secretary” means the Secretary of  
7 Homeland Security.

8 (15) STATE.—The term “State” means a State, the District of Co-  
9 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the  
10 Northern Mariana Islands, and a possession of the United States.

11 (16) TERRORISM.—The term “terrorism” means an activity that—

12 (A) involves an act that—

13 (i) is dangerous to human life or potentially destructive of  
14 critical infrastructure or key resources; and

15 (ii) is a violation of the criminal laws of the United States  
16 or of a State or other subdivision of the United States; and

17 (B) appears to be intended—

18 (i) to intimidate or coerce a civilian population;

19 (ii) to influence the policy of a government by intimidation  
20 or coercion; or

21 (iii) to affect the conduct of a government by mass destruc-  
22 tion, assassination, or kidnapping.

23 (17) UNITED STATES.—The term “United States” means the States,  
24 the District of Columbia, Puerto Rico, the Virgin Islands, Guam,  
25 American Samoa, the Northern Mariana Islands, a possession of the  
26 United States, and waters within the jurisdiction of the United States.

27 (18) VOLUNTARY PREPAREDNESS STANDARDS.—The term “vol-  
28 untary preparedness standards” means a common set of criteria for  
29 preparedness, disaster management, emergency management, and busi-  
30 ness continuity programs, such as the American National Standards  
31 Institute’s National Fire Protection Association Standard on Disaster/  
32 Emergency Management and Business Continuity Programs (ANSI/  
33 NFPA 1600).

34 **§ 10102. Construction; relationship to other laws**

35 (a) CONSTRUCTION; SEVERABILITY.—A provision of this subtitle held to  
36 be invalid or unenforceable by its terms, or as applied to a person or cir-  
37 cumstance, shall be construed so as to give it the maximum effect permitted  
38 by law, unless the holding shall be one of utter invalidity or unenforceability,  
39 in which event the provision shall be deemed severable from this subtitle and  
40 shall not affect the remainder of the subtitle, or the application of the provi-

1 sion to other persons not similarly situated or to other, dissimilar circum-  
 2 stances.

3 (b) RELATIONSHIP TO OTHER LAWS.—

4 (1) NATIONAL SECURITY RESPONSIBILITIES.—Nothing in this sub-  
 5 title (or an amendment made by the Homeland Security Act of 2002  
 6 (Public Law 107–296, 116 Stat. 2135)) shall supersede any authority  
 7 of the Secretary of Defense, the Director of Central Intelligence, or  
 8 other agency head, as authorized by law and as directed by the Presi-  
 9 dent, with regard to the operation, control, or management of national  
 10 security systems, as defined by section 3532(b)(2) of title 44.

11 (2) ATOMIC ENERGY ACT OF 1954.—Nothing in this subtitle shall su-  
 12 persede any requirement made by or under the Atomic Energy Act of  
 13 1954 (42 U.S.C. 2011 et seq.). Restricted data or formerly restricted  
 14 data shall be handled, protected, classified, downgraded, and declas-  
 15 sified in conformity with the Atomic Energy Act of 1954 (42 U.S.C.  
 16 2011 et seq.).

17 (3) STANDARDS AND TECHNOLOGY ACT.—Nothing in this subtitle  
 18 (or an amendment made by the Homeland Security Act of 2002 (Pub-  
 19 lic Law 107–296, 116 Stat. 2135)) affects the authority of the Na-  
 20 tional Institute of Standards and Technology or the Department of  
 21 Commerce relating to the development and promulgation of standards  
 22 or guidelines under paragraphs (1) and (2) of section 20(a) of the Na-  
 23 tional Institute of Standards and Technology Act (15 U.S.C. 278g-  
 24 3(a)(1), (2)).

25 (4) IMMIGRATION AND NATIONALITY LAW.—Nothing in the definition  
 26 of “United States” in section 10101 of this title or another provision  
 27 of this subtitle shall be construed to modify the definition of “United  
 28 States” for the purposes of the Immigration and Nationality Act (8  
 29 U.S.C. 1101 et seq.) or any other immigration or nationality law.

## 30 **Chapter 103—Department of Homeland Security**

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**Subchapter I—Organization**

**§ 10301. Establishment; mission; seal**

(a) ESTABLISHMENT.—The Department of Homeland Security is an executive department of the United States within the meaning of title 5.

(b) MISSION.—

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

- (A) prevent terrorist attacks within the United States;
- (B) reduce the vulnerability of the United States to terrorism;
- (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;
- (D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

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

5 (F) ensure that the overall economic security of the United  
6 States is not diminished by efforts, activities, and programs aimed  
7 at securing the homeland;

8 (G) ensure that the civil rights and civil liberties of persons are  
9 not diminished by efforts, activities, and programs aimed at secur-  
10 ing the homeland; and

11 (H) monitor connections between illegal drug trafficking and  
12 terrorism, coordinate efforts to sever the connections, and other-  
13 wise contribute to efforts to interdict illegal drug trafficking.

14 (2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TER-  
15 RORISM.—Except as specifically provided by law with respect to entities  
16 transferred to the Department under this subtitle, primary responsibil-  
17 ity for investigating and prosecuting acts of terrorism shall be vested  
18 not in the Department, but rather in Federal, State, and local law en-  
19 forcement agencies with jurisdiction over the acts in question.

20 (c) SEAL.—The Department has a seal. The design of the seal is subject  
21 to the approval of the President.

## 22 § 10302. Secretary and other officers

23 (a) SECRETARY.—The Secretary of Homeland Security is the head of the  
24 Department. The Secretary is appointed by the President, by and with the  
25 advice and consent of the Senate.

26 (b) DEPUTY SECRETARY, UNDER SECRETARIES, ADMINISTRATOR, DI-  
27 RECTORS, ASSISTANT SECRETARIES, AND GENERAL COUNSEL.—

28 (1) IN GENERAL.—Except as provided under paragraph (2), the De-  
29 partment of Homeland Security has the following officers. Each officer  
30 is appointed by the President, by and with the advice and consent of  
31 the Senate:

32 (A) Deputy Secretary of Homeland Security, who shall be the  
33 Secretary's first assistant for purposes of subchapter III of chap-  
34 ter 33 of title 5.

35 (B) Under Secretary for Science and Technology.

36 (C) Under Secretary for Border and Transportation Security.

37 (D) Administrator of the Federal Emergency Management  
38 Agency.

39 (E) Director of the Bureau of Citizenship and Immigration  
40 Services.

41 (F) Under Secretary for Management.



1 (G) Director of the Office of Counternarcotics Enforcement.

2 (H) Under Secretary responsible for overseeing critical infra-  
3 structure protection, cybersecurity, and other related programs of  
4 the Department.

5 (I) Not more than 12 Assistant Secretaries.

6 (J) General Counsel, who is the chief legal officer of the Depart-  
7 ment.

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

14 (3) ASSISTANT SECRETARY FOR CYBERSECURITY AND COMMUNICA-  
15 TIONS.—There is in the Department an Assistant Secretary for  
16 Cybersecurity and Communications.

17 (4) UNITED STATES FIRE ADMINISTRATOR.—The Administrator of  
18 the United States Fire Administration shall have a rank equivalent to  
19 an assistant secretary of the Department.

20 (e) INSPECTOR GENERAL.—There is in the Department the Office of In-  
21 spector General and an Inspector General at the head of the office, as pro-  
22 vided in the Inspector General Act of 1978 (5 U.S.C. App.).

23 (d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in  
24 the performance of the Secretary's functions, there is a Commandant of the  
25 Coast Guard, who shall be appointed as provided in section 44 of title 14,  
26 and who shall report directly to the Secretary. In addition to duties provided  
27 in this subtitle and as assigned to the Commandant by the Secretary, the  
28 duties of the Commandant shall include those required by section 2 of title  
29 14.

30 (e) CHIEF FINANCIAL OFFICER.—There is in the Department a Chief Fi-  
31 nancial Officer, as provided in chapter 9 of title 31.

32 (f) CHIEF MEDICAL OFFICER.—There is in the Department a Chief Med-  
33 ical Officer. The Chief Medical Officer is appointed by the President. The  
34 individual appointed as Chief Medical Officer shall possess a demonstrated  
35 ability in and knowledge of medicine and public health.

36 (g) CHIEF HUMAN CAPITAL OFFICER.THERE IS IN THE DEPARTMENT A  
37 CHIEF HUMAN CAPITAL OFFICER.

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

41 (1) Director of the Secret Service.

- 1 (2) Chief Information Officer.
- 2 (3) Officer for Civil Rights and Civil Liberties.
- 3 (4) Director for Domestic Nuclear Detection.

4 **§ 10303. Office of Intelligence and Analysis**

5 (a) THERE IS IN THE DEPARTMENT THE OFFICE OF INTELLIGENCE AND  
6 ANALYSIS. THE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS IS  
7 THE HEAD OF THE OFFICE. THE UNDER SECRETARY IS APPOINTED BY  
8 THE PRESIDENT, BY AND WITH THE ADVICE AND CONSENT OF THE SEN-  
9 ATE, AND SERVES AS THE CHIEF INTELLIGENCE OFFICER OF THE DE-  
10 PARTMENT.

11 (b) HOMELAND SECURITY INTELLIGENCE PROGRAM. THE HOMELAND  
12 SECURITY INTELLIGENCE PROGRAM IN THE DEPARTMENT COORDINATES  
13 THE INTELLIGENCE ACTIVITIES OF THE OFFICE OF INTELLIGENCE AND  
14 ANALYSIS THAT SERVE PREDOMINANTLY DEPARTMENT MISSIONS.

15 **§ 10304. Office of Infrastructure Protection**

16 There is in the Department the Office of Infrastructure Protection. The  
17 Assistant Secretary for Infrastructure Protection is the head of the Office.  
18 The Assistant Secretary is appointed by the President.

19 **§ 10305. Directorate of Science and Technology**

20 There is in the Department the Directorate of Science and Technology.  
21 The Under Secretary for Science and Technology is the head of the Direc-  
22 torate.

23 **§ 10306. Directorate of Border and Transportation Security**

24 There is in the Department the Directorate of Border and Transportation  
25 Security. The Under Secretary for Border and Transportation Security is  
26 the head of the Directorate.

27 **§ 10307. of Customs and Border Protection**

28 There is in the Department the Bureau of Customs and Border Protec-  
29 tion, under the authority of the Under Secretary for Border and Transpor-  
30 tation Security. The Commissioner of Customs and Border Protection is the  
31 head of the Bureau. The Commissioner is appointed by the President, by  
32 and with the advice and consent of the Senate.

33 **§ 10308. Bureau of Immigration and Customs Enforcement**

34 There is in the Department the Bureau of Immigration and Customs En-  
35 forcement. The Assistant Secretary for Immigration and Customs Enforce-  
36 ment is the head of the Bureau. The Assistant Secretary reports directly  
37 to the Under Secretary for Border and Transportation Security and shall  
38 have a minimum of 5 years professional experience in law enforcement and  
39 a minimum of 5 years of management experience.

1     **§ 10309. Bureau of Citizenship and Immigration Services**

2         There is in the Department the Bureau of Citizenship and Immigration  
3 Services. The Director of the Bureau of Citizenship and Immigration Serv-  
4 ices is the head of the Bureau. The Director reports directly to the Deputy  
5 Secretary of Homeland Security, shall have a minimum of 5 years of man-  
6 agement experience, and shall be paid at the same level as the Assistant  
7 Secretary for Immigration and Customs Enforcement.

8     **§ 10310. Federal Emergency Management Agency**

9         (a) ESTABLISHMENT.—There is in the Department the Federal Emer-  
10 gency Management Agency.

11         (b) ADMINISTRATOR.—The Administrator of the Federal Emergency  
12 Management Agency is the head of the Agency. The Administrator shall be  
13 appointed by the President, by and with the advice and consent of the Sen-  
14 ate, from among individuals who have—

15             (1) a demonstrated ability in and knowledge of emergency manage-  
16 ment and homeland security; and

17             (2) not less than 5 years of executive leadership and management  
18 experience in the public or private sector.

19         (c) DEPUTY ADMINISTRATORS.—The President may appoint, by and with  
20 the advice and consent of the Senate, not more than 4 Deputy Administra-  
21 tors to assist the Administrator in carrying out chapter 111 of this title.

22     **§ 10311. Transportation Security Administration**

23         (a) ESTABLISHMENT.—There is in the Department the Transportation  
24 Security Administration.

25         (b) ADMINISTRATOR.—

26             (1) IN GENERAL.—The Administrator of the Transportation Security  
27 Administration is the head of the Administration. The Administrator  
28 shall be appointed by the President, by and with the advice and consent  
29 of the Senate. The Administrator shall be a citizen of the United States  
30 and have experience in a field directly related to transportation or secu-  
31 rity.

32             (2) TERM.THE TERM OF OFFICE OF AN INDIVIDUAL APPOINTED AS  
33 THE ADMINISTRATOR IS 5 YEARS.

34             (3) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The Ad-  
35 ministrator may not own stock in or bonds of a transportation or secu-  
36 rity enterprise or an enterprise that makes equipment that could be  
37 used for security purposes.

38     **§ 10312. United States Secret Service**

39         The United States Secret Service is a distinct entity in the Department.  
40 The Secretary succeeds to the functions, personnel, assets, and obligations

1 of the Secret Service, including the functions of the Secretary of the Treas-  
2 ury relating to the Secret Service.

3 **§ 10313. Coast Guard**

4 (a) IN GENERAL.—The Coast Guard is a distinct entity in the Depart-  
5 ment. The Commandant reports directly to the Secretary without being re-  
6 quired to report through any other official of the Department.

7 (b) TRANSFER.—

8 (1) IN GENERAL.—The authorities, functions, personnel, and assets  
9 of the Coast Guard, including the authorities and functions of the Sec-  
10 retary of Transportation relating to the Coast Guard, are transferred  
11 to the Secretary. Notwithstanding any other provision of this subtitle,  
12 the authorities, functions, and capabilities of the Coast Guard to per-  
13 form its missions shall be maintained intact and without significant re-  
14 duction, except as specified in Acts subsequent to the Homeland Secu-  
15 rity Act of 2002 (Public Law 107–296, 116 Stat. 2135).

16 (2) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or  
17 asset (including for purposes of this paragraph a ship, aircraft, or heli-  
18 copter) of the Coast Guard may be diverted to the principal and con-  
19 tinuing use of another organization, unit, or entity of the Department,  
20 except for details or assignments that do not reduce the Coast Guard’s  
21 capability to perform its missions.

22 (c) CHANGES TO MISSIONS.—

23 (1) PROHIBITION.—The Secretary may not substantially or signifi-  
24 cantly reduce the missions of the Coast Guard or the Coast Guard’s  
25 capability to perform those missions, except as specified in Acts subse-  
26 quent to the Homeland Security Act of 2002 (Public Law 107–296,  
27 116 Stat. 2135).

28 (2) WAIVER.—The Secretary may waive the restrictions under para-  
29 graph (1) for a period of not to exceed 90 days upon a declaration and  
30 certification by the Secretary to Congress that a clear, compelling, and  
31 immediate need exists for a waiver. A certification under this para-  
32 graph shall include a detailed justification for the declaration and cer-  
33 tification, including the reasons and specific information that dem-  
34 onstrate that the Nation and the Coast Guard cannot respond effec-  
35 tively if the restrictions under paragraph (1) are not waived.

36 (d) ANNUAL REVIEW.—

37 (1) DEFINITIONS.—In this subsection:

38 (A) HOMELAND SECURITY MISSIONS.—The term “homeland se-  
39 curity missions” means the following missions of the Coast Guard:

40 (i) Ports, waterways and coastal security.

41 (ii) Drug interdiction.

1 (iii) Migrant interdiction.

2 (iv) Defense readiness.

3 (v) Other law enforcement.

4 (B) NON-HOMELAND SECURITY MISSIONS.—The term “non-  
5 homeland security missions” means the following missions of the  
6 Coast Guard:

7 (i) Marine safety.

8 (ii) Search and rescue.

9 (iii) Aids to navigation.

10 (iv) Living marine resources (fisheries law enforcement).

11 (v) Marine environmental protection.

12 (vi) Ice operations.

13 (2) IN GENERAL.—The Inspector General of the Department shall  
14 conduct an annual review that shall assess thoroughly the performance  
15 by the Coast Guard of all missions of the Coast Guard (including non-  
16 homeland security missions and homeland security missions) with a  
17 particular emphasis on examining the non-homeland security missions.

18 (3) REPORT.—The review conducted under paragraph (2) shall be  
19 submitted to—

20 (A) the Committee on Homeland Security and Governmental  
21 Affairs of the Senate;

22 (B) the Committee on Oversight and Government Reform of the  
23 House of Representatives;

24 (C) the Committees on Appropriations of the Senate and the  
25 House of Representatives;

26 (D) the Committee on Commerce, Science, and Transportation  
27 of the Senate; and

28 (E) the Committee on Transportation and Infrastructure of the  
29 House of Representatives.

30 (e) NONAPPLICABILITY TO OPERATION AS A SERVICE IN THE NAVY.—  
31 None of the conditions and restrictions in this section shall apply when the  
32 Coast Guard operates as a service in the Navy under section 3 of title 14.

33 **§ 10314. Office for State and Local Government Coordina-**  
34 **tion**

35 There is in the Office of the Secretary the Office for State and Local  
36 Government Coordination.

37 **§ 10315. Office of Emergency Communications**

38 There is in the Department the Office of Emergency Communications.  
39 The Director for Emergency Communications is the head of the Office. The  
40 Director reports to the Assistant Secretary for Cybersecurity and Commu-  
41 nications.

1     **§ 10316. Domestic Nuclear Detection Office**

2         There is in the Department the Domestic Nuclear Detection Office. The  
3     Director for Domestic Nuclear Detection is the head of the Office. The Di-  
4     rector is appointed by the President.

5     **§ 10317. Office of Counternarcotics Enforcement**

6         (a) OFFICE.—There is in the Department the Office of Counternarcotics  
7     Enforcement. The Director is the head of the Office. The Director is ap-  
8     pointed by the President.

9         (b) Assignment of Personnel.—

10             (1) IN GENERAL.—The Secretary shall assign permanent staff to the  
11     Office of Counternarcotics Enforcement, consistent with effective man-  
12     agement of Department resources.

13             (2) LIAISONS.—The Secretary shall designate senior employees from  
14     each appropriate subdivision of the Department that has significant  
15     counternarcotics responsibilities to act as a liaison between that sub-  
16     division and the Office of Counternarcotics Enforcement.

17         (c) LIMITATION ON CONCURRENT EMPLOYMENT.—The Director of the  
18     Office of Counternarcotics Enforcement shall not be employed by, assigned  
19     to, or serve as the head of, another branch of the Federal Government, a  
20     State or local government, or a subdivision of the Department other than  
21     the Office of Counternarcotics Enforcement.

22         (d) RESPONSIBILITIES.—The Secretary shall direct the Director of the  
23     Office of Counternarcotics Enforcement—

24             (1) to coordinate policy and operations within the Department, be-  
25     tween the Department and other Federal departments and agencies,  
26     and between the Department and State and local agencies with respect  
27     to stopping the entry of illegal drugs into the United States;

28             (2) to ensure the adequacy of resources within the Department for  
29     stopping the entry of illegal drugs into the United States;

30             (3) to recommend the appropriate financial and personnel resources  
31     necessary to help the Department better fulfill its responsibility to stop  
32     the entry of illegal drugs into the United States;

33             (4) in the Joint Terrorism Task Force construct, to track and sever  
34     connections between illegal drug trafficking and terrorism; and

35             (5) to be a representative of the Department on all task forces, com-  
36     mittees, or other entities whose purpose is to coordinate the counter-  
37     narcotics enforcement activities of the Department and other Federal,  
38     State or local agencies.

39         (e) SAVINGS CLAUSE.—Nothing in this section shall be construed to au-  
40     thorize direct control of the operations conducted by the Directorate of Bor-

1 der and Transportation Security, the Coast Guard, or joint terrorism task  
2 forces.

3 (f) REPORTS TO CONGRESS.—

4 (1) ANNUAL BUDGET REVIEW.—The Director of the Office of Coun-  
5 ternarcotics Enforcement shall, not later than 30 days after the sub-  
6 mission by the President to Congress of a request for expenditures for  
7 the Department, submit to the Committees on Appropriations and the  
8 authorizing committees of jurisdiction of the House of Representatives  
9 and the Senate a review and evaluation of the request. The review and  
10 evaluation shall—

11 (A) identify a request or subpart of a request that affects or  
12 may affect the counternarcotics activities of the Department or its  
13 subdivisions, or that affects the ability of the Department or a  
14 subdivision of the Department to meet its responsibility to stop  
15 the entry of illegal drugs into the United States;

16 (B) describe with particularity how requested funds would be or  
17 could be expended in furtherance of counternarcotics activities;  
18 and

19 (C) compare the requests with requests for expenditures and  
20 amounts appropriated by Congress in the previous fiscal year.

21 (2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director  
22 of the Office of Counternarcotics Enforcement shall, not later than  
23 February 1 each year, submit to the Committees on Appropriations  
24 and the authorizing committees of jurisdiction of the House of Rep-  
25 resentatives and the Senate a review and evaluation of the counternar-  
26 cotics activities of the Department for the previous fiscal year. The re-  
27 view and evaluation shall—

28 (A) describe the counternarcotics activities of the Department  
29 and each subdivision of the Department (whether individually or  
30 in cooperation with other subdivisions of the Department, or in co-  
31 operation with other branches of the Federal Government or with  
32 State or local agencies), including the methods, procedures, and  
33 systems (including computer systems) for collecting, analyzing,  
34 sharing, and disseminating information concerning narcotics activ-  
35 ity within the Department and between the Department and other  
36 Federal, State, and local agencies;

37 (B) describe the results of those activities, using quantifiable  
38 data whenever possible;

39 (C) state whether those activities were sufficient to meet the re-  
40 sponsibility of the Department to stop the entry of illegal drugs  
41 into the United States, including a description of the performance

1 measures of effectiveness that were used in making that deter-  
2 mination; and

3 (D) recommend, where appropriate, changes to those activities  
4 to improve the performance of the Department in meeting its re-  
5 sponsibility to stop the entry of illegal drugs into the United  
6 States.

7 (3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—  
8 Any content of a review and evaluation described in the reports re-  
9 quired in this subsection that involves information classified under cri-  
10 teria established by an Executive order, or whose public disclosure, as  
11 determined by the Secretary, would be detrimental to the law enforce-  
12 ment or national security activities of the Department or any other  
13 Federal, State, or local agency, shall be presented to Congress sepa-  
14 rately from the rest of the review and evaluation.

15 **§ 10318. Office of International Affairs**

16 (a) ESTABLISHMENT.—There is in the Office of the Secretary the Office  
17 of International Affairs. The Director is the head of the Office. The Direc-  
18 tor shall be a senior official appointed by the Secretary.

19 (b) DUTIES OF THE DIRECTOR.—The Director shall have the following  
20 duties:

21 (1) To promote information and education exchange with nations  
22 friendly to the United States in order to promote sharing of best prac-  
23 tices and technologies relating to homeland security. The exchange  
24 shall include the following:

25 (A) Exchange of information on research and development on  
26 homeland security technologies.

27 (B) Joint training exercises of first responders.

28 (C) Exchange of expertise on terrorism prevention, response,  
29 and crisis management.

30 (2) To identify areas for homeland security information and training  
31 exchange where the United States has a demonstrated weakness and  
32 another friendly nation or nations have a demonstrated expertise.

33 (3) To plan and undertake international conferences, exchange pro-  
34 grams, and training activities.

35 (4) To manage international activities in the Department in coordi-  
36 nation with other Federal officials responsible for counter-terrorism  
37 matters.

38 **§ 10319. Office for National Capital Region Coordination**

39 There is in the Office of the Secretary the Office of National Capital Re-  
40 gion Coordination. The Director is the head of the Office. The Director is  
41 appointed by the Secretary.



1    **§ 10320. Office of Cargo Security Policy**

2       There is in the Department the Office of Cargo Security Policy. The Di-  
3    rector is the head of the Office. The Director is appointed by the Secretary.  
4    The Director reports to the Assistant Secretary for Policy.

5    **§ 10321. Transportation Security Oversight Board**

6       (a) ESTABLISHMENT.—There is in the Department the Transportation  
7    Security Oversight Board

8       (b) MEMBERSHIP.—

9           (1) NUMBER.THE BOARD IS COMPOSED OF 7 MEMBERS AS FOLLOWS:

10           (A) The Secretary, or the Secretary’s designee.

11           (B) The Secretary of Transportation, or the Secretary of Trans-  
12          portation’s designee.

13           (C) The Attorney General, or the Attorney General’s designee.

14           (D) The Secretary of Defense, or the Secretary of Defense’s  
15          designee.

16           (E) The Secretary of the Treasury, or the Secretary of the  
17          Treasury’s designee.

18           (F) The Director of National Intelligence, or the Director’s des-  
19          ignee.

20           (G) One member appointed by the President to represent the  
21          National Security Council.

22           (2) CHAIRPERSON.THE SECRETARY IS THE CHAIRPERSON OF THE  
23          BOARD.

24       (c) DUTIES.—The Board shall—

25           (1) review and ratify or disapprove a regulation or security directive  
26          issued by the Administrator of the Transportation Security Administra-  
27          tion under section 11307(b) of this title within 30 days after the date  
28          of issuance of the regulation or directive;

29           (2) facilitate the coordination of intelligence, security, and law en-  
30          forcement activities affecting transportation;

31           (3) facilitate the sharing of intelligence, security, and law enforce-  
32          ment information affecting transportation among Federal agencies and  
33          with carriers and other transportation providers as appropriate;

34           (4) explore the technical feasibility of developing a common  
35          database of individuals who may pose a threat to transportation  
36          or national security;

37           (5) review plans for transportation security;

38           (6) make recommendations to the Under Secretary regarding  
39          matters reviewed under paragraph (5).

40       (d) QUARTERLY MEETINGS.—The Board shall meet at least quarterly.

1 (e) CONSIDERATION OF SECURITY INFORMATION.—A majority of the  
2 Board may vote to close a meeting of the Board to the public, except that  
3 meetings shall be closed to the public whenever classified, sensitive security  
4 information, or information protected under section 40119(b) of title 49,  
5 will be discussed.

6 **§ 10322. Special Assistant to the Secretary**

7 The Secretary shall appoint a Special Assistant to the Secretary. The  
8 Special Assistant is responsible for—

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

12 (2) advising the Secretary on the impact of the Department's poli-  
13 cies, regulations, processes, and actions on the private sector;

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

17 (4) creating and managing private-sector advisory councils composed  
18 of representatives of industries and associations designated by the Sec-  
19 retary to—

20 (A) advise the Secretary on private-sector products, applica-  
21 tions, and solutions as they relate to homeland security challenges;

22 (B) advise the Secretary on homeland security policies, regula-  
23 tions, processes, and actions that affect the participating indus-  
24 tries and associations; and

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

27 (i) promoting voluntary preparedness standards to the pri-  
28 vate sector; and

29 (ii) assisting the private sector in adopting voluntary pre-  
30 paredness standards;

31 (5) working with Federal laboratories, federally funded research and  
32 development centers, other federally funded organizations, academia,  
33 and the private sector to develop innovative approaches to address  
34 homeland security challenges to produce and deploy the best available  
35 technologies for homeland security missions;

36 (6) promoting existing public-private partnerships and developing  
37 new public-private partnerships to provide for collaboration and mutual  
38 support to address homeland security challenges;

39 (7) assisting in the development and promotion of private-sector best  
40 practices to secure critical infrastructure;

1 (8) providing information to the private sector regarding voluntary  
2 preparedness standards and the business justification for preparedness  
3 and promoting to the private sector the adoption of voluntary prepared-  
4 ness standards;

5 (9) coordinating industry efforts, with respect to functions of the De-  
6 partment of Homeland Security, to identify private-sector resources  
7 and capabilities that could be effective in supplementing Federal, State,  
8 and local government agency efforts to prevent or respond to a terrorist  
9 attack;

10 (10) coordinating with the Directorate of Border and Transportation  
11 Security and the Assistant Secretary for Trade Development of the De-  
12 partment of Commerce on issues related to the travel and tourism in-  
13 dustries; and

14 (11) consulting with the Office for State and Local Government Co-  
15 ordination on all matters of concern to the private sector, including the  
16 tourism industry.

17 **§ 10323. Border Enforcement Security Task Force**

18 There is in the Department the Border Enforcement Security Task  
19 Force.

20 **Subchapter IIFunctions**

21 **§ 10331. In general**

22 (a) FUNCTIONS VESTED IN SECRETARY.—ALL FUNCTIONS OF ALL OFFI-  
23 CERS, EMPLOYEES, AND ORGANIZATIONAL UNITS OF THE DEPARTMENT ARE  
24 VESTED IN THE SECRETARY.

25 (b) REORGANIZATION.—

26 (1) IN GENERAL.—The Secretary may allocate or reallocate func-  
27 tions among the officers of the Department, and may establish, consoli-  
28 date, alter, or discontinue organizational units within the Department,  
29 but only after the expiration of 60 days after providing notice of the  
30 action to the appropriate congressional committees, which shall include  
31 an explanation of the rationale for the action.

32 (2) LIMITATION.—Authority under paragraph (1) does not extend to  
33 the abolition of an agency, entity, organizational unit, program, or  
34 function established or required to be maintained by statute.

35 (c) PERFORMANCE OF FUNCTIONS.—Subject to the provisions of this  
36 subtitle, every officer of the Department shall perform the functions speci-  
37 fied by law for the official's office or prescribed by the Secretary.

38 (d) REDELEGATION.—Unless otherwise provided in the delegation or by  
39 law, a function delegated under this subtitle may be redelegated to a subor-  
40 dinate.

41 (e) GENERAL FUNCTIONS OF SECRETARY.—The Secretary—

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

4 (2) shall have the authority to make contracts, grants, and coopera-  
5 tive agreements, and to enter into agreements with other executive  
6 agencies, as may be necessary and proper to carry out the Secretary's  
7 responsibilities under this subtitle or otherwise provided by law;

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

11 (4) shall ensure that there is effective and ongoing coordination of  
12 Federal efforts to prevent, prepare for, and respond to acts of terror-  
13 ism and other major disasters and emergencies among the divisions of  
14 the Department, including the Office for State and Local Government  
15 Coordination;

16 (5) shall ensure that the Department complies with the protections  
17 for human research subjects, as described in part 46 of title 45, Code  
18 of Federal Regulations, or in equivalent regulations as promulgated by  
19 the Secretary, with respect to research that is conducted or supported  
20 by the Department; and

21 (6) has the same authorities that the Secretary of Transportation  
22 has with respect to the Department of Transportation under section  
23 324 of title 49.

24 (f) REGULATORY AUTHORITY.—

25 (1) Vesting and transfer of authority. Except as otherwise provided  
26 in sections 10542(c) and 10705(c) of this title and section 1315(c) of  
27 title 40, this subtitle—

28 (A) does not vest new regulatory authority in the Secretary or  
29 another Federal official; and

30 (B) transfers to the Secretary or another Federal official only  
31 the regulatory authority that—

32 (i) existed on November 25, 2002, in an agency, program,  
33 or function transferred to the Department pursuant to the  
34 Homeland Security Act of 2002 (Public Law 107–296, 116  
35 Stat. 2135); or

36 (ii) on November 25, 2002, was exercised by another offi-  
37 cial of the executive branch with respect to the transferred  
38 agency, program, or function.

39 (2) RESTRICTION ON EXERCISE OF TRANSFERRED AUTHORITY.—  
40 Transferred authority may not be exercised by an official from whom  
41 it is transferred on transfer of the agency, program, or function to the

1 Secretary or another Federal official pursuant to the Homeland Security  
2 Act of 2002 (Public Law 107–296, 116 Stat. 2135).

3 (3) ALTERATION OR DIMINUTION OF AUTHORITY.—The Act may not  
4 be construed as altering or diminishing the regulatory authority of another  
5 executive agency, except to the extent that the Act transfers the  
6 authority from the agency.

7 (g) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided  
8 in this subtitle, this subtitle preempts no State or local law, except  
9 that authority to preempt State or local law vested in a Federal agency or  
10 official transferred to the Department pursuant to the Homeland Security  
11 Act of 2002 (Public Law 107–296, 116 Stat. 2135) shall be transferred to  
12 the Department, effective on the date of the transfer to the Department of  
13 that Federal agency or official.

14 (h) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to  
15 homeland security, the Secretary shall coordinate through the Office for  
16 State and Local Government Coordination (including the provision of training  
17 and equipment) with State and local government personnel, agencies,  
18 and authorities, with the private sector, and with other entities, including  
19 by—

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

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

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

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

33 (j) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary  
34 shall be governed by the provisions of chapter 5 of title 5, except as  
35 specifically provided in this subtitle, in laws granting regulatory authorities  
36 that are transferred by this subtitle, and in laws enacted after November  
37 25, 2002.

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

1     **§ 10332. Trade and customs revenue functions**

2           (a) SUBTITLE III DEFINITIONS APPLY.—A term used in this section that  
3 is defined in section 30101 of this title has the meaning set forth for the  
4 term in that section.

5           (b) TRADE AND CUSTOMS REVENUE FUNCTIONS.—

6               (1) DESIGNATION OF APPROPRIATE OFFICIAL.—The Secretary shall  
7 designate an appropriate senior official in the Office of the Secretary  
8 who shall—

9                   (A) ensure that the trade and customs revenue functions of the  
10 Department are coordinated within the Department and with  
11 other Federal departments and agencies, and that the impact on  
12 legitimate trade is taken into account in an action impacting the  
13 functions; and

14                   (B) monitor and report to Congress on the Department man-  
15 date to ensure that the trade and customs revenue functions of the  
16 Department are not diminished, including how spending, oper-  
17 ations, and personnel related to these functions have kept pace  
18 with the level of trade entering the United States.

19               (2) DIRECTOR OF TRADE POLICY.—There shall be in the Depart-  
20 ment a Director of Trade Policy (in this subsection referred to as the  
21 “Director”), who shall be subject to the direction and control of the  
22 official designated under paragraph (1). The Director shall—

23                   (A) advise the official designated under paragraph (1) regarding  
24 all aspects of Department policies relating to the trade and cus-  
25 toms revenue functions of the Department;

26                   (B) coordinate the development of Department-wide policies re-  
27 garding trade and customs revenue functions and trade facilita-  
28 tion; and

29                   (C) coordinate the trade and customs revenue-related policies of  
30 the Department with the policies of other Federal departments  
31 and agencies.

32           (c) CONSULTATION ON TRADE AND CUSTOMS REVENUE FUNCTIONS.—

33               (1) BUSINESS COMMUNITY CONSULTATIONS.—The Secretary shall  
34 consult with representatives of the business community involved in  
35 international trade, including seeking the advice and recommendations  
36 of the Commercial Operations Advisory Committee, on Department  
37 policies and actions that have a significant impact on international  
38 trade and customs revenue functions.

39               (2) CONGRESSIONAL CONSULTATION AND NOTIFICATION.—

40                   (A) IN GENERAL.—Subject to subparagraph (B), the Secretary  
41 shall notify the appropriate congressional committees not later

1 than 30 days prior to the finalization of Department policies, ini-  
2 tiatives, or actions that will have a major impact on trade and cus-  
3 toms revenue functions. The notifications shall include a descrip-  
4 tion of the proposed policies, initiatives, or actions and any com-  
5 ments or recommendations provided by the Commercial Operations  
6 Advisory Committee and other relevant groups regarding the pro-  
7 posed policies, initiatives, or actions.

8 (B) EXCEPTION.—If the Secretary determines that it is impor-  
9 tant to the national security interest of the United States to final-  
10 ize any Department policies, initiatives, or actions prior to the  
11 consultation described in subparagraph (A), the Secretary shall—

12 (i) notify and provide any recommendations of the Com-  
13 mercial Operations Advisory Committee received to the appro-  
14 priate congressional committees not later than 45 days after  
15 the date on which the policies, initiatives, or actions are final-  
16 ized; and

17 (ii) to the extent appropriate, modify the policies, initia-  
18 tives, or actions based upon the consultations with the appro-  
19 priate congressional committees.

20 (d) NOTIFICATION OF REORGANIZATION OF CUSTOMS REVENUE FUNC-  
21 TIONS.—

22 (1) IN GENERAL.—Not less than 45 days prior to a change in the  
23 organization of any of the customs revenue functions of the Depart-  
24 ment, the Secretary shall notify the Committee on Appropriations, the  
25 Committee on Finance, and the Committee on Homeland Security and  
26 Governmental Affairs of the Senate, and the Committee on Appropria-  
27 tions, the Committee on Homeland Security, and the Committee on  
28 Ways and Means of the House of Representatives of the specific assets,  
29 functions, or personnel to be transferred as part of the reorganization,  
30 and the reason for the transfer. The notification shall also include—

31 (A) an explanation of how trade enforcement functions will be  
32 impacted by the reorganization;

33 (B) an explanation of how the reorganization meets the require-  
34 ments of section 10912(b) of this title that the Department not  
35 diminish the customs revenue and trade facilitation functions for-  
36 merly performed by the United States Customs Service; and

37 (C) any comments or recommendations provided by the Com-  
38 mercial Operations Advisory Committee regarding the reorganiza-  
39 tion.

40 (2) ANALYSIS.—A congressional committee referred to in paragraph  
41 (1) may request that the Commercial Operations Advisory Committee

1 provide a report to the committee analyzing the impact of the reorga-  
2 nization and providing any recommendations for modifying the reorga-  
3 nization.

4 (3) REPORT.—Not later than 1 year after a reorganization referred  
5 to in paragraph (1) takes place, the Secretary, in consultation with the  
6 Commercial Operations Advisory Committee, shall submit a report to  
7 the Committee on Finance of the Senate and the Committee on Ways  
8 and Means of the House of Representatives. The report shall include  
9 an assessment of the impact of, and any suggested modifications to,  
10 the reorganization.

### 11 **§ 10333. Military activities**

12 Nothing in this subtitle shall confer upon the Secretary authority to en-  
13 gage in warfighting, the military defense of the United States, or other mili-  
14 tary activities, nor shall anything in this subtitle limit the existing authority  
15 of the Department of Defense or the Armed Forces to engage in warfight-  
16 ing, the military defense of the United States, or other military activities.

### 17 **§ 10334. Sensitive Security Information**

18 (a) IN GENERAL.THE SECRETARY SHALL PROVIDE THAT EACH OFFICE  
19 IN THE DEPARTMENT THAT HANDLES DOCUMENTS MARKED AS SENSITIVE  
20 SECURITY INFORMATION (IN THIS SECTION REFERRED TO AS “SSI”) HAS  
21 AT LEAST 1 EMPLOYEE WITH AUTHORITY TO COORDINATE AND MAKE DE-  
22 TERMINATIONS ON BEHALF OF THE DEPARTMENT THAT THE DOCUMENTS  
23 MEET THE CRITERIA FOR MARKING AS SSI.

24 (b) REPORT.THE SECRETARY SHALL, NOT LATER THAN JANUARY 31  
25 EACH YEAR, PROVIDE A REPORT TO THE COMMITTEES ON APPROPRIATIONS  
26 OF THE SENATE AND THE HOUSE OF REPRESENTATIVES ON THE TITLES  
27 OF ALL DEPARTMENT DOCUMENTS THAT ARE DESIGNATED AS SSI IN  
28 THEIR ENTIRETY DURING THE PERIOD OF JANUARY 1 THROUGH DECEM-  
29 BER 31 FOR THE PRECEDING YEAR.

30 (c) GUIDANCE ON INDIVIDUAL CATEGORIES OF SSI INFORMATION.—

31 (1) IN GENERAL.—The Secretary shall promulgate guidance that in-  
32 cludes common but extensive examples of SSI that further define the  
33 individual categories of information cited under 49 CFR 1520(b)(1)  
34 through (16) and eliminates judgment by covered individuals in the ap-  
35 plication of the SSI marking.

36 (2) PURPOSE OF GUIDANCE.—The guidance shall serve as the pri-  
37 mary basis and authority for the marking of Departmental information  
38 as SSI by covered individuals.

## 39 **Subchapter III—Acquisitions**

### 40 **§ 10341. Personal services**

41 The Secretary—



1 (1) may procure the temporary or intermittent services of experts or  
2 consultants (or organizations thereof) under section 3109 of title 5;  
3 and

4 (2) may, whenever necessary due to an urgent homeland security  
5 need, procure temporary (not to exceed 1 year) or intermittent personal  
6 services, including the services of experts or consultants (or organiza-  
7 tions thereof), without regard to the pay limitations of section 3109.

8 **§ 10342. Prohibition on contracts with corporate expatriates**

9 (a) DEFINITIONS AND SPECIAL RULES.—

10 (1) DEFINITIONS.—In this section:

11 (A) DOMESTIC.—The term “domestic” has the meaning given  
12 the term in section 7701(a)(4) of the Internal Revenue Code of  
13 1986 (26 U.S.C. 7701(a)(4)).

14 (B) EXPANDED AFFILIATED GROUP.—The term “expanded af-  
15 filiated group” means an affiliated group as defined in section  
16 1504(a) of the Internal Revenue Code of 1986 (26 U.S.C.  
17 1504(a)) (without regard to section 1504(b) of the Code (26  
18 U.S.C. 1504(b))), except that section 1504 of the Code (26 U.S.C.  
19 1504) shall be applied by substituting “more than 50 percent” for  
20 “at least 80 percent” each place it appears.

21 (C) FOREIGN.—The term “foreign” has the meaning given the  
22 term in section 7701(a)(5) of the Internal Revenue Code of 1986  
23 (26 U.S.C. 7701(a)(5)).

24 (D) FOREIGN INCORPORATED ENTITY.—The term “foreign in-  
25 corporated entity” means an entity that is, or but for subsection  
26 (c) would be, treated as a foreign corporation for purposes of the  
27 Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

28 (E) PERSON.—The term “person” has the meaning given the  
29 term in section 7701(a)(1) of the Internal Revenue Code of 1986  
30 (26 U.S.C. 7701(a)(1)).

31 (2) RULES FOR APPLICATION OF SUBSECTION (C).—In applying sub-  
32 section (c) for purposes of subsection (b), the following rules apply:

33 (A) CERTAIN STOCK DISREGARDED.—There shall not be taken  
34 into account in determining ownership for purposes of subsection  
35 (c)(2)—

36 (i) stock held by members of the expanded affiliated group  
37 which includes the foreign incorporated entity; or

38 (ii) stock of the entity which is sold in a public offering re-  
39 lated to the acquisition described in subsection (c)(1).

40 (B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incor-  
41 porated entity acquires directly or indirectly substantially all of the

1 properties of a domestic corporation or partnership during the 4-  
2 year period beginning on the date which is 2 years before the own-  
3 ership requirements of subsection (c)(2) are met, these actions  
4 shall be treated as pursuant to a plan.

5 (C) CERTAIN TRANSFERS DISREGARDED.—The transfer of prop-  
6 erties or liabilities (including by contribution or distribution) shall  
7 be disregarded if the transfers are part of a plan a principal pur-  
8 pose of which is to avoid the purposes of this section.

9 (D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For pur-  
10 poses of applying subsection (c) to the acquisition of a domestic  
11 partnership, except as provided in regulations, all domestic part-  
12 nerships that are under common control (within the meaning of  
13 section 482 of the Internal Revenue Code of 1986 (26 U.S.C.  
14 482)) shall be treated as one partnership.

15 (E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall  
16 prescribe regulations necessary to—

17 (i) treat warrants, options, contracts to acquire stock, con-  
18 vertible debt instruments, and other similar interests as stock;  
19 and

20 (ii) treat stock as not stock.

21 (b) IN GENERAL.—The Secretary may not enter into a contract with a  
22 foreign incorporated entity that is treated as an inverted domestic corpora-  
23 tion under subsection (c), or a subsidiary of the entity.

24 (c) INVERTED DOMESTIC CORPORATION.—For purposes of this section,  
25 a foreign incorporated entity shall be treated as an inverted domestic cor-  
26 poration if, pursuant to a plan (or a series of related transactions)—

27 (1) the entity completes before, on, or after November 25, 2002, the  
28 direct or indirect acquisition of substantially all of the properties held  
29 directly or indirectly by a domestic corporation or substantially all of  
30 the properties constituting a trade or business of a domestic partner-  
31 ship;

32 (2) after the acquisition at least 80 percent of the stock (by vote or  
33 value) of the entity is held—

34 (A) in the case of an acquisition with respect to a domestic cor-  
35 poration, by former shareholders of the domestic corporation by  
36 reason of holding stock in the domestic corporation; or

37 (B) in the case of an acquisition with respect to a domestic  
38 partnership, by former partners of the domestic partnership by  
39 reason of holding a capital or profits interest in the domestic part-  
40 nership; and

1 (3) the expanded affiliated group which after the acquisition includes  
2 the entity does not have substantial business activities in the foreign  
3 country in which or under the law of which the entity is created or or-  
4 ganized when compared to the total business activities of the expanded  
5 affiliated group.

6 (d) WAIVERS.—The Secretary shall waive subsection (b) with respect to  
7 a specific contract if the Secretary determines that the waiver is required  
8 in the interest of national security.

9 **§ 10343. Lead system integrator; financial interests**

10 (a) IN GENERAL.—With respect to contracts entered into after July 1,  
11 2007, and except as provided in subsection (b), no entity performing lead  
12 system integrator functions in the acquisition of a major system by the De-  
13 partment of Homeland Security may have a direct financial interest in the  
14 development or construction of an individual system or element of a system  
15 of systems.

16 (b) EXCEPTION.—An entity described in subsection (a) may have a direct  
17 financial interest in the development or construction of an individual system  
18 or element of a system of systems if—

19 (1) the Secretary certifies to the Committees on Appropriations of  
20 the Senate and the House of Representatives, the Committee on Home-  
21 land Security of the House of Representatives, the Committee on  
22 Transportation and Infrastructure of the House of Representatives, the  
23 Committee on Homeland Security and Governmental Affairs of the  
24 Senate, and the Committee on Commerce, Science and Transportation  
25 of the Senate that—

26 (A) the entity was selected by the Department as a contractor  
27 to develop or construct the system or element concerned through  
28 the use of competitive procedures; and

29 (B) the Department took appropriate steps to prevent an orga-  
30 nizational conflict of interest in the selection process; or

31 (2) the entity was selected by a subcontractor to serve as a lower-  
32 tier subcontractor, through a process over which the entity exercised  
33 no control.

34 (c) CONSTRUCTION.—Nothing in this section shall be construed to pre-  
35 clude an entity described in subsection (a) from performing work necessary  
36 to integrate two or more individual systems or elements of a system of sys-  
37 tems with each other.

38 (d) REGULATIONS UPDATE.—The Secretary of Homeland Security shall  
39 update the acquisition regulations of the Department to specify fully in the  
40 regulations the matters with respect to lead system integrators set forth in  
41 this section. The regulations shall include—

1 (1) a precise and comprehensive definition of the term “lead system  
2 integrator”, modeled after that used by the Department of Defense;  
3 and

4 (2) a specification of various types of contracts and fee structures  
5 that are appropriate for use by lead system integrators in the produc-  
6 tion, fielding, and sustainment of complex systems.

#### 7 **Subchapter IV—Human Resources Management**

#### 8 **§ 10351. Establishment of human resources management** 9 **system**

10 (a) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE  
11 SCHEDULE.—A person who, on the day preceding the person’s date of  
12 transfer pursuant to the Homeland Security Act of 2002 (Public Law 107–  
13 296, 116 Stat. 2135), held a position compensated in accordance with the  
14 Executive Schedule prescribed in chapter 53 of title 5, and who, without a  
15 break in service, is appointed in the Department to a position having duties  
16 comparable to the duties performed immediately preceding the appointment  
17 shall continue to be compensated in the new position at not less than the  
18 rate provided for the position, for the duration of the service of the person  
19 in the new position.

20 (b) COORDINATION RULE.—An exercise of authority under chapter 97 of  
21 title 5, including under a system established under that chapter, shall be  
22 in conformance with the requirements of this section.

#### 23 **§ 10352. Labor-management relations**

24 (a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

25 (1) IN GENERAL.—An agency or subdivision of an agency transferred  
26 to the Department pursuant to the Homeland Security Act of 2002  
27 (Public Law 107–296, 116 Stat. 2135) shall not be excluded from the  
28 coverage of chapter 71 of title 5, as a result of an order issued under  
29 section 7103(b)(1) of title 5 after June 18, 2002, unless—

30 (A) the mission and responsibilities of the agency (or subdivi-  
31 sion) materially change; and

32 (B) a majority of the employees within the agency (or subdivi-  
33 sion) have as their primary duty intelligence, counterintelligence,  
34 or investigative work directly related to terrorism investigation.

35 (2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall af-  
36 fect the effectiveness of an order to the extent that the order excludes  
37 a portion of an agency or subdivision of an agency as to which—

38 (A) recognition as an appropriate unit has never been conferred  
39 for purposes of chapter 71 of title 5; or

40 (B) recognition has been revoked or otherwise terminated as a  
41 result of a determination under subsection (b)(1).

1 (b) PROVISIONS RELATING TO BARGAINING UNITS.—

2 (1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit rec-  
3 ognized as an appropriate unit for purposes of chapter 71 of title 5,  
4 as of January 23, 2003, (and a subdivision of a unit) shall, if the unit  
5 (or subdivision) is transferred to the Department pursuant to the  
6 Homeland Security Act of 2002 (Public Law 107–296, 116 Stat.  
7 2135), continue to be so recognized for those purposes, unless—

8 (A) the mission and responsibilities of the unit (or subdivision)  
9 materially change; and

10 (B) a majority of the employees within the unit (or subdivision)  
11 have as their primary duty intelligence, counterintelligence, or in-  
12 vestigative work directly related to terrorism investigation.

13 (2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—A posi-  
14 tion or employee within a unit (or subdivision of a unit) as to which  
15 continued recognition is given under paragraph (1) shall not be ex-  
16 cluded from the unit (or subdivision), for purposes of chapter 71 of  
17 title 5, unless the primary job duty of the position or employee

18 (A) consists of intelligence, counterintelligence, or investigative  
19 work directly related to terrorism investigation; and

20 (B) materially changes (in the case of a position within a unit  
21 (or subdivision) that is first established before January 24, 2003,  
22 or to which the employee is first appointed before that date).

23 (c) WAIVER.—If the President determines that the application of sub-  
24 sections (a), (b), and (d) would have a substantial adverse impact on the  
25 ability of the Department to protect homeland security, the President may  
26 waive the application of the subsections 10 days after the President has sub-  
27 mitted to Congress a written explanation of the reasons for the determina-  
28 tion.

29 (d) COORDINATION RULE.—No other provision of this subtitle or the  
30 Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135), or  
31 of an amendment made by the Act, may be construed or applied in a man-  
32 ner so as to limit, supersede, or otherwise affect the provisions of this sec-  
33 tion, except to the extent that it does so by specific reference to this section.

34 (e) RULE OF CONSTRUCTION.—Nothing in section 9701(e) of  
35 title 5 shall be considered to apply with respect to an agency or  
36 subdivision of an agency, which is excluded from the coverage of  
37 chapter 71 of title 5 by virtue of an order issued under section  
38 7103(b) of the title and the preceding provisions of this section  
39 (as applicable), or to an employees of the agency or subdivision  
40 or to an individual or entity representing the employees or rep-  
41 resentatives thereof.

1    **§ 10353. Use of counternarcotics enforcement activities in**  
2                            **certain employee performance appraisals**

3           (a) DEFINITIONS.—In this section:

4               (1) NATIONAL DRUG CONTROL PROGRAM AGENCY.—The term “Na-  
5           tional Drug Control Program Agency” means—

6                       (A) a National Drug Control Program Agency, as defined in  
7                       section 702(7) of the Office of National Drug Control Policy Re-  
8                       authorization Act of 1998 (21 U.S.C. 1701(7)); and

9                       (B) a subdivision of the Department that has a significant coun-  
10                      ternarcotics responsibility, as determined by—

11                           (i) the counternarcotics officer, appointed under section  
12                           10317 of this title; or

13                           (ii) if applicable, the counternarcotics officer’s successor in  
14                           function (as determined by the Secretary).

15               (2) PERFORMANCE APPRAISAL SYSTEM.—The term “performance  
16           appraisal system” means a system under which periodic appraisals of  
17           job performance of employees are made, whether under chapter 43 of  
18           title 5, or otherwise.

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

26                       (1) the contribution of that employee to seizures of narcotics and ar-  
27                       rests of violators of Federal, State, or local narcotics laws; and

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

31    **§ 10354. Compliance with laws protecting equal employment**  
32                            **opportunity and providing whistleblower protec-**  
33                            **tions**

34           Nothing in this subtitle shall be construed as exempting the Department  
35   from requirements applicable with respect to executive agencies—

36                       (1) to provide equal employment protection for employees of the De-  
37                       partment (including under section 2302(b)(1) of title 5 and the Notifi-  
38                       cation and Federal Employee Antidiscrimination and Retaliation Act of  
39                       2002 (Public Law 107–174, 5 U.S.C. 2301 note)); or

40                       (2) to provide whistleblower protections for employees of the Depart-  
41                       ment (including under paragraphs (8) and (9) of section 2302(b) of

1 title 5 and the Notification and Federal Employee Antidiscrimination  
2 and Retaliation Act of 2002(Public Law 107–174, 5 U.S.C. 2301  
3 note)).

4 **§ 10355. Homeland Security Rotation Program**

5 (a) ESTABLISHMENT.—The Secretary shall establish the Homeland Secu-  
6 rity Rotation Program (in this section referred to as the “Rotation Pro-  
7 gram”) for employees of the Department. The Rotation Program shall use  
8 applicable best practices, including those from the Chief Human Capital Of-  
9 ficers Council.

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

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

13 (2) provide middle and senior level employees in the Department the  
14 opportunity to broaden their knowledge through exposure to other com-  
15 ponents of the Department;

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

18 (4) build professional relationships and contacts among the employ-  
19 ees in the Department;

20 (5) invigorate the workforce with exciting and professionally reward-  
21 ing opportunities;

22 (6) incorporate Department human capital strategic plans and activi-  
23 ties, and address critical human capital deficiencies, recruitment and  
24 retention efforts, and succession planning within the Federal workforce  
25 of the Department; and

26 (7) complement and incorporate (but not replace) rotational pro-  
27 grams within the Department in effect on October 4, 2006.

28 (c) ADMINISTRATION.—

29 (1) IN GENERAL.—The Chief Human Capital Officer shall admin-  
30 ister the Rotation Program.

31 (2) RESPONSIBILITIES—THE CHIEF HUMAN CAPITAL OFFICER  
32 SHALL—

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

35 (B) establish a framework that supports the goals of the Rota-  
36 tion Program and promotes cross-disciplinary rotational opportuni-  
37 ties;

38 (C) establish eligibility for employees to participate in the Rota-  
39 tion Program and select participants from employees who apply;

1 (D) establish incentives for employees to participate in the Ro-  
2 tation Program, including promotions and employment pref-  
3 erences;

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

6 (F) ensure that the Rotation Program develops qualified em-  
7 ployees and future leaders with broad-based experience throughout  
8 the Department;

9 (G) provide for greater interaction among employees in compo-  
10 nents of the Department; and

11 (H) coordinate with rotational programs within the Department  
12 in effect on October 4, 2006.

13 (d) ALLOWANCES, PRIVILEGES, AND BENEFITS.—All allowances, privi-  
14 leges, rights, seniority, and other benefits of employees participating in the  
15 Rotation Program shall be preserved.

16 **§ 10356. Homeland Security Education Program**

17 (a) ESTABLISHMENT.—The Secretary, acting through the Administrator  
18 of the Federal Emergency Management Agency, shall establish a graduate-  
19 level Homeland Security Education Program in the National Capital Region  
20 to provide educational opportunities to senior Federal officials and selected  
21 State and local officials with homeland security and emergency management  
22 responsibilities. The Administrator shall appoint an individual to administer  
23 the activities under this section.

24 (b) LEVERAGING OF EXISTING RESOURCES.—To maximize efficiency and  
25 effectiveness in carrying out the Program, the Administrator shall use exist-  
26 ing Department-reviewed Master's Degree curricula in homeland security,  
27 including curricula pending accreditation, together with associated learning  
28 materials, quality assessment tools, digital libraries, exercise systems and  
29 other educational facilities, including the National Domestic Preparedness  
30 Consortium, the National Fire Academy, and the Emergency Management  
31 Institute. The Administrator may develop additional educational programs,  
32 as appropriate.(c) STUDENT ENROLLMENT.—

33 (1) SOURCES.—The student body of the Program shall include offi-  
34 cials from Federal, State, local, and tribal governments, and from other  
35 sources designated by the Administrator.

36 (2) ENROLLMENT PRIORITIES AND SELECTION CRITERIA.—The Ad-  
37 ministrator shall establish policies governing student enrollment prior-  
38 ities and selection criteria that are consistent with the mission of the  
39 Program.



1           (3) DIVERSITY.—The Administrator shall take reasonable steps to  
2           ensure that the student body represents racial, gender, and ethnic di-  
3           versity.

4           (d) SERVICE COMMITMENT.—

5           (1) IN GENERAL.—Before an employee selected for the Program may  
6           be assigned to participate in the program, the employee shall agree in  
7           writing—

8           (A) to continue in the service of the agency sponsoring the em-  
9           ployee during the 2-year period beginning on the date on which  
10          the employee completes the program, unless the employee is invol-  
11          untarily separated from the service of that agency for reasons  
12          other than a reduction in force; and(B) TO PAY TO THE GOVERN-  
13          MENT THE AMOUNT OF THE ADDITIONAL EXPENSES INCURRED BY  
14          THE GOVERNMENT IN CONNECTION WITH THE EMPLOYEE’S EDU-  
15          CATION IF THE EMPLOYEE IS VOLUNTARILY SEPARATED FROM  
16          THE SERVICE TO THE AGENCY BEFORE THE END OF THE PERIOD  
17          DESCRIBED IN SUBPARAGRAPH (A).

18          (2) PAYMENT OF EXPENSES.—

19          (A) EXEMPTION.—An employee who leaves the service of the  
20          sponsoring agency to enter into the service of another agency in  
21          any branch of the Government shall not be required to make a  
22          payment under paragraph (1)(B), unless the head of the agency  
23          that sponsored the education of the employee notifies that em-  
24          ployee before the date on which the employee enters the service  
25          of the other agency that payment is required under that para-  
26          graph.

27          (B) AMOUNT OF PAYMENT.—If an employee is required to make  
28          a payment under paragraph (1)(B), the agency that sponsored the  
29          education of the employee shall determine the amount of the pay-  
30          ment, except that the amount may not exceed the pro rata share  
31          of the expenses incurred for the time remaining in the 2-year pe-  
32          riod.

33          (3) RECOVERY OF PAYMENT.—If an employee who is required to  
34          make a payment under this subsection does not make the payment, a  
35          sum equal to the amount of the expenses incurred by the Government  
36          for the education of that employee is recoverable by the Government  
37          from the employee or his estate by—

38          (A) setoff against accrued pay, compensation, amount of retire-  
39          ment credit, or other amount due the employee from the Govern-  
40          ment; or

1 (B) another method provided by law for the recovery of amounts  
2 owing to the Government.

### 3 **Subchapter V—Miscellaneous Provisions**

#### 4 **§ 10371. committees**

5 (a) IN GENERAL.—The Secretary may establish, appoint members of, and  
6 use the services of, advisory committees, that the Secretary considers nec-  
7 essary. An advisory committee established under this section may be ex-  
8 empted by the Secretary from Public Law 92–463 (5 U.S.C. App. ), but  
9 the Secretary shall publish notice in the Federal Register announcing the  
10 establishment of the committee and identifying its purpose and membership.  
11 Notwithstanding the preceding sentence, members of an advisory committee  
12 that is exempted by the Secretary under the preceding sentence who are  
13 special Government employees (as that term is defined in section 202 of  
14 title 18) shall be eligible for certifications under subsection (b)(3) of section  
15 208 of title 18, for official actions taken as a member of the advisory com-  
16 mittee.

17 (b) TERMINATION.—An advisory committee established by the Secretary  
18 shall terminate 2 years after the date of its establishment, unless the Sec-  
19 retary makes a written determination to extend the advisory committee to  
20 a specified date, which shall not be more than 2 years after the date on  
21 which the determination is made. The Secretary may make any number of  
22 subsequent extensions consistent with this subsection.

#### 23 **§ 10372. Use of appropriated funds**

24 (a) IN GENERAL.—Unless otherwise provided, funds may be used for the  
25 following:

26 (1) Purchase of uniforms without regard to the general purchase  
27 price limitation for the current fiscal year;

28 (2) Purchase of insurance for official motor vehicles operated in for-  
29 eign countries;

30 (3) Entering into contracts with the Department of State to furnish  
31 health and medical services to employees and their dependents serving  
32 in foreign countries;

33 (4) Services authorized by section 3109 of title 5, United States  
34 Code.

35 (5) The hire and purchase of motor vehicles, as authorized by section  
36 1343 of title 31.

37 (b) POLICE-LIKE USE OF VEHICLES.—The purchase for police-type use  
38 of passenger vehicles may be made without regard to the general purchase  
39 price limitation for the current fiscal year.

40 (c) Disposal of Property.—

1 (1) STRICT COMPLIANCE.—If specifically authorized to dispose of  
2 real property in this subtitle or any law, the Secretary shall exercise  
3 this authority in strict compliance with subchapter IV of chapter 5 of  
4 title 40.

5 (2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the pro-  
6 ceeds of an exercise of property disposal authority into the miscellane-  
7 ous receipts of the Treasury under section 3302(b) of title 31.

8 (d) GIFTS.—Except as authorized by section 10377 or 11122 of this title,  
9 section 2601 of title 10, or section 93 of title 14, gifts or donations of serv-  
10 ices or property of or for the Department may not be accepted, used, or  
11 disposed of unless specifically permitted in advance in an appropriations Act  
12 and only under the conditions and for the purposes specified in the appro-  
13 priations Act.

14 (e) BUDGET REQUEST.—Under section 1105 of title 31, the President  
15 shall submit to Congress a detailed budget request for the Department for  
16 each fiscal year.

17 **§ 10373. Reports and consultation addressing use of appro-**  
18 **riated funds**

19 (a) IN GENERAL.—Notwithstanding any other provision of this subtitle,  
20 a report, notification, or consultation addressing directly or indirectly the  
21 use of appropriated funds and stipulated by this subtitle to be submitted  
22 to, or held with, Congress or a Congressional committee shall also be sub-  
23 mitted to, or held with, the Committees on Appropriations of the Senate  
24 and the House of Representatives under the same conditions and with the  
25 same restrictions as stipulated by this subtitle.

26 (b) Reprogramming and Transfer of Funds.—Notwithstanding any other  
27 provision of law, notifications by the Department under an authority for re-  
28 programming or transfer of funds shall be made solely to the Committees  
29 on Appropriations of the Senate and the House of Representatives.

30 **§ 10374. Buy America requirements**

31 (a) DEFINITION.—In this section, the term “United States” includes the  
32 possessions of the United States.

33 (b) REQUIREMENT.—Except as provided in subsections (d) and (e), funds  
34 appropriated or otherwise available to the Department may not be used for  
35 the procurement of an item described in subsection (c) under a contract en-  
36 tered into by the Department of Homeland Security on and after August  
37 16, 2009, if the item is not grown, reprocessed, reused, or produced in the  
38 United States.

39 (c) COVERED ITEMS.—An item referred to in subsection (b) is an article  
40 or item of any of the following, if the item is directly related to the national  
41 security interests of the United States:

1 (1) Clothing and the materials and components of clothing, other  
2 than sensors, electronics, or other items added to, and not normally as-  
3 sociated with, clothing (and the materials and components of clothing).

4 (2) Tents, tarpaulins, covers, textile belts, bags, protective equipment  
5 (including body armor), sleep systems, load carrying equipment (includ-  
6 ing fieldpacks), textile marine equipment, parachutes, or bandages.

7 (3) Cotton and other natural fiber products, woven silk or woven silk  
8 blends, spun silk yarn for cartridge cloth, synthetic fabric or coated  
9 synthetic fabric (including all textile fibers and yarns that are for use  
10 in the fabrics), canvas products, or wool (whether in the form of fiber  
11 or yarn or contained in fabrics, materials, or manufactured articles).

12 (4) An item of individual equipment manufactured from or contain-  
13 ing the fibers, yarns, fabrics, or materials.

14 (d) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCURE-  
15 MENT OF COMMERCIAL ITEMS.—

16 (1) DEFINITION.—In this section, the word “commercial” has the  
17 same meaning as in the Federal Acquisition Regulation—Part 2.

18 (2) IN GENERAL.—This section is applicable to contracts and sub-  
19 contracts for the procurement of commercial items notwithstanding sec-  
20 tion 1906 of title 41, with the exception of commercial items listed  
21 under paragraphs (3) and (4) of subsection (c).

22 (e) EXCEPTIONS.—

23 (1) AVAILABILITY.—

24 (A) MATERIALS.—Subsection (b) does not apply to covered  
25 items that are, or include, materials determined to be non-avail-  
26 able in accordance with Federal Acquisition Regulation 25.104  
27 Nonavailable Articles.

28 (B) UNSATISFACTORY QUALITY AND INSUFFICIENT QUAN-  
29 TITY.—Subsection (b) does not apply to the extent that the Sec-  
30 retary determines that satisfactory quality and sufficient quantity  
31 of an article or item described in subsection (c) grown, repro-  
32 cessed, reused, or produced in the United States cannot be pro-  
33 cured as and when needed at United States market prices.

34 (2) DE MINIMIS NONCOMPLIANCE.—Notwithstanding subsection (b),  
35 the Secretary may accept delivery of an item covered by subsection (c)  
36 that contains non-compliant fibers if the total value of non-compliant  
37 fibers contained in the end item does not exceed 10 percent of the total  
38 purchase price of the end item.

39 (3) CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Sub-  
40 section (b) does not apply to the following:

41 (A) Procurements by vessels in foreign waters.

1 (B) Emergency procurements.

2 (4) SMALL PURCHASES.—Subsection (b) does not apply to purchases  
3 for amounts not greater than the simplified acquisition threshold re-  
4 ferred to in section 2304(g) of title 10.

5 (f) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD  
6 IF CERTAIN EXCEPTIONS APPLIED.—In the case of a contract for the pro-  
7 curement of an item described in subsection (c), if the Secretary applies an  
8 exception set forth in subsection (e)(1) with respect to that contract, the  
9 Secretary shall, not later than 7 days after the award of the contract, post  
10 a notification that the exception has been applied on the Internet site main-  
11 tained by the General Services Administration known as FedBizOps.gov (or  
12 a successor site).

13 (g) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The  
14 Secretary shall ensure that a training program for the acquisition workforce  
15 includes comprehensive information on the requirements of this section and  
16 the regulations implementing this section.

17 (h) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This section  
18 shall be applied in a manner consistent with United States obligations under  
19 international agreements.

#### 20 **§ 10375. Horse adoption program**

21 None of the funds made available in any Act may be used to destroy or  
22 put out to pasture a horse or other equine belonging to a component or  
23 agency of the Department of Homeland Security that has become unfit for  
24 service, unless the trainer or handler is first given the option to take posses-  
25 sion of the equine through an adoption program that has safeguards against  
26 slaughter and inhumane treatment.

#### 27 **§ 10376. Future Years Homeland Security Program**

28 (a) IN GENERAL.—Each budget request submitted to Congress for the  
29 Department under section 1105 of title 31, shall, at or about the same time,  
30 be accompanied by a Future Years Homeland Security Program.

31 (b) CONTENTS.—The Future Years Homeland Security Program shall—

32 (1) include the same type of information, organizational structure,  
33 and level of detail as the future years defense program submitted to  
34 Congress by the Secretary of Defense under section 221 of title 10;

35 (2) set forth the homeland security strategy of the Department,  
36 which shall be developed and updated as appropriate annually by the  
37 Secretary, that was used to develop program planning guidance for the  
38 Future Years Homeland Security Program; and

39 (3) include an explanation of how the resource allocations included  
40 in the Future Years Homeland Security Program correlate to the  
41 homeland security strategy set forth under paragraph (2).

1     **§ 10377. Federal Law Enforcement Training Center**

2         (a) IN GENERAL.—The transfer of an authority or an agency under this  
3 subtitle to the Department does not affect training agreements already entered  
4 into with the Federal Law Enforcement Training Center with respect  
5 to the training of personnel to carry out that authority or the duties of that  
6 transferred agency.

7         (b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law En-  
8 forcement Training Center transferred to the Department under this sub-  
9 title shall continue to be carried out at the locations the activities were car-  
10 ried out before the transfer.

11         (c) ACCEPTANCE AND USE OF GIFTS.—The Federal Law Enforcement  
12 Training Center may accept and use gifts of property, both real and per-  
13 sonal, and accept services, for authorized purposes.

14         (d) STAFFING ACCREDITATION FUNCTION.—The Center may accept  
15 detailees from other Federal agencies, on a non-reimbursable basis, to staff  
16 the accreditation function.

17         (e) STUDENT HOUSING.—Students attending training at a Center site  
18 shall reside in on-Center or Center-provided housing, insofar as available  
19 and in accordance with Center policy.

20         (f) ADDITIONAL FUNDS FOR TRAINING.—Funds appropriated to the De-  
21 partment under the heading “Federal Law Enforcement Training Center”  
22 and the subheading “Salaries and Expenses” shall be available, at the dis-  
23 cretion of the Director, for the following:

24             (1) Training United States Postal Service law enforcement personnel  
25 and Postal police officers.

26             (2) State and local government law enforcement training on a space-  
27 available basis.

28             (3) Training of foreign law enforcement officials on a space-available  
29 basis with reimbursement of actual costs to the appropriation made  
30 under the heading “Federal Law Enforcement Training Center” and  
31 the subheading “Salaries and Expenses”, except that reimbursement  
32 may be waived by the Secretary for law enforcement training activities  
33 in foreign countries undertaken under section 801 of the Antiterrorism  
34 and Effective Death Penalty Act of 1996 (Public Law 104–132, 28  
35 U.S.C. 509 note).

36             (4) Training of private-sector security officials on a space-available  
37 basis with reimbursement of actual costs to this appropriation.

38             (5) Travel expenses of non-Federal personnel to attend course devel-  
39 opment meetings and training sponsored by the Center.

1 (g) SHORT-TERM MEDICAL SERVICES FOR STUDENTS.—The Center may  
2 provide short-term medical services for students undergoing training at the  
3 Center.

4 **§ 10378. Fees**

5 (a) FEES FOR CREDENTIALING AND BACKGROUND INVESTIGATIONS IN  
6 TRANSPORTATION.—The Secretary shall charge reasonable fees for provid-  
7 ing credentialing and background investigations in the field of transpor-  
8 tation. The establishment and collection of fees shall be subject to the fol-  
9 lowing requirements:

10 (1) Fees, in the aggregate, shall not exceed the costs incurred by the  
11 Department associated with providing the credential or performing the  
12 background record checks.

13 (2) The Secretary shall charge fees in amounts that are reasonably  
14 related to the costs of providing services in connection with the activity  
15 or item for which the fee is charged.

16 (3) A fee may not be collected except to the extent the fee will be  
17 expended to pay for—

18 (A) the costs of conducting or obtaining a criminal history  
19 record check and a review of available law enforcement databases  
20 and commercial databases and records of other governmental and  
21 international agencies;

22 (B) reviewing and adjudicating requests for waiver and appeals  
23 of agency decisions with respect to providing the credential, per-  
24 forming the background record check, and denying requests for  
25 waiver and appeals; and

26 (C) other costs related to providing the credential or performing  
27 the background record check.

28 (4) A fee collected shall be available for expenditure only to pay the  
29 costs incurred in providing services in connection with the activity or  
30 item for which the fee is charged and shall remain available until ex-  
31 pended.

32 (b) RECURRENT TRAINING OF ALIENS IN OPERATION OF AIRCRAFT.—

33 (1) PROCESS FOR REVIEWING THREAT ASSESSMENTS.—Notwith-  
34 standing section 40957(e) of this title, the Secretary shall establish a  
35 process to ensure that an alien (as defined in section 101(a)(3) of the  
36 Immigration and Nationality Act (8 U.S.C. 1101(a)(3)) applying for  
37 recurrent training in the operation of an aircraft is properly identified  
38 and has not, since the time of a prior threat assessment conducted  
39 under section 40957(a) of this title, become a risk to aviation or na-  
40 tional security.

1           (2) INTERRUPTION OF TRAINING.—If the Secretary determines, in  
2           carrying out the process established under paragraph (1), that an alien  
3           is a present risk to aviation or national security, the Secretary shall  
4           immediately notify the person providing the training of the determina-  
5           tion and that person shall not provide the training or, if training has  
6           commenced, that person shall immediately terminate the training.

7           (3) FEES.—The Secretary may charge reasonable fees under sub-  
8           section (a) for providing credentialing and background investigations  
9           for aliens in connection with the process for recurrent training estab-  
10          lished under paragraph (1). The fees shall be promulgated by notice  
11          in the Federal Register.

12          (e) COLLECTION OF FEES FROM NON-FEDERAL PARTICIPANTS IN MEET-  
13          INGS.—

14           (1) IN GENERAL.—The Secretary may collect fees from a non-Fed-  
15           eral participant in a conference, seminar, exhibition, symposium, or  
16           similar meeting conducted by the Department in advance of the con-  
17           ference, either directly or by contract, and those fees shall be credited  
18           to the appropriation or account from which the costs of the conference,  
19           seminar, exhibition, symposium, or similar meeting are paid and shall  
20           be available to pay the costs of the Department with respect to the con-  
21           ference or to reimburse the Department for costs incurred with respect  
22           to the conference.

23           (2) DEPOSIT OF EXCESS FEES.—If the total amount of fees collected  
24           with respect to a conference exceeds the actual costs of the Department  
25           with respect to the conference, the excess amount shall be deposited  
26           into the Treasury as miscellaneous receipts.

27           (3) ANNUAL REPORT.—The Secretary shall provide a report annually  
28           to the Committees on Appropriations of the Senate and the House of  
29           Representatives, providing the level of collections and a summary by  
30           agency of the purposes and levels of expenditures for the prior fiscal  
31           year.

32          **§ 10379. Reports to Committee on Commerce, Science, and**  
33          **Transportation**

34          The Committee on Commerce, Science, and Transportation of the Senate  
35          shall receive the reports required by the following provisions of law in the  
36          same manner and to the same extent that the reports are to be received  
37          by the Committee on Homeland Security and Governmental Affairs of the  
38          Senate:

39           (1) Section 10501(b)(25) of this title.

40           (2) Section 12510(a)(3)(D) of this title.



1 (3) Section 7209(b)(1)(C) of the Intelligence Reform and Terrorism  
2 Prevention Act of 2004 (Public Law 108–458, 8 U.S.C. 1185 note).

3 (4) Title III of the Implementing Recommendations of the 9/11  
4 Commission Act of 2007 (Public Law 110–53, 121 Stat. 296).

5 (5) Section 511(d) of the Implementing Recommendations of the 9/  
6 11 Commission Act of 2007 (Public Law 110–53, 121 Stat. 323).

7 (6) Section 804(c) of the Implementing Recommendations of the 9/  
8 11 Commission Act of 2007 (42 U.S.C. 2000ee–3(c)).

9 (7) Section 901(b) of the Implementing Recommendations of the 9/  
10 11 Commission Act of 2007 (Public Law 110–53, 121 Stat. 370).

11 **§ 10380. National identification system not authorized**

12 Nothing in this subtitle or the Homeland Security Act of 2002 (Public  
13 Law 107–296, 116 Stat. 2135) shall be construed to authorize the develop-  
14 ment of a national identification system or card.

15 **§ 10381. Functions of Administrator of General Services not  
16 affected**

17 (a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILD-  
18 INGS AND GROUNDS.—Nothing in this subtitle may be construed to affect  
19 the functions or authorities of the Administrator of General Services with  
20 respect to the operation, maintenance, and protection of buildings and  
21 grounds owned or occupied by the Federal Government and under the juris-  
22 diction, custody, or control of the Administrator. Except for the law enforce-  
23 ment and related security functions transferred under section 10902(3) of  
24 this title, the Administrator shall retain all powers, functions, and authori-  
25 ties vested in the Administrator under chapters 1 (except section  
26 121(e)(2)(A)) and 5 through 11 of title 40, and other provisions of law that  
27 are necessary for the operation, maintenance, and protection of the build-  
28 ings and grounds.

29 (b) LIMITATION ON COLLECTION AND USE OF RENTS AND FEES AND  
30 FEDERAL BUILDINGS FUND.—

31 (1) STATUTORY CONSTRUCTION.—Nothing in this subtitle may be  
32 construed

33 (A) to direct the transfer of, or affect, the authority of the Ad-  
34 ministrator of General Services to collect rents and fees, including  
35 fees collected for protective services; or

36 (B) to authorize the Secretary or another official in the Depart-  
37 ment to obligate amounts in the Federal Buildings Fund estab-  
38 lished by section 592 of title 40.

39 (2) USE OF TRANSFERRED AMOUNTS.—Amounts transferred by the  
40 Administrator of General Services to the Secretary out of rents and  
41 fees collected by the Administrator shall be used by the Secretary solely

1 for the protection of buildings or grounds owned or occupied by the  
2 Federal Government.

3 **Chapter 105—Information Analysis and Infrastructure**  
4 **Protection**

**Subchapter I—Directorate for Information Analysis and Infrastructure**  
**Protection**

Sec.

- 10501. Information and analysis and infrastructure protection.
- 10502. Access to information.
- 10503. Terrorist travel program.
- 10504. Homeland Security Advisory System.
- 10505. Homeland security information sharing.
- 10506. Comprehensive information technology network architecture.
- 10507. Coordination with information sharing environment.
- 10508. Intelligence components.
- 10509. Training for employees of intelligence components.
- 10510. Intelligence training development for State and local government officials.
- 10511. Information sharing incentives.
- 10512. Department of Homeland Security State, Local, and Regional Fusion Center initiative.
- 10513. Homeland Security Information Sharing Fellows Program.
- 10514. Rural Policing Institute.
- 10515. Interagency Threat Assessment and Coordination Group.
- 10516. National asset database.
- 10517. Classified Information Advisory Officer.

**Subchapter II—Critical Infrastructure Information**

- 10531. Definitions.
- 10532. Designation of critical infrastructure protection program.
- 10533. Protection of voluntarily shared critical infrastructure information.
- 10534. No private right of action.

**Subchapter III— Information Security**

- 10541. Procedures for sharing information.
- 10542. Privacy officer.
- 10543. Enhancement of Non-Federal cybersecurity.
- 10544. NET Guard.

**Subchapter IV—Supporting Anti-Terrorism by Fostering Effective**  
**Technologies**

- 10551. Definitions.
- 10552. Administration.
- 10553. Litigation management.
- 10554. Risk management.

**Subchapter V—Secure Handling of Ammonium Nitrate**

- 10561. Definitions.
- 10562. Regulation of the sale and transfer of ammonium nitrate.
- 10563. Inspection and auditing of records.
- 10564. Administrative provisions.
- 10565. Theft reporting requirement.
- 10566. Prohibitions and penalty.
- 10567. Protection from civil liability.
- 10568. Preemption of other laws.

5 **Subchapter I—Directorate for Information Analysis and**  
6 **Infrastructure Protection**

7 **§ 10501. Information and analysis and infrastructure protec-**  
8 **tion**

9 (a) DISCHARGE OF RESPONSIBILITIES.—The Secretary shall ensure that  
10 the responsibilities of the Department relating to information analysis and

1 infrastructure protection, including those described in subsection (b), are  
2 carried out through the Under Secretary for Intelligence and Analysis or the  
3 Assistant Secretary for Infrastructure Protection, as appropriate.

4 (b) RESPONSIBILITIES OF SECRETARY RELATING TO INTELLIGENCE AND  
5 ANALYSIS AND INFRASTRUCTURE PROTECTION.—The responsibilities of the  
6 Secretary relating to intelligence and analysis and infrastructure protection  
7 shall be as follows:

8 (1) To access, receive, and analyze law enforcement information, in-  
9 telligence information, and other information from agencies of the Fed-  
10 eral Government, State and local government agencies (including law  
11 enforcement agencies), and private-sector entities, and to integrate the  
12 information, in support of the mission responsibilities of the Depart-  
13 ment and the functions of the National Counterterrorism Center estab-  
14 lished under section 119 of the National Security Act of 1947 (50  
15 U.S.C. 3056), in order to—

16 (A) identify and assess the nature and scope of terrorist threats  
17 to the homeland;

18 (B) detect and identify threats of terrorism against the United  
19 States; and

20 (C) understand the threats in light of actual and potential vul-  
21 nerabilities of the homeland.

22 (2) To carry out comprehensive assessments of the vulnerabilities of  
23 the key resources and critical infrastructure of the United States, in-  
24 cluding the performance of risk assessments to determine the risks  
25 posed by particular types of terrorist attacks within the United States  
26 (including an assessment of the probability of success of attacks and  
27 the feasibility and potential efficacy of various countermeasures to the  
28 attacks).

29 (3) To integrate relevant information, analysis, and vulnerability as-  
30 sessments (regardless of whether the information, analysis or assess-  
31 ments are provided by or produced by the Department) in order to—

32 (A) identify priorities for protective and support measures re-  
33 garding terrorist and other threats to homeland security by the  
34 Department, other agencies of the Federal Government, State, and  
35 local government agencies and authorities, the private sector, and  
36 other entities; and

37 (B) prepare finished intelligence and information products in  
38 both classified and unclassified formats, as appropriate, whenever  
39 reasonably expected to be of benefit to a State, local, or tribal gov-  
40 ernment (including a State, local, or tribal law enforcement agen-  
41 cy) or a private-sector entity.

1           (4) To ensure, under section 10502 of this title, the timely and effi-  
2           cient access by the Department to all information necessary to dis-  
3           charge the responsibilities under this section, including obtaining the  
4           information from other agencies of the Federal Government.

5           (5) To develop a comprehensive national plan for securing the key  
6           resources and critical infrastructure of the United States, including  
7           power production, generation, and distribution systems, information  
8           technology and telecommunications systems (including satellites), elec-  
9           tronic financial and property record storage and transmission systems,  
10          emergency preparedness communications systems, and the physical and  
11          technological assets that support the systems.

12          (6) To recommend measures necessary to protect the key resources  
13          and critical infrastructure of the United States in coordination with  
14          other agencies of the Federal Government and in cooperation with  
15          State and local government agencies and authorities, the private sector,  
16          and other entities.

17          (7) To review, analyze, and make recommendations for improve-  
18          ments to the policies and procedures governing the sharing of informa-  
19          tion within the scope of the information sharing environment estab-  
20          lished under section 10552 of this title, including homeland security in-  
21          formation, terrorism information, and weapons of mass destruction in-  
22          formation, and policies, guidelines, procedures, instructions, or stand-  
23          ards established under that section.

24          (8) To disseminate, as appropriate, information analyzed by the De-  
25          partment within the Department, to other agencies of the Federal Gov-  
26          ernment with responsibilities relating to homeland security, and to  
27          agencies of State and local governments and private-sector entities with  
28          equivalent responsibilities in order to assist in the deterrence, preven-  
29          tion, preemption of, or response to, terrorist attacks against the United  
30          States.

31          (9) To consult with the Director of National Intelligence and other  
32          appropriate intelligence, law enforcement, or other elements of the Fed-  
33          eral Government to establish collection priorities and strategies for in-  
34          formation, including law enforcement-related information, relating to  
35          threats of terrorism against the United States through such means as  
36          the representation of the Department in discussions regarding require-  
37          ments and priorities in the collection of the information.

38          (10) To consult with State and local governments and private-sector  
39          entities to ensure appropriate exchanges of information, including law  
40          enforcement-related information, relating to threats of terrorism  
41          against the United States.

1 (11) To ensure that—

2 (A) material received pursuant to this subtitle is protected from  
3 unauthorized disclosure and handled and used only for the per-  
4 formance of official duties; and

5 (B) intelligence information under this subtitle is shared, re-  
6 tained, and disseminated consistent with the authority of the Di-  
7 rector of National Intelligence to protect intelligence sources and  
8 methods under the National Security Act of 1947 (50 U.S.C. 3001  
9 et seq.) and related procedures and, as appropriate, similar au-  
10 thorities of the Attorney General concerning sensitive law enforce-  
11 ment information.

12 (12) To request additional information from other agencies of the  
13 Federal Government, State and local government agencies, and the pri-  
14 vate sector relating to threats of terrorism in the United States, or re-  
15 lating to other areas of responsibility assigned by the Secretary, includ-  
16 ing the entry into cooperative agreements through the Secretary to ob-  
17 tain the information.

18 (13) To establish and utilize, in conjunction with the chief informa-  
19 tion officer of the Department, a secure communications and informa-  
20 tion technology infrastructure, including data-mining and other ad-  
21 vanced analytical tools, in order to access, receive, and analyze data  
22 and information in furtherance of the responsibilities under this sec-  
23 tion, and to disseminate information acquired and analyzed by the De-  
24 partment, as appropriate.

25 (14) To ensure, in conjunction with the chief information officer of  
26 the Department, that information databases and analytical tools devel-  
27 oped or utilized by the Department—

28 (A) are compatible with one another and with relevant informa-  
29 tion databases of other agencies of the Federal Government; and

30 (B) treat information in the databases in a manner that com-  
31 plies with applicable Federal law on privacy.

32 (15) To coordinate training and other support to the elements and  
33 personnel of the Department, other agencies of the Federal Govern-  
34 ment, and State and local governments that provide information to the  
35 Department, or are consumers of information provided by the Depart-  
36 ment, in order to facilitate the identification and sharing of information  
37 revealed in their ordinary duties and the optimal utilization of informa-  
38 tion received from the Department.

39 (16) To coordinate with elements of the intelligence community and  
40 with Federal, State, and local law enforcement agencies, and the pri-  
41 vate sector, as appropriate.

1           (17) To provide intelligence and information analysis and support to  
2 other elements of the Department.

3           (18) To coordinate and enhance integration among the intelligence  
4 components of the Department, including through strategic oversight of  
5 the intelligence activities of the components.

6           (19) To establish the intelligence collection, processing, analysis, and  
7 dissemination priorities, policies, processes, standards, guidelines, and  
8 procedures for the intelligence components of the Department, consist-  
9 ent with directions from the President and, as applicable, the Director  
10 of National Intelligence.

11          (20) To establish a structure and process to support the missions  
12 and goals of the intelligence components of the Department.

13          (21) To ensure that, whenever possible, the Department—

14           (A) produces and disseminates unclassified reports and analytic  
15 products based on open-source information; and

16           (B) produces and disseminates the reports and analytic prod-  
17 ucts contemporaneously with reports or analytic products concern-  
18 ing the same or similar information that the Department produced  
19 and disseminated in a classified format.

20          (22) To establish within the Office of Intelligence and Analysis an  
21 internal continuity of operations plan.

22          (23) Based on intelligence priorities set by the President, and guid-  
23 ance from the Secretary and, as appropriate, the Director of National  
24 Intelligence—

25           (A) to provide to the heads of each intelligence component of  
26 the Department guidance for developing the budget pertaining to  
27 the activities of the component; and

28           (B) to present to the Secretary a recommendation for a consoli-  
29 dated budget for the intelligence components of the Department,  
30 together with comments from the heads of the components.

31          (24) To perform other duties relating to the responsibilities the Sec-  
32 retary may provide.

33          (25) To prepare and submit to the Committee on Homeland Security  
34 and Governmental Affairs of the Senate and the Committee on Home-  
35 land Security in the House of Representatives, and to other appropriate  
36 congressional committees having jurisdiction over the critical infra-  
37 structure or key resources, for each sector identified in the National  
38 Infrastructure Protection Plan, a report on the comprehensive assess-  
39 ments carried out by the Secretary of the critical infrastructure and  
40 key resources of the United States, evaluating threat, vulnerability, and

1 consequence, as required under this subsection. Each report under this  
2 paragraph

3 (A) shall contain, if applicable, actions or countermeasures rec-  
4 ommended or taken by the Secretary or the head of another Fed-  
5 eral agency to address issues identified in the assessments;

6 (B) shall be submitted annually and not later than 35 days  
7 after the last day of the fiscal year covered by the report; and

8 (C) may be classified.

9 (c) STAFF.—

10 (1) IN GENERAL.—The Secretary shall provide the Office of Intel-  
11 ligence and Analysis and the Office of Infrastructure Protection with  
12 a staff of analysts having appropriate expertise and experience to assist  
13 the offices in discharging responsibilities under this section.

14 (2) PRIVATE-SECTOR ANALYSTS.—Analysts under this subsection  
15 may include analysts from the private sector.

16 (3) SECURITY CLEARANCES.—Analysts under this subsection shall  
17 possess security clearances appropriate for their work under this sec-  
18 tion.

19 (d) DETAIL OF PERSONNEL.—

20 (1) IN GENERAL.—In order to assist the Office of Intelligence and  
21 Analysis and the Office of Infrastructure Protection in discharging re-  
22 sponsibilities under this section, personnel of the agencies listed in  
23 paragraph (2) may be detailed to the Department for the performance  
24 of analytic functions and related duties.

25 (2) COVERED AGENCIES.—The agencies referred to in paragraph (1)  
26 are as follows:

27 (A) The Department of State.

28 (B) The Central Intelligence Agency.

29 (C) The Federal Bureau of Investigation.

30 (D) The National Security Agency.

31 (E) The National Geospatial-Intelligence Agency.

32 (F) The Defense Intelligence Agency.

33 (G) Any other agency of the Federal Government that the  
34 President considers appropriate.

35 (3) Cooperative agreements.—The Secretary and the head of the  
36 agency concerned may enter into cooperative agreements for the pur-  
37 pose of detailing personnel under this subsection.

38 (4) Basis.—The detail of personnel under this subsection may be on  
39 a reimbursable or non-reimbursable basis.

40 (e) FUNCTIONS TRANSFERRED.—The Secretary succeeds to, and there is  
41 assigned to the Office of Intelligence and Analysis and the Office of Infra-

1 structure Protection, the functions, personnel, assets, and liabilities of the  
2 following entities:

3 (1) The National Infrastructure Protection Center of the Federal  
4 Bureau of Investigation (other than the Computer Investigations and  
5 Operations Section), including the functions of the Attorney General  
6 relating thereto.

7 (2) The National Communications System of the Department of De-  
8 fense, including the functions of the Secretary of Defense relating  
9 thereto.

10 (3) The Critical Infrastructure Assurance Office of the Department  
11 of Commerce, including the functions of the Secretary of Commerce re-  
12 lating thereto.

13 (4) The National Infrastructure Simulation and Analysis Center of  
14 the Department of Energy and the energy security and assurance pro-  
15 gram and activities of the Department, including the functions of the  
16 Secretary of Energy relating thereto.

17 (5) The Federal Computer Incident Response Center of the General  
18 Services Administration, including the functions of the Administrator  
19 of General Services relating thereto.

20 **§ 10502. Access to information**

21 (a) IN GENERAL.—

22 (1) THREAT AND VULNERABILITY INFORMATION.—Except as  
23 otherwise directed by the President, the Secretary shall have access the  
24 Secretary considers necessary to all information, including reports, as-  
25 sessments, analyses, and unevaluated intelligence relating to threats of  
26 terrorism against the United States and to other areas of responsibility  
27 assigned by the Secretary, and to all information concerning infrastruc-  
28 ture or other vulnerabilities of the United States to terrorism, whether  
29 or not the information has been analyzed, that may be collected, pos-  
30 sessed, or prepared by an agency of the Federal Government.

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

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

38 (1) the Secretary may obtain the material upon request, and may  
39 enter into cooperative arrangements with other executive agencies to  
40 provide the material or provide Department officials with access to it  
41 on a regular or routine basis, including requests or arrangements in-



1           volving broad categories of material, access to electronic databases, or  
2           both; and

3           (2) regardless of whether the Secretary has made a request or en-  
4           tered into a cooperative arrangement under paragraph (1), all agencies  
5           of the Federal Government shall promptly provide to the Secretary—

6                   (A) all reports (including information reports containing intel-  
7                   ligence which has not been fully evaluated), assessments, and ana-  
8                   lytical information relating to threats of terrorism against the  
9                   United States and to other areas of responsibility assigned by the  
10                  Secretary;

11                  (B) all information concerning the vulnerability of the infra-  
12                  structure of the United States, or other vulnerabilities of the  
13                  United States, to terrorism, whether or not the information has  
14                  been analyzed;

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

18                  (D) other information or material as the President may direct.

19           (e) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed  
20           to be a Federal law enforcement, intelligence, protective, national defense,  
21           immigration, or national security official, and shall be provided with all in-  
22           formation from law enforcement agencies that is required to be given to the  
23           Director of Central Intelligence, under any provision of the following:

24                   (1) The USA PATRIOT Act of 2001 (Public Law 107–56, 115 Stat.  
25                   272).

26                   (2) Section 2517(6) of title 18.

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

28           (d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

29                   (1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing  
30                   in this chapter shall preclude an element of the intelligence community  
31                   (as that term is defined in section 3(4) of the National Security Act  
32                   of 1947 (50 U.S.C. 3003(4)), or any other element of the Federal Gov-  
33                   ernment with responsibility for analyzing terrorist threat information,  
34                   from receiving intelligence or other information relating to terrorism.

35                   (2) SHARING OF INFORMATION.—The Secretary, in consultation  
36                   with the Director of Central Intelligence, shall work to ensure that in-  
37                   telligence or other information relating to terrorism to which the De-  
38                   partment has access is appropriately shared with the elements of the  
39                   Federal Government referred to in paragraph (1), as well as with State  
40                   and local governments, as appropriate.

1     **§ 10503. Terrorist travel program**

2         (a) REQUIREMENT TO ESTABLISH.—The Secretary, in consultation with  
3     the Director of the National Counterterrorism Center and consistent with  
4     the strategy developed under section 7201 of the Intelligence Reform and  
5     Terrorism Prevention Act of 2004 (Public Law 108–458, 50 U.S.C. 3056  
6     note), shall establish a program to oversee the implementation of the Sec-  
7     retary’s responsibilities with respect to terrorist travel.

8         (b) HEAD OF THE PROGRAM.—The Secretary shall designate an official  
9     of the Department to be responsible for carrying out the program. The offi-  
10    cial shall be—

- 11             (1) the Assistant Secretary for Policy; or  
12             (2) an official appointed by the Secretary who reports directly to the  
13     Secretary.

14         (c) DUTIES.—The official designated under subsection (b) shall assist the  
15     Secretary of in improving the Department’s ability to prevent terrorists  
16     from entering the United States or remaining in the United States unde-  
17     tected by—

- 18             (1) developing relevant strategies and policies;  
19             (2) reviewing the effectiveness of existing programs and recommend-  
20     ing improvements, if necessary;  
21             (3) making recommendations on budget requests and on the alloca-  
22     tion of funding and personnel;  
23             (4) ensuring effective coordination, with respect to policies, pro-  
24     grams, planning, operations, and dissemination of intelligence and in-  
25     formation related to terrorist travel—

26             (A) among appropriate subdivisions of the Department, as de-  
27     termined by the Secretary and including the—

- 28                     (i) Bureau of Customs and Border Protection;  
29                     (ii) Bureau of Immigration and Customs Enforcement;  
30                     (iii) Bureau of Citizenship and Immigration Services;  
31                     (iv) Transportation Security Administration; and  
32                     (v) Coast Guard; and

33             (B) between the Department and other appropriate Federal  
34     agencies; and

35             (5) serving as the Secretary’s primary point of contact with the Na-  
36     tional Counterterrorism Center for implementing initiatives related to  
37     terrorist travel and ensuring that the recommendations of the Center  
38     related to terrorist travel are carried out by the Department.

39     **§ 10504. Homeland Security Advisory System**

40         (a) IN GENERAL.—The Secretary shall administer the Homeland Security  
41     Advisory System under this section to provide advisories or warnings re-

1     garding the threat or risk that acts of terrorism will be committed on the  
2     homeland to Federal, State, local, and tribal government authorities and to  
3     the people of the United States, as appropriate. The Secretary shall exercise  
4     primary responsibility for providing the advisories or warnings.

5     (b) REQUIRED ELEMENTS.—In administering the Homeland Security Ad-  
6     visory System, the Secretary shall—

7         (1) establish criteria for the issuance and revocation of the advisories  
8         or warnings;

9         (2) develop a methodology, relying on the criteria established under  
10         paragraph (1), for the issuance and revocation of the advisories or  
11         warnings;

12         (3) provide, in each advisory or warning, specific information and ad-  
13         vice regarding appropriate protective measures and countermeasures  
14         that may be taken in response to the threat or risk, at the maximum  
15         level of detail practicable to enable individuals, government entities,  
16         emergency response providers, and the private sector to act appro-  
17         priately;

18         (4) whenever possible, limit the scope of each advisory or warning  
19         to a specific region, locality, or economic sector believed to be under  
20         threat or at risk; and

21         (5) not, in issuing an advisory or warning, use color designations as  
22         the exclusive means of specifying homeland security threat conditions  
23         that are the subject of the advisory or warning.

24     **§ 10505. Homeland security information sharing**

25     (a) INFORMATION SHARING.—Consistent with section 11707 of this title,  
26     the Secretary, acting through the Under Secretary for Intelligence and  
27     Analysis, shall integrate the information and standardize the format of the  
28     products of the intelligence components of the Department containing home-  
29     land security information, terrorism information, weapons of mass destruc-  
30     tion information, or national intelligence (as defined in section 3(5) of the  
31     National Security Act of 1947 (50 U.S.C. 3003(5)) except for internal secu-  
32     rity protocols or personnel information of the intelligence components, or  
33     other administrative processes that are administered by any chief security  
34     officer of the Department.

35     (b) INFORMATION SHARING AND KNOWLEDGE MANAGEMENT OFFI-  
36     CERS.—For each intelligence component of the Department, the Secretary  
37     shall designate an information sharing and knowledge management officer  
38     who shall report to the Under Secretary for Intelligence and Analysis re-  
39     garding coordinating the different systems used in the Department to gather  
40     and disseminate homeland security information or national intelligence

1 (as defined in section 3(5) of the National Security Act of 1947 (50 U.S.C.  
2 3003(5)).

3 (c) STATE, LOCAL, AND PRIVATE-SECTOR SOURCES OF INFORMATION.—

4 (1) ESTABLISHMENT OF BUSINESS PROCESSES.—The Secretary, act-  
5 ing through the Under Secretary for Intelligence and Analysis or the  
6 Assistant Secretary for Infrastructure Protection, as appropriate,  
7 shall—

8 (A) establish Department-wide procedures for the review and  
9 analysis of information provided by State, local, and tribal govern-  
10 ments and the private sector;

11 (B) as appropriate, integrate the information into the informa-  
12 tion gathered by the Department and other departments and agen-  
13 cies of the Federal Government; and

14 (C) make available the information, as appropriate, within the  
15 Department and to other departments and agencies of the Federal  
16 Government.

17 (2) FEEDBACK.—The Secretary shall develop mechanisms to provide  
18 feedback regarding the analysis and utility of information provided by  
19 an entity of State, local, or tribal government or the private sector that  
20 provides the information to the Department.

21 (d) TRAINING AND EVALUATION OF EMPLOYEES.—

22 (1) TRAINING.—The Secretary, acting through the Under Secretary  
23 for Intelligence and Analysis or the Assistant Secretary for Infrastruc-  
24 ture Protection, as appropriate, shall provide to employees of the De-  
25 partment opportunities for training and education to develop an under-  
26 standing of—

27 (A) the definitions of homeland security information and na-  
28 tional intelligence (as defined in section 3(5) of the National Secu-  
29 rity Act of 1947 (50 U.S.C. 3003(5)); and

30 (B) how information available to the employees as part of their  
31 duties—

32 (i) might qualify as homeland security information or na-  
33 tional intelligence; and

34 (ii) might be relevant to the Office of Intelligence and  
35 Analysis and the intelligence components of the Department.

36 (2) EVALUATIONS.—The Under Secretary for Intelligence and Analy-  
37 sis shall—

38 (A) on an ongoing basis, evaluate how employees of the Office  
39 of Intelligence and Analysis and the intelligence components of the  
40 Department are utilizing homeland security information or na-  
41 tional intelligence, sharing information within the Department, as

1 described in this title, and participating in the information sharing  
2 environment established under section 11707 of this title; and

3 (B) provide to the appropriate component heads regular reports  
4 regarding the evaluations under subparagraph (A).

5 (e) Receipt of information from United States Secret Service.—

6 (1) IN GENERAL.—The Under Secretary for Intelligence and Analy-  
7 sis shall receive from the United States Secret Service homeland secu-  
8 rity information, terrorism information, weapons of mass destruction  
9 information (as these terms are defined in section 11707 of this title),  
10 or national intelligence, as defined in Section 3(5) of the National Se-  
11 curity Act of 1947 (50 U.S.C. 3003(5)), as well as suspect information  
12 obtained in criminal investigations. The United States Secret Service  
13 shall cooperate with the Under Secretary for Intelligence and Analysis  
14 with respect to activities under this section and section 10506 of this  
15 title.

16 (2) SAVINGS CLAUSE.—Nothing in the Implementing Recommenda-  
17 tions of the 9/11 Commission Act of 2007 (Public Law 110–53, 121  
18 Stat. 266) shall interfere with the operation of section 3056(g) of title  
19 18, or with the authority of the Secretary or the Director of the United  
20 States Secret Service regarding the budget of the United States Secret  
21 Service.

22 **§ 10506. Comprehensive information technology network ar-**  
23 **chitecture**

24 (a) ESTABLISHMENT.—The Secretary, acting through the Under Sec-  
25 retary for Intelligence and Analysis, shall establish, consistent with the poli-  
26 cies and procedures developed under section 11707 of this title, and consist-  
27 ent with the enterprise architecture of the Department, a comprehensive in-  
28 formation technology network architecture for the Office of Intelligence and  
29 Analysis that connects the various databases and related information tech-  
30 nology assets of the Office of Intelligence and Analysis and the intelligence  
31 components of the Department in order to promote internal information  
32 sharing among the intelligence and other personnel of the Department.

33 (b) COMPREHENSIVE INFORMATION TECHNOLOGY NETWORK ARCHITEC-  
34 TURE DEFINED.—The term “comprehensive information technology network  
35 architecture” means an integrated framework for evolving or maintaining  
36 existing information technology and acquiring new information technology to  
37 achieve the strategic management and information resources management  
38 goals of the Office of Intelligence and Analysis.

1    **§ 10507. Coordination with information sharing environ-**  
2                                   **ment**

3           (a) GUIDANCE.—All activities to comply with sections 10504, 10505, and  
4 10506 of this title shall be—

5               (1) consistent with policies, guidelines, procedures, instructions, or  
6 standards established under section 11707 of this title;

7               (2) implemented in coordination with, as appropriate, the program  
8 manager for the information sharing environment established under  
9 that section;

10              (3) consistent with applicable guidance issued by the Director of Na-  
11 tional Intelligence; and

12              (4) consistent with applicable guidance issued by the Secretary relat-  
13 ing to the protection of law enforcement information or proprietary in-  
14 formation.

15           (b) CONSULTATION.—In carrying out the duties and responsibilities  
16 under this subchapter, the Under Secretary for Intelligence and Analysis  
17 shall take into account the views of the heads of the intelligence components  
18 of the Department.

19    **§ 10508. Intelligence components**

20           Subject to the direction and control of the Secretary, and consistent with  
21 applicable guidance issued by the Director of National Intelligence, the re-  
22 sponsibilities of the head of each intelligence component of the Department  
23 are as follows:

24               (1) To ensure that the collection, processing, analysis, and dissemi-  
25 nation of information within the scope of the information sharing envi-  
26 ronment, including homeland security information, terrorism informa-  
27 tion, weapons of mass destruction information, and national intelligence  
28 (as defined in section 3(5) of the National Security Act of 1947 (50  
29 U.S.C. 3003(5)), are carried out effectively and efficiently in support  
30 of the intelligence mission of the Department, as led by the Under Sec-  
31 retary for Intelligence and Analysis.

32               (2) To otherwise support and implement the intelligence mission of  
33 the Department, as led by the Under Secretary for Intelligence and  
34 Analysis.

35               (3) To incorporate the input of the Under Secretary for Intelligence  
36 and Analysis with respect to performance appraisals, bonus or award  
37 recommendations, pay adjustments, and other forms of commendation.

38               (4) To coordinate with the Under Secretary for Intelligence and  
39 Analysis in developing policies and requirements for the recruitment  
40 and selection of intelligence officials of the intelligence component.

1           (5) To advise and coordinate with the Under Secretary for Intel-  
2           ligence and Analysis on any plan to reorganize or restructure the intel-  
3           ligence component that would, if implemented, result in realignments  
4           of intelligence functions.

5           (6) To ensure that employees of the intelligence component have  
6           knowledge of, and comply with, the programs and policies established  
7           by the Under Secretary for Intelligence and Analysis and other appro-  
8           priate officials of the Department and that the employees comply with  
9           all applicable laws and regulations.

10          (7) To perform other activities relating to the responsibilities as the  
11          Secretary may provide.

12       **§ 10509. Training for employees of intelligence components**

13          The Secretary shall provide training and guidance for employees, officials,  
14          and senior executives of the intelligence components of the Department to  
15          develop knowledge of laws, regulations, operations, policies, procedures, and  
16          programs that are related to the functions of the Department relating to  
17          the collection, processing, analysis, and dissemination of information within  
18          the scope of the information sharing environment, including homeland secu-  
19          rity information, terrorism information, and weapons of mass destruction  
20          information, or national intelligence (as the term is defined in section 3(5)  
21          of the National Security Act of 1947 (50 U.S.C. 3003(5)).

22       **§ 10510. Intelligence training development for State and**  
23       **local government officials**

24          (a) CURRICULUM.—The Secretary, acting through the Under Secretary  
25          for Intelligence and Analysis, shall—

26               (1) develop a curriculum for training State, local, and tribal govern-  
27               ment officials, including law enforcement officers, intelligence analysts,  
28               and other emergency response providers, in the intelligence cycle and  
29               Federal laws, practices, and regulations regarding the development,  
30               handling, and review of intelligence and other information; and

31               (2) ensure that the curriculum includes executive level training for  
32               senior level State, local, and tribal law enforcement officers, intelligence  
33               analysts, and other emergency response providers.

34          (b) TRAINING.—To the extent possible, the Federal Law Enforcement  
35          Training Center and other existing Federal entities with the capacity and  
36          expertise to train State, local, and tribal government officials based on the  
37          curriculum developed under subsection (a) shall be used to carry out the  
38          training programs created under this section. If the entities do not have the  
39          capacity, resources, or capabilities to conduct the training, the Secretary  
40          may approve another entity to conduct the training.

1 (c) CONSULTATION.—In carrying out the duties described in subsection  
2 (a), the Under Secretary for Intelligence and Analysis shall consult with the  
3 Director of the Federal Law Enforcement Training Center, the Attorney  
4 General, the Director of National Intelligence, the Administrator of the Fed-  
5 eral Emergency Management Agency, and other appropriate parties, such  
6 as private industry, institutions of higher education, nonprofit institutions,  
7 and other intelligence agencies of the Federal Government.

8 **§ 10511. Information sharing incentives**

9 (a) AWARDS.—In making cash awards under chapter 45 of title 5, the  
10 President or the head of an agency, in consultation with the program man-  
11 ager designated under section 11707 of this title, may consider the success  
12 of an employee in appropriately sharing information within the scope of the  
13 information sharing environment established under that section, including  
14 homeland security information, terrorism information, and weapons of mass  
15 destruction information, or national intelligence (as defined in section 3(5)  
16 of the National Security Act of 1947 (50 U.S.C. 3003(5)), in a manner con-  
17 sistent with policies, guidelines, procedures, instructions, or standards estab-  
18 lished by the President or, as appropriate, the program manager of that en-  
19 vironment for the implementation and management of that environment.

20 (b) OTHER INCENTIVES.—The head of each department or agency de-  
21 scribed in section 11707(g), in consultation with the program manager des-  
22 ignated under section 11707, shall adopt best practices regarding effective  
23 ways to educate and motivate officers and employees of the Federal Govern-  
24 ment to participate fully in the information sharing environment, including

- 25 (1) promotions and other nonmonetary awards; and  
26 (2) publicizing information sharing accomplishments by individual  
27 employees and, where appropriate, the tangible end benefits that re-  
28 sulted.

29 **§ 10512. Department of Homeland Security State, Local, and**  
30 **Regional Fusion Center initiative**

31 (a) DEFINITIONS.—In this section:

32 (1) FUSION CENTER.—The term “fusion center” means a collabo-  
33 rative effort of two or more Federal, State, local, or tribal government  
34 agencies that combines resources, expertise, or information with the  
35 goal of maximizing the ability of the agencies to detect, prevent, inves-  
36 tigate, apprehend, and respond to criminal or terrorist activity.

37 (2) INFORMATION SHARING ENVIRONMENT.—The term “information  
38 sharing environment” means the information sharing environment es-  
39 tablished under section 11707 of this title.

40 (3) INTELLIGENCE ANALYST.—The term “intelligence analyst”  
41 means an individual who regularly advises, administers, supervises, or



1 performs work in the collection, gathering, analysis, evaluation, report-  
2 ing, production, or dissemination of information on political, economic,  
3 social, cultural, physical, geographical, scientific, or military conditions,  
4 trends, or forces in foreign or domestic areas that directly or indirectly  
5 affect national security.

6 (4) INTELLIGENCE-LED POLICING.—The term “intelligence-led polic-  
7 ing” means the collection and analysis of information to produce an in-  
8 telligence end product designed to inform law enforcement decision  
9 making at the tactical and strategic levels.

10 (5) TERRORISM INFORMATION.—The term “terrorism information”  
11 has the meaning given that term in section 11707 of this title.

12 (b) ESTABLISHMENT.—The Secretary, in consultation with the program  
13 manager of the information sharing environment established under section  
14 11707 of this title, the Attorney General, the Privacy Officer of the Depart-  
15 ment, the Officer for Civil Rights and Civil Liberties of the Department,  
16 and the Privacy and Civil Liberties Oversight Board established under sec-  
17 tion 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004  
18 (Public Law 108–458, 5 U.S.C. 601 note), shall establish a Department of  
19 Homeland Security State, Local, and Regional Fusion Center Initiative to  
20 establish partnerships with State, local, and regional fusion centers.

21 (c) DEPARTMENT SUPPORT AND COORDINATION.—Through the Depart-  
22 ment of Homeland Security State, Local, and Regional Fusion Center Ini-  
23 tiative, and in coordination with the principal officials of participating State,  
24 local, or regional fusion centers and the officers designated as the Homeland  
25 Security Advisors of the States, the Secretary shall—

26 (1) provide operational and intelligence advice and assistance to  
27 State, local, and regional fusion centers;

28 (2) support efforts to include State, local, and regional fusion centers  
29 into efforts to establish an information sharing environment;

30 (3) conduct tabletop and live training exercises to regularly assess  
31 the capability of individual and regional networks of State, local, and  
32 regional fusion centers to integrate the efforts of the networks with the  
33 efforts of the Department;

34 (4) coordinate with other relevant Federal entities engaged in home-  
35 land security-related activities;

36 (5) provide analytic and reporting advice and assistance to State,  
37 local, and regional fusion centers;

38 (6) review information within the scope of the information sharing  
39 environment, including homeland security information, terrorism infor-  
40 mation, and weapons of mass destruction information, that is gathered

1 by State, local, and regional fusion centers, and to incorporate the in-  
2 formation, as appropriate, into the Department's own information;

3 (7) provide management assistance to State, local, and regional fu-  
4 sion centers;

5 (8) serve as a point of contact to ensure the dissemination of infor-  
6 mation within the scope of the information sharing environment, in-  
7 cluding homeland security information, terrorism information, and  
8 weapons of mass destruction information;

9 (9) facilitate close communication and coordination between State,  
10 local, and regional fusion centers and the Department;

11 (10) provide State, local, and regional fusion centers with expertise  
12 on Department resources and operations;

13 (11) provide training to State, local, and regional fusion centers and  
14 encourage the fusion centers to participate in terrorism threat-related  
15 exercises conducted by the Department; and

16 (12) carry out other duties the Secretary determines are appropriate.

17 (d) Personnel Assignment.—

18 (1) IN GENERAL.—THE UNDER SECRETARY FOR INTELLIGENCE AND  
19 ANALYSIS SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, ASSIGN  
20 OFFICERS AND INTELLIGENCE ANALYSTS FROM COMPONENTS OF THE  
21 DEPARTMENT TO PARTICIPATING STATE, LOCAL, AND REGIONAL FU-  
22 SION CENTERS.

23 (2) PERSONNEL SOURCES.—Officers and intelligence analysts as-  
24 signed to participating fusion centers under this subsection may be as-  
25 signed from the following Department components, in coordination with  
26 the respective component head and in consultation with the principal  
27 officials of participating fusion centers:

28 (A) Office of Intelligence and Analysis.

29 (B) Office of Infrastructure Protection.

30 (C) Transportation Security Administration.

31 (D) Bureau of Customs and Border Protection.

32 (E) Bureau of Immigration and Customs Enforcement.

33 (F) Coast Guard.

34 (G) Other components of the Department, as determined by the  
35 Secretary.

36 (3) QUALIFYING CRITERIA.—

37 (A) In general.—The Secretary shall develop qualifying criteria  
38 for a fusion center to participate in the assigning of Department  
39 officers or intelligence analysts under this section.

40 (B) Criteria.—Criteria developed under subparagraph (A) may  
41 include—

1 (i) whether the fusion center, through its mission and gov-  
2 ernance structure, focuses on a broad counterterrorism ap-  
3 proach, and whether that broad approach is pervasive  
4 through all levels of the organization;

5 (ii) whether the fusion center has sufficient numbers of  
6 adequately trained personnel to support a broad counter-  
7 terrorism mission;

8 (iii) whether the fusion center has—

9 (I) access to relevant law enforcement, emergency re-  
10 sponse, private sector, open source, and national security  
11 data; and

12 (II) the ability to share and analytically utilize that  
13 data for lawful purposes;

14 (iv) whether the fusion center is adequately funded by the  
15 State, local, or regional government to support its counter-  
16 terrorism mission; and

17 (v) the relevancy of the mission of the fusion center to the  
18 particular source component of Department officers or intel-  
19 ligence analysts.

20 (4) PREREQUISITE.—

21 (A) INTELLIGENCE ANALYSIS, PRIVACY, AND CIVIL LIBERTIES  
22 TRAINING.—Before being assigned to a fusion center under this  
23 section, an officer or intelligence analyst shall undergo

24 (i) appropriate intelligence analysis or information sharing  
25 training using an intelligence-led policing curriculum that is  
26 consistent with—

27 (I) standard training and education programs offered  
28 to Department law enforcement and intelligence person-  
29 nel; and

30 (II) the Criminal Intelligence Systems Operating Poli-  
31 cies under part 23 of title 28, Code of Federal Regula-  
32 tions (or a corresponding similar rule or regulation);

33 (ii) appropriate privacy and civil liberties training that is  
34 developed, supported, or sponsored by the Privacy Officer and  
35 the Officer for Civil Rights and Civil Liberties of the Depart-  
36 ment, in consultation with the Privacy and Civil Liberties  
37 Oversight Board established under section 1061 of the Intel-  
38 ligence Reform and Terrorism Prevention Act of 2004 (Public  
39 Law 108–458, 5 U.S.C. 601 note); and

40 (iii) other training prescribed by the Under Secretary for  
41 Intelligence and Analysis.

1 (B) PRIOR WORK EXPERIENCE IN AREA.—In determining the  
2 eligibility of an officer or intelligence analyst to be assigned to a  
3 fusion center under this section, the Under Secretary for Intel-  
4 ligence and Analysis shall consider the familiarity of the officer or  
5 intelligence analyst with the State, locality, or region, as deter-  
6 mined by such factors as whether the officer or intelligence analyst  
7 (i) has been previously assigned in the geographic area; or  
8 (ii) has previously worked with intelligence officials or law  
9 enforcement or other emergency response providers from that  
10 State, locality, or region.

11 (5) EXPEDITED SECURITY CLEARANCE PROCESSING.—The Under  
12 Secretary for Intelligence and Analysis—

13 (A) shall ensure that each officer or intelligence analyst as-  
14 signed to a fusion center under this section has the appropriate  
15 security clearance to contribute effectively to the mission of the fu-  
16 sion center; and

17 (B) may request that security clearance processing be expedited  
18 for each officer or intelligence analyst and may use available funds  
19 for this purpose.

20 (6) ADDITIONAL QUALIFICATIONS.—Each officer or intelligence ana-  
21 lyst assigned to a fusion center under this section shall satisfy any  
22 other qualifications the Under Secretary for Intelligence and Analysis  
23 may prescribe.

24 (e) RESPONSIBILITIES.—An officer or intelligence analyst assigned to a  
25 fusion center under this section shall—

26 (1) assist law enforcement agencies and other emergency response  
27 providers of State, local, and tribal governments and fusion center per-  
28 sonnel in using information within the scope of the information sharing  
29 environment, including homeland security information, terrorism infor-  
30 mation, and weapons of mass destruction information, to develop a  
31 comprehensive and accurate threat picture;

32 (2) review homeland security-relevant information from law enforce-  
33 ment agencies and other emergency response providers of State, local,  
34 and tribal government;

35 (3) create intelligence and other information products derived from  
36 the information and other homeland security-relevant information pro-  
37 vided by the Department; and

38 (4) assist in the dissemination of the products, as coordinated by the  
39 Under Secretary for Intelligence and Analysis, to law enforcement  
40 agencies and other emergency response providers of State, local, and

1 tribal government, other fusion centers, and appropriate Federal agen-  
2 cies.

3 (f) BORDER INTELLIGENCE PRIORITY.—

4 (1) IN GENERAL.—The Secretary shall make it a priority to assign  
5 officers and intelligence analysts under this section from the Bureau  
6 of Customs and Border Protection, Bureau of Immigration and Customs  
7 Enforcement, and Coast Guard to participating State, local, and  
8 regional fusion centers located in jurisdictions along land or maritime  
9 borders of the United States in order to enhance the integrity of and  
10 security at the borders by helping Federal, State, local, and tribal law  
11 enforcement authorities to identify, investigate, and otherwise interdict  
12 persons, weapons, and related contraband that pose a threat to home-  
13 land security.

14 (2) BORDER INTELLIGENCE PRODUCTS.—When performing the re-  
15 sponsibilities described in subsection (e), officers and intelligence ana-  
16 lysts assigned to participating State, local, and regional fusion centers  
17 under this section shall have, as a primary responsibility, the creation  
18 of border intelligence products that—

19 (A) assist State, local, and tribal law enforcement agencies in  
20 deploying their resources most efficiently to help detect and inter-  
21 dict terrorists, weapons of mass destruction, and related contra-  
22 band at land or maritime borders of the United States;

23 (B) promote more consistent and timely sharing of border secu-  
24 rity-relevant information among jurisdictions along land or mari-  
25 time borders of the United States; and

26 (C) enhance the Department's situational awareness of the  
27 threat of acts of terrorism at or involving the land or maritime  
28 borders of the United States.

29 (g) DATABASE ACCESS.—To fulfill the objectives described under sub-  
30 section (e), each officer or intelligence analyst assigned to a fusion center  
31 under this section shall have appropriate access to all relevant Federal data-  
32 bases and information systems, consistent with policies, guidelines, proce-  
33 dures, instructions, or standards established by the President or, as appro-  
34 priate, the program manager of the information sharing environment for the  
35 implementation and management of that environment.

36 (h) CONSUMER FEEDBACK.—

37 (1) IN GENERAL.—The Secretary shall create a voluntary mechanism  
38 for a State, local, or tribal law enforcement officer or other emergency  
39 response provider who is a consumer of the intelligence or other infor-  
40 mation products referred to in subsection (e) to provide feedback to the  
41 Department on the quality and utility of the intelligence products.

1           (2) REPORT.—The Secretary shall submit annually to the Committee  
2           on Homeland Security and Governmental Affairs of the Senate and the  
3           Committee on Homeland Security of the House of Representatives a  
4           report that includes a description of the consumer feedback obtained  
5           under paragraph (1) and, if applicable, how the Department has ad-  
6           justed its production of intelligence products in response to that con-  
7           sumer feedback.

8           (i) RULE OF CONSTRUCTION.—

9           (1) IN GENERAL.—The authorities granted under this section shall  
10          supplement the authorities granted under section 10501(b) of this title,  
11          and nothing in this section shall be construed to abrogate the authori-  
12          ties granted under section 10501(b).

13          (2) PARTICIPATION.—Nothing in this section shall be construed to  
14          require a State, local, or regional government or entity to accept the  
15          assignment of officers or intelligence analysts of the Department into  
16          the fusion center of that State, locality, or region.

17          (j) GUIDELINES.—The Secretary, in consultation with the Attorney Gen-  
18          eral, shall establish guidelines for fusion centers created and operated by  
19          State and local governments, to include standards that a fusion center  
20          shall—

21               (1) collaboratively develop a mission statement, identify expectations  
22               and goals, measure performance, and determine effectiveness for that  
23               fusion center;

24               (2) create a representative governance structure that includes law  
25               enforcement officers and other emergency response providers and, as  
26               appropriate, the private sector;

27               (3) create a collaborative environment for the sharing of intelligence  
28               and information among Federal, State, local, and tribal government  
29               agencies (including law enforcement officers and other emergency re-  
30               sponse providers), the private sector, and the public, consistent with  
31               policies, guidelines, procedures, instructions, or standards established  
32               by the President or, as appropriate, the program manager of the infor-  
33               mation sharing environment;

34               (4) leverage the databases, systems, and networks available from  
35               public and private-sector entities, in accordance with all applicable  
36               laws, to maximize information sharing;

37               (5) develop, publish, and adhere to a privacy and civil liberties policy  
38               consistent with Federal, State, and local law;

39               (6) provide, in coordination with the Privacy Officer of the Depart-  
40               ment and the Officer for Civil Rights and Civil Liberties of the Depart-

1 ment, appropriate privacy and civil liberties training for all State, local,  
2 tribal, and private-sector representatives at the fusion center;

3 (7) ensure appropriate security measures are in place for the facility,  
4 data, and personnel;

5 (8) select and train personnel based on the needs, mission, goals, and  
6 functions of that fusion center;

7 (9) offer a variety of intelligence and information services and prod-  
8 ucts to recipients of fusion center intelligence and information; and

9 (10) incorporate law enforcement officers, other emergency response  
10 providers, and, as appropriate, the private sector, into all relevant  
11 phases of the intelligence and fusion process, consistent with the mis-  
12 sion statement developed under paragraph (1), either through full time  
13 representatives or liaison relationships with the fusion center to enable  
14 the receipt and sharing of information and intelligence.

15 **§ 10513. Homeland Security Information Sharing Fellows**  
16 **Program**

17 (a) ESTABLISHMENT.—The Secretary, acting through the Under Sec-  
18 retary for Intelligence and Analysis, and in consultation with the Chief  
19 Human Capital Officer, shall establish the Homeland Security Information  
20 Sharing Fellows Program for the purpose of—

21 (1) detailing State, local, and tribal law enforcement officers and intel-  
22 ligence analysts to the Department in accordance with subchapter VI of  
23 chapter 33 of title 5, to participate in the work of the Office of Intelligence  
24 and Analysis in order to become familiar with—

25 (A) the relevant missions and capabilities of the Department  
26 and other Federal agencies; and

27 (B) the role, programs, products, and personnel of the Office of  
28 Intelligence and Analysis; and

29 (2) promoting information sharing between the Department and  
30 State, local, and tribal law enforcement officers and intelligence ana-  
31 lysts by assigning the officers and analysts to—

32 (A) serve as a point of contact in the Department to assist in  
33 the representation of State, local, and tribal information require-  
34 ments;

35 (B) identify information within the scope of the information  
36 sharing environment, including homeland security information, ter-  
37 rorism information, and weapons of mass destruction information,  
38 that is of interest to State, local, and tribal law enforcement offi-  
39 cers, intelligence analysts, and other emergency response provid-  
40 ers;

1 (C) assist Department analysts in preparing and disseminating  
2 products derived from information within the scope of the informa-  
3 tion sharing environment, including homeland security informa-  
4 tion, terrorism information, and weapons of mass destruction in-  
5 formation, that are tailored to State, local, and tribal law enforce-  
6 ment officers and intelligence analysts and designed to prepare for  
7 and thwart acts of terrorism; and

8 (D) assist Department analysts in preparing products derived  
9 from information within the scope of the information sharing envi-  
10 ronment, including homeland security information, terrorism infor-  
11 mation, and weapons of mass destruction information, that are  
12 tailored to State, local, and tribal emergency response providers  
13 and assist in the dissemination of the products through appro-  
14 priate Department channels.

15 (b) ELIGIBILITY.—To be eligible for selection as an Information Sharing  
16 Fellow under the program under the Homeland Security Information Shar-  
17 ing Fellows Program, an individual shall—

18 (1) have homeland security-related responsibilities;  
19 (2) be eligible for an appropriate security clearance;  
20 (3) possess a valid need for access to classified information, as deter-  
21 mined by the Under Secretary for Intelligence and Analysis;  
22 (4) be an employee of—

23 (A) a State, local, or regional fusion center;

24 (B) a State or local law enforcement or other government entity  
25 that serves a major metropolitan area, suburban area, or rural  
26 area, as determined by the Secretary;

27 (C) a State or local law enforcement or other government entity  
28 with port, border, or agricultural responsibilities, as determined by  
29 the Secretary;

30 (D) a tribal law enforcement or other authority; or

31 (E) another entity the Secretary determines is appropriate; and

32 (5) have undergone appropriate privacy and civil liberties training  
33 that is developed, supported, or sponsored by the Privacy Officer and  
34 the Officer for Civil Rights and Civil Liberties, in consultation with the  
35 Privacy and Civil Liberties Oversight Board established under section  
36 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004  
37 (5 U.S.C. 601 note).

38 (c) OPTIONAL PARTICIPATION.—A State, local, or tribal law enforcement  
39 or other government entity shall not be required to participate in the Home-  
40 land Security Information Sharing Fellows Program.

41 (d) PROCEDURES FOR NOMINATION AND SELECTION.—



1 (1) IN GENERAL.—The Under Secretary for Intelligence and Analy-  
2 sis shall establish procedures to provide for the nomination and selec-  
3 tion of individuals to participate in the Homeland Security Information  
4 Sharing Fellows Program.

5 (2) LIMITATIONS.—The Under Secretary for Intelligence and Analy-  
6 sis shall—

7 (A) select law enforcement officers and intelligence analysts rep-  
8 resenting a broad cross-section of State, local, and tribal agencies;  
9 and

10 (B) ensure that the number of Information Sharing Fellows se-  
11 lected does not impede the activities of the Office of Intelligence  
12 and Analysis.

### 13 § 10514. Rural Policing Institute

14 (a) DEFINITION.—In this section, the term “rural” means an area

15 (1) that is not located in a metropolitan statistical area, as defined  
16 by the Office of Management and Budget; or

17 (2) that is located in a metropolitan statistical area and a county,  
18 borough, parish, or area under the jurisdiction of an Indian tribe with  
19 a population of not more than 50,000.

20 (b) IN GENERAL.—The Secretary shall establish a Rural Policing Insti-  
21 tute, which shall be administered by the Federal Law Enforcement Training  
22 Center, to target training to law enforcement agencies and other emergency  
23 response providers located in rural areas. The Secretary, through the Rural  
24 Policing Institute, shall—

25 (1) evaluate the needs of law enforcement agencies and other emer-  
26 gency response providers in rural areas;

27 (2) develop expert training programs designed to address the needs  
28 of law enforcement agencies and other emergency response providers in  
29 rural areas as identified in the evaluation conducted under paragraph  
30 (1), including training programs about intelligence-led policing and pro-  
31 tections for privacy, civil rights, and civil liberties;

32 (3) provide the training programs developed under paragraph (2) to  
33 law enforcement agencies and other emergency response providers in  
34 rural areas; and

35 (4) conduct outreach efforts to ensure that local and tribal govern-  
36 ments in rural areas are aware of the training programs developed  
37 under paragraph (2) so they can avail themselves of the programs.

38 (c) Curricula.—The training at the Rural Policing Institute established  
39 under subsection (a) shall—

40 (1) be configured in a manner so as not to duplicate or displace a  
41 law enforcement or emergency response program of the Federal Law

1 Enforcement Training Center or a local or tribal government entity in  
2 existence on August 3, 2007; and

3 (2) to the maximum extent practicable, be delivered in a cost-effective  
4 manner at facilities of the Department, on closed military installations  
5 with adequate training facilities, or at facilities operated by the  
6 participants.

7 **§ 10515. Interagency Threat Assessment and Coordination**  
8 **Group**

9 (a) IN GENERAL.—To improve the sharing of information within the  
10 scope of the information sharing environment established under section  
11 11707 of this title with State, local, tribal, and private-sector officials, the  
12 Director of National Intelligence, through the program manager for the in-  
13 formation sharing environment, in coordination with the Secretary, shall  
14 coordinate and oversee the creation of an Interagency Threat Assessment  
15 and Coordination Group (in this section referred to as “ITACG”).

16 (b) COMPOSITION OF ITACG.—The ITACG shall consist of—

17 (1) an ITACG Advisory Council to set policy and develop processes  
18 for the integration, analysis, and dissemination of federally-coordinated  
19 information within the scope of the information sharing environment,  
20 including homeland security information, terrorism information, and  
21 weapons of mass destruction information; and

22 (2) an ITACG Detail comprised of State, local, and tribal homeland  
23 security and law enforcement officers and intelligence analysts detailed  
24 to work in the National Counterterrorism Center with Federal intel-  
25 ligence analysts for the purpose of integrating, analyzing, and assisting  
26 in the dissemination of federally-coordinated information within the  
27 scope of the information sharing environment, including homeland se-  
28 curity information, terrorism information, and weapons of mass de-  
29 struction information, through appropriate channels identified by the  
30 ITACG Advisory Council.

31 (c) RESPONSIBILITIES OF PROGRAM MANAGER.—The program manager  
32 shall—

33 (1) monitor and assess the efficacy of the ITACG;

34 (2) submit annually to the Secretary, the Attorney General, the Di-  
35 rector of National Intelligence, the Committee on Homeland Security  
36 and Governmental Affairs of the Senate and the Committee on Home-  
37 land Security of the House of Representatives a report on the progress  
38 of the ITACG; and

39 (3) in each report required by paragraph (2), include an assessment  
40 of whether the detailees under subsection (d)(5) have appropriate ac-  
41 cess to all relevant information, as required by subsection (g)(2)(C).

1 (d) RESPONSIBILITIES OF SECRETARY.—The Secretary, or the Sec-  
2 retary's designee, in coordination with the Director of the National Counter-  
3 terrorism Center and the ITACG Advisory Council, shall—

4 (1) create policies and standards for the creation of information  
5 products derived from information within the scope of the information  
6 sharing environment, including homeland security information, terror-  
7 ism information, and weapons of mass destruction information, that  
8 are suitable for dissemination to State, local, and tribal governments  
9 and the private sector;

10 (2) evaluate and develop processes for the timely dissemination of  
11 federally-coordinated information within the scope of the information  
12 sharing environment, including homeland security information, terror-  
13 ism information, and weapons of mass destruction information, to  
14 State, local, and tribal governments and the private sector;

15 (3) establish criteria and a methodology for indicating to State, local,  
16 and tribal governments and the private sector the reliability of informa-  
17 tion within the scope of the information sharing environment, including  
18 homeland security information, terrorism information, and weapons of  
19 mass destruction information, disseminated to them;

20 (4) educate the intelligence community about the requirements of the  
21 State, local, and tribal homeland security, law enforcement, and other  
22 emergency response providers regarding information within the scope  
23 of the information sharing environment, including homeland security  
24 information, terrorism information, and weapons of mass destruction  
25 information;

26 (5) establish and maintain the ITACG Detail, which shall assign an  
27 appropriate number of State, local, and tribal homeland security and  
28 law enforcement officers and intelligence analysts to work in the Na-  
29 tional Counterterrorism Center who shall—

30 (A) educate and advise National Counterterrorism Center intel-  
31 ligence analysts about the requirements of the State, local, and  
32 tribal homeland security and law enforcement officers, and other  
33 emergency response providers regarding information within the  
34 scope of the information sharing environment, including homeland  
35 security information, terrorism information, and weapons of mass  
36 destruction information;

37 (B) assist National Counterterrorism Center intelligence ana-  
38 lysts in integrating, analyzing, and otherwise preparing versions of  
39 products derived from information within the scope of the informa-  
40 tion sharing environment, including homeland security informa-  
41 tion, terrorism information, and weapons of mass destruction in-

1           formation that are unclassified or classified at the lowest possible  
2           level and suitable for dissemination to State, local, and tribal  
3           homeland security and law enforcement agencies in order to help  
4           deter and prevent terrorist attacks;

5           (C) implement, in coordination with National Counterterrorism  
6           Center intelligence analysts, the policies, processes, procedures,  
7           standards, and guidelines developed by the ITACG Advisory Coun-  
8           cil;

9           (D) assist in the dissemination of products derived from infor-  
10          mation within the scope of the information sharing environment,  
11          including homeland security information, terrorism information,  
12          and weapons of mass destruction information, to State, local, and  
13          tribal jurisdictions only through appropriate channels identified by  
14          the ITACG Advisory Council;

15          (E) make recommendations, as appropriate, to the Secretary or  
16          the Secretary's designee, for the further dissemination of intel-  
17          ligence products that could likely inform or improve the security  
18          of a State, local, or tribal government, (including a State, local,  
19          or tribal law enforcement agency) or a private-sector entity; and

20          (F) report directly to the senior intelligence official from the  
21          Department under paragraph (6);

22          (6) detail a senior intelligence official from the Department of Home-  
23          land Security to the National Counterterrorism Center, who shall—

24                  (A) manage the day-to-day operations of the ITACG Detail;

25                  (B) report directly to the Director of the National Counter-  
26          terrorism Center or the Director's designee; and

27                  (C) in coordination with the Director of the Federal Bureau of  
28          Investigation, and subject to the approval of the Director of the  
29          National Counterterrorism Center, select a deputy from the pool  
30          of available detailees from the Federal Bureau of Investigation in  
31          the National Counterterrorism Center;

32          (7) establish, within the ITACG Advisory Council, a mechanism to  
33          select law enforcement officers and intelligence analysts for placement  
34          in the National Counterterrorism Center consistent with paragraph (5),  
35          using criteria developed by the ITACG Advisory Council that shall en-  
36          courage participation from a broadly representative group of State,  
37          local, and tribal homeland security and law enforcement agencies;

38          (8) compile an annual assessment of the ITACG Detail's perform-  
39          ance, including summaries of customer feedback, in preparing, dissemi-  
40          nating, and requesting the dissemination of intelligence products in-

1 tended for State, local and tribal government (including State, local,  
2 and tribal law enforcement agencies) and private-sector entities; and

3 (9) provide the assessment developed under paragraph (8) to the  
4 program manager for use in the annual reports required by subsection  
5 (e)(2).

6 (e) MEMBERSHIP.—The Secretary, or the Secretary’s designee, shall serve  
7 as the chair of the ITACG Advisory Council, which shall include—

8 (1) representatives of—

9 (A) the Department;

10 (B) the Federal Bureau of Investigation;

11 (C) the National Counterterrorism Center;

12 (D) the Department of Defense;

13 (E) the Department of Energy;

14 (F) the Department of State; and

15 (G) other Federal entities as appropriate;

16 (2) the program manager of the information sharing environment,  
17 designated under section 11707(d) of this title, or the program man-  
18 ager’s designee; and

19 (3) executive level law enforcement and intelligence officials from  
20 State, local, and tribal governments.

21 (f) CRITERIA.—The Secretary, in consultation with the Director of Na-  
22 tional Intelligence, the Attorney General, and the program manager of the  
23 information sharing environment established under section 11707 of this  
24 title, shall—

25 (1) establish procedures for selecting members of the ITACG Advi-  
26 sory Council and for the proper handling and safeguarding of products  
27 derived from information within the scope of the information sharing  
28 environment, including homeland security information, terrorism infor-  
29 mation, and weapons of mass destruction information, by those mem-  
30 bers; and

31 (2) ensure that at least 50 percent of the members of the ITACG  
32 Advisory Council are from State, local, and tribal governments.

33 (g) OPERATIONS.—

34 (1) IN GENERAL.—The ITACG Advisory Council shall meet regu-  
35 larly, but not less than quarterly, at the facilities of the National  
36 Counterterrorism Center of the Office of the Director of National Intel-  
37 ligence.

38 (2) MANAGEMENT.—Pursuant to section 119(f)(1)(E) of the Na-  
39 tional Security Act of 1947 (50 U.S.C. 3056(f)(1)(E)), the Director of  
40 the National Counterterrorism Center, acting through the senior intel-

1           ligence official from the Department of Homeland Security detailed  
2           pursuant to subsection (d)(6), shall ensure that—

3           (A) the products derived from information within the scope of  
4           the information sharing environment, including homeland security  
5           information, terrorism information, and weapons of mass destruc-  
6           tion information, prepared by the National Counterterrorism Cen-  
7           ter and the ITACG Detail for distribution to State, local, and trib-  
8           al homeland security and law enforcement agencies reflect the re-  
9           quirements of the agencies and are produced consistently with the  
10          policies, processes, procedures, standards, and guidelines estab-  
11          lished by the ITACG Advisory Council;

12          (B) in consultation with the ITACG Advisory Council and con-  
13          sistent with sections 102A(f)(1)(B)(iii) and 119(f)(1)(E) of the  
14          National Security Act of 1947 (50 U.S.C. 3024(f)(1)(B)(iii),  
15          3056(f)(1)(E)), all products described in subparagraph (A) are  
16          disseminated through existing channels of the Department and the  
17          Department of Justice and other appropriate channels to State,  
18          local, and tribal government officials and other entities;

19          (C) all detailees under subsection (d)(5) have appropriate access  
20          to all relevant information within the scope of the information  
21          sharing environment, including homeland security information, ter-  
22          rorism information, and weapons of mass destruction information,  
23          available at the National Counterterrorism Center in order to ac-  
24          complish the objectives under that paragraph;

25          (D) all detailees under subsection (d)(5) have the appropriate  
26          security clearances and are trained in the procedures for handling,  
27          processing, storing, and disseminating classified products derived  
28          from information within the scope of the information sharing envi-  
29          ronment, including homeland security information, terrorism infor-  
30          mation, and weapons of mass destruction information; and

31          (E) all detailees under subsection (d)(5) complete appropriate  
32          privacy and civil liberties training.

33          (h) INAPPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—  
34          The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the  
35          ITACG or any subsidiary groups of the ITACG.

36          **§ 10516. National asset database**

37          (a) ESTABLISHMENT.—

38                  (1) NATIONAL ASSET DATABASE.—The Secretary shall establish and  
39                  maintain a national database of each system or asset that—

40                          (A) the Secretary, in consultation with appropriate homeland se-  
41                          curity officials of the States, determines to be vital and the loss,

1 interruption, incapacity, or destruction of which would have a neg-  
2 ative or debilitating effect on the economic security, public health,  
3 or safety of the United States, a State, or a local government; or

4 (B) the Secretary determines is appropriate for inclusion in the  
5 database.

6 (2) PRIORITIZED CRITICAL INFRASTRUCTURE LIST.—In accordance  
7 with Homeland Security Presidential Directive 7, as in effect on Janu-  
8 ary 1, 2007, the Secretary shall establish and maintain a single classi-  
9 fied prioritized list of systems and assets included in the database  
10 under paragraph (1) that the Secretary determines would, if destroyed  
11 or disrupted, cause national or regional catastrophic effects.

12 (b) USE OF DATABASE.—The Secretary shall use the database estab-  
13 lished under subsection (a)(1) in the development and implementation of  
14 Department plans and programs as appropriate.

15 (c) MAINTENANCE OF DATABASE.—

16 (1) IN GENERAL.—The Secretary shall maintain and annually up-  
17 date the database established under subsection (a)(1) and the list es-  
18 tablished under subsection (a)(2), including—

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

22 (B) regularly reviewing the guidelines established under sub-  
23 paragraph (A), including by consulting with the appropriate home-  
24 land security officials of States, to solicit feedback about the  
25 guidelines, as appropriate;

26 (C) after providing the homeland security official of a State  
27 with the guidelines under subparagraph (A), allowing the official  
28 a reasonable amount of time to submit to the Secretary data sub-  
29 missions recommended by the official for inclusion in the database  
30 established under subsection (a)(1);

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

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

39 (2) ORGANIZATION OF INFORMATION IN DATABASE.—The Secretary  
40 shall organize the contents of the database established under subsection  
41 (a)(1) and the list established under subsection (a)(2) as the Secretary

1 determines is appropriate. Any organizational structure of the contents  
2 shall include the categorization of the contents—

3 (A) according to the sectors listed in National Infrastructure  
4 Protection Plan developed pursuant to Homeland Security Presi-  
5 dential Directive 7; and

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

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

13 (4) RETENTION OF CLASSIFICATION.—The classification of informa-  
14 tion required to be provided to Congress, the Department, or another  
15 department or agency under this section by a sector-specific agency, in-  
16 cluding the assignment of a level of classification of the information,  
17 shall be binding on Congress, the Department, and that other Federal  
18 agency.

19 (d) REPORTS.—

20 (1) REPORT REQUIRED.—The Secretary shall submit annually to the  
21 Committee on Homeland Security and Governmental Affairs of the  
22 Senate and the Committee on Homeland Security of the House of Rep-  
23 resentatives a report on the database established under subsection  
24 (a)(1) and the list established under subsection (a)(2).

25 (2) CONTENTS.—Each report shall include the following:

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

28 (B) The name, location, and sector classification of each of the  
29 systems and assets on the list that are determined by the Sec-  
30 retary to be most at risk to terrorism.

31 (C) Any significant challenges in compiling the list of the sys-  
32 tems and assets included on the list or in the database established  
33 under subsection (a)(1).

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

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

40 (F) The amount of coordination between the Department and  
41 the private sector, through an entity of the Department that meets



1 with representatives of private-sector industries for purposes of co-  
2 ordination, for the purpose of ensuring the accuracy of the data-  
3 base and list.

4 (G) Other information the Secretary deems relevant.

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

7 (e) NATIONAL INFRASTRUCTURE PROTECTION CONSORTIUM.—The Sec-  
8 retary may establish a consortium to be known as the “National Infrastruc-  
9 ture Protection Consortium”. The Consortium may advise the Secretary on  
10 the best way to identify, generate, organize, and maintain a database or list  
11 of systems and assets established by the Secretary, including the database  
12 established under subsection (a)(1) and the list established under subsection  
13 (a)(2). If the Secretary establishes the National Infrastructure Protection  
14 Consortium, the Consortium may—

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

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

#### 21 **§ 10517. Classified Information Advisory Officer**

22 (a) REQUIREMENT TO ESTABLISH.—The Secretary shall identify and  
23 designate within the Department a Classified Information Advisory Officer.

24 (b) RESPONSIBILITIES.—The responsibilities of the Classified Information  
25 Advisory Officer are as follows:

26 (1) To develop and disseminate educational materials and to develop  
27 and administer training programs to assist State, local, and tribal gov-  
28 ernments (including State, local, and tribal law enforcement agencies)  
29 and private-sector entities—

30 (A) in developing plans and policies to respond to requests relat-  
31 ed to classified information without communicating the informa-  
32 tion to individuals who lack appropriate security clearances;

33 (B) regarding the appropriate procedures for challenging classi-  
34 fication designations of information received by personnel of the  
35 entities; and

36 (C) on the means by which personnel may apply for security  
37 clearances.

38 (2) To inform the Under Secretary for Intelligence and Analysis on  
39 policies and procedures that could facilitate the sharing of classified in-  
40 formation with the personnel, as appropriate.

**Subchapter II—Critical Infrastructure Information****§ 10531. Definitions**

In this subchapter:

(1) AGENCY.—The term “agency” has the meaning given it in section 551 of title 5.

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

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term “critical infrastructure information” means information not customarily in the public domain and related to the security of critical infrastructure or protected systems, including

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of critical infrastructure or a protected system to resist interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation, risk management planning, or risk audit; and

(C) a planned or past operational problem or solution regarding critical infrastructure or a protected system, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term “critical infrastructure protection program” means a component or bureau of a covered Federal agency that has been designated by the President or an agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term “Information Sharing and Analysis Organization” means a formal or informal entity or collaboration created or employed by public or private-sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdepend-

1           encies related to critical infrastructure and protected systems, so  
2           as to ensure the availability, integrity, and reliability thereof;

3           (B) communicating or disclosing critical infrastructure informa-  
4           tion to help prevent, detect, mitigate, or recover from the effects  
5           of an interference, compromise, or incapacitation problem related  
6           to critical infrastructure or protected systems; and

7           (C) voluntarily disseminating critical infrastructure information  
8           to its members, State, local, and Federal Governments, or other  
9           entities that may be of assistance in carrying out the purposes  
10          specified in subparagraphs (A) and (B).

11       (6) PROTECTED SYSTEM.—The term “protected system”—

12           (A) means a service, physical or computer-based system, proc-  
13           ess, or procedure that directly or indirectly affects the viability of  
14           a facility of critical infrastructure; and

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

21       (7) VOLUNTARY.—

22           (A) IN GENERAL.—The term “voluntary”, in the case of a sub-  
23           mittal of critical infrastructure information to a covered Federal  
24           agency, means the submittal thereof in the absence of the agency’s  
25           exercise of legal authority to compel access to or submission of the  
26           information and may be accomplished by a single entity or an In-  
27           formation Sharing and Analysis Organization on behalf of itself or  
28           its members.

29           (B) EXCLUSIONS.—The term “voluntary”—

30           (i) in the case of an action brought under the securities  
31           laws as is defined in section 3(a)(47) of the Securities Ex-  
32           change Act of 1934 (15 U.S.C. 78c(a)(47))—

33           (I) does not include information or statements con-  
34           tained in documents or materials filed with the Securities  
35           and Exchange Commission, or with Federal banking reg-  
36           ulators, under section 12(i) of the Securities Exchange  
37           Act of 1934 (15 U.S.C. 781(i)); and

38           (II) with respect to the submittal of critical infrastruc-  
39           ture information, does not include a disclosure or writing  
40           that when made accompanied the solicitation of an offer  
41           or a sale of securities; and

1 (ii) does not include information or statements submitted  
2 or relied upon as a basis for making licensing or permitting  
3 determinations, or during regulatory proceedings.

4 **§ 10532. Designation of critical infrastructure protection**  
5 **program**

6 A critical infrastructure protection program may be designated as such  
7 by one of the following:

- 8 (1) The President.  
9 (2) The Secretary of Homeland Security.

10 **§ 10533. Protection of voluntarily shared critical infrastruc-**  
11 **ture information**

12 (a) PROTECTION.—

13 (1) IN GENERAL.—Notwithstanding any other provision of law, criti-  
14 cal infrastructure information (including the identity of the submitting  
15 person or entity) that is voluntarily submitted to a covered Federal  
16 agency for use by that agency regarding the security of critical infra-  
17 structure and protected systems, analysis, warning, interdependency  
18 study, recovery, reconstitution, or other informational purpose, when  
19 accompanied by an express statement specified in paragraph (2)—

20 (A) shall be exempt from disclosure under section 552 of title  
21 5 (commonly referred to as the Freedom of Information Act);

22 (B) shall not be subject to agency rules or judicial doctrine re-  
23 garding ex parte communications with a decision making official;

24 (C) shall not, without the written consent of the person or en-  
25 tity submitting the information, be used directly by the agency,  
26 another Federal, State, or local authority, or a third party, in a  
27 civil action arising under Federal or State law if the information  
28 is submitted in good faith;

29 (D) shall not, without the written consent of the person or en-  
30 tity submitting the information, be used or disclosed by an officer  
31 or employee of the United States for purposes other than the pur-  
32 poses of this subchapter, except—

33 (i) in furtherance of an investigation or the prosecution of  
34 a criminal act; or

35 (ii) when disclosure of the information would be—

36 (I) to either House of Congress, or to the extent of  
37 matter within its jurisdiction, a committee or subcommit-  
38 tee of Congress (including a joint committee or sub-  
39 committee); or

40 (II) to the Comptroller General, or an authorized rep-  
41 resentative of the Comptroller General, in the course of

1 the performance of the duties of the Government Ac-  
2 countability Office;

3 (E) shall not, if provided to a State or local government or gov-  
4 ernment agency

5 (i) be made available pursuant to State or local law requir-  
6 ing disclosure of information or records;

7 (ii) otherwise be disclosed or distributed to a party by the  
8 State or local government or government agency without the  
9 written consent of the person or entity submitting the infor-  
10 mation; or

11 (iii) be used other than for the purpose of protecting criti-  
12 cal infrastructure or protected systems, or in furtherance of  
13 an investigation or the prosecution of a criminal act; and

14 (F) does not constitute a waiver of an applicable privilege or  
15 protection provided under law, such as trade secret protection.

16 (2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term  
17 “express statement”, with respect to information or records, means—

18 (A) in the case of written information or records, a written  
19 marking on the information or records substantially similar to the  
20 following: “This information is voluntarily submitted to the Fed-  
21 eral Government in expectation of protection from disclosure as  
22 provided by the provisions of the Critical Infrastructure Informa-  
23 tion Act of 2002.”; or

24 (B) in the case of oral information, a similar written statement  
25 submitted within a reasonable period following the oral commu-  
26 nication.

27 (b) LIMITATION.—A communication of critical infrastructure information  
28 to a covered Federal agency made pursuant to this subchapter shall not be  
29 considered to be an action subject to the requirements of the Federal Advi-  
30 sory Committee Act (5 U.S.C. App.).

31 (c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section  
32 shall be construed to limit or otherwise affect the ability of a State, local,  
33 or Federal Government entity, agency, or authority, or an third party,  
34 under applicable law, to obtain critical infrastructure information in a man-  
35 ner not covered by subsection (a), including information lawfully and prop-  
36 erly disclosed generally or broadly to the public and to use the information  
37 in any manner permitted by law. For purposes of this section, a permissible  
38 use of independently obtained information includes the disclosure of the in-  
39 formation under section 2302(b)(8) of title 5.

40 (d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The  
41 voluntary submittal to the Government of information or records that are

1 protected from disclosure by this subchapter shall not be construed to con-  
2 stitute compliance with a requirement to submit the information to a Fed-  
3 eral agency under any other provision of law.

4 (e) PROCEDURES.—

5 (1) IN GENERAL.—The Secretary shall, in consultation with appro-  
6 priate representatives of the National Security Council and the Office  
7 of Science and Technology Policy, establish uniform procedures for the  
8 receipt, care, and storage by Federal agencies of critical infrastructure  
9 information that is voluntarily submitted to the Government.

10 (2) ELEMENTS.—The procedures established under paragraph (1)  
11 shall include mechanisms regarding

12 (A) the acknowledgement of receipt by Federal agencies of criti-  
13 cal infrastructure information that is voluntarily submitted to the  
14 Government;

15 (B) the maintenance of the identification of the information as  
16 voluntarily submitted to the Government for purposes of and sub-  
17 ject to the provisions of this subchapter;

18 (C) the care and storage of the information; and

19 (D) the protection and maintenance of the confidentiality of the  
20 information so as to permit the sharing of the information within  
21 the Federal Government and with State and local governments,  
22 and the issuance of notices and warnings related to the protection  
23 of critical infrastructure and protected systems, in a manner to  
24 protect from public disclosure the identity of the submitting per-  
25 son or entity, or information that is proprietary, business sensitive,  
26 relates specifically to the submitting person or entity, and is other-  
27 wise not appropriately in the public domain.

28 (f) PENALTIES.—Whoever, being an officer or employee of the United  
29 States or of any department or agency thereof, knowingly publishes, di-  
30 vulges, discloses, or makes known in any manner or to any extent not au-  
31 thorized by law, any critical infrastructure information protected from dis-  
32 closure by this subchapter coming to him or her in the course of this em-  
33 ployment or official duties or by reason of any examination or investigation  
34 made by, or return, report, or record made to or filed with, the department  
35 or agency or officer or employee thereof, shall be fined under title 18, im-  
36 prisoned not more than 1 year, or both, and shall be removed from office  
37 or employment.

38 (g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may  
39 provide advisories, alerts, and warnings to relevant companies, targeted sec-  
40 tors, other governmental entities, or the general public regarding potential  
41 threats to critical infrastructure as appropriate. In issuing a warning, the

1 Federal Government shall take appropriate actions to protect from disclo-  
2 sure

3 (1) the source of voluntarily submitted critical infrastructure infor-  
4 mation that forms the basis for the warning; or

5 (2) information that is proprietary, business sensitive, relates specifi-  
6 cally to the submitting person or entity, or is otherwise not appro-  
7 priately in the public domain.

8 (h) AUTHORITY TO DELEGATE.—The President may delegate authority  
9 to a critical infrastructure protection program, designated under section  
10 10522 of this title, to enter into a voluntary agreement to promote critical  
11 infrastructure security, including with an Information Sharing and Analysis  
12 Organization, or a plan of action as otherwise defined in section 708 of the  
13 Defense Production Act of 1950 (50 U.S.C. App. 2158).

14 **§ 10534. No private right of action**

15 Nothing in this subchapter may be construed to create a private right of  
16 action for enforcement of a provision of this subtitle.

17 **Subchapter III—Information Security**

18 **§ 10541. Procedures for sharing information**

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

21 (1) limit the re-dissemination of the information to ensure that it is  
22 not used for an unauthorized purpose;

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

24 (3) protect the constitutional and statutory rights of individuals who  
25 are subjects of the information; and

26 (4) provide data integrity through the timely removal and destruc-  
27 tion of obsolete or erroneous names and information.

28 **§ 10542. Privacy officer**

29 (a) APPOINTMENT AND RESPONSIBILITIES.—The Secretary shall appoint  
30 a senior official in the Department, who shall report directly to the Sec-  
31 retary, to assume primary responsibility for privacy policy, including

32 (1) assuring that the use of technologies sustain, and do not erode,  
33 privacy protections relating to the use, collection, and disclosure of per-  
34 sonal information;

35 (2) assuring that personal information contained in Privacy Act sys-  
36 tems of records is handled in full compliance with fair information  
37 practices as set out in the Privacy Act of 1974 (5 U.S.C. 552a);

38 (3) evaluating legislative and regulatory proposals involving collec-  
39 tion, use, and disclosure of personal information by the Federal Gov-  
40 ernment;

1 (4) conducting a privacy impact assessment of proposed rules of the  
2 Department or that of the Department on the privacy of personal in-  
3 formation, including the type of personal information collected and the  
4 number of people affected;

5 (5) coordinating with the Officer for Civil Rights and Civil Liberties  
6 to ensure that—

7 (A) programs, policies, and procedures involving civil rights,  
8 civil liberties, and privacy considerations are addressed in an inte-  
9 grated and comprehensive manner; and

10 (B) Congress receives appropriate reports on the programs, poli-  
11 cies, and procedures; and

12 (6) preparing a report to Congress on an annual basis on activities  
13 of the Department that affect privacy, including complaints of privacy  
14 violations, implementation of the Privacy Act of 1974 (5 U.S.C. 552a),  
15 internal controls, and other matters.

16 (b) AUTHORITY TO INVESTIGATE.—

17 (1) IN GENERAL.—The senior official appointed under subsection (a)  
18 may—

19 (A) have access to all records, reports, audits, reviews, docu-  
20 ments, papers, recommendations, and other materials available to  
21 the Department that relate to programs and operations with re-  
22 spect to the responsibilities of the senior official under this section;

23 (B) make investigations and reports relating to the administra-  
24 tion of the programs and operations of the Department that are,  
25 in the senior official's judgment, necessary or desirable;

26 (C) subject to the approval of the Secretary, require by sub-  
27 poena the production, by any person other than a Federal agency,  
28 of all information, documents, reports, answers, records, accounts,  
29 papers, and other data and documentary evidence necessary to  
30 performance of the responsibilities of the senior official under this  
31 section; and

32 (D) administer to or take from a person an oath, affirmation,  
33 or affidavit, whenever necessary to performance of the responsibil-  
34 ities of the senior official under this section.

35 (2) ENFORCEMENT OF SUBPOENAS.—A subpoena issued under para-  
36 graph (1)(C) shall, in the case of contumacy or refusal to obey, be en-  
37 forceable by order of an appropriate United States district court.

38 (3) EFFECT OF OATHS.—An oath, affirmation, or affidavit adminis-  
39 tered or taken under paragraph (1)(D) by or before an employee of the  
40 Privacy Office designated for that purpose by the senior official ap-



1 pointed under subsection (a) shall have the same force and effect as  
2 if administered or taken by or before an officer having a seal of office.

3 (c) SUPERVISION AND COORDINATION.—

4 (1) IN GENERAL.—The senior official appointed under subsection (a)  
5 shall—

6 (A) report to, and be under the general supervision of, the Sec-  
7 retary; and

8 (B) coordinate activities with the Inspector General of the De-  
9 partment in order to avoid duplication of effort.

10 (2) COORDINATION WITH INSPECTOR GENERAL.—

11 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
12 senior official appointed under subsection (a) may investigate a  
13 matter relating to possible violations or abuse concerning the ad-  
14 ministration of a program or operation of the Department relevant  
15 to the purposes under this section.

16 (B) Coordination.—

17 (i) Before initiating an investigation described under sub-  
18 paragraph (A), the senior official shall refer the matter and  
19 all related complaints, allegations, and information to the In-  
20 spector General of the Department.

21 (ii) Not later than 30 days after the receipt of a matter  
22 referred under clause (i), the Inspector General shall—

23 (I) make a determination regarding whether the In-  
24 spector General intends to initiate an audit or investiga-  
25 tion of the matter referred under clause (i); and

26 (II) notify the senior official of that determination.

27 (iii) If the Inspector General notifies the senior official that  
28 the Inspector General intended to initiate an audit or inves-  
29 tigation, but does not initiate that audit or investigation with-  
30 in 90 days after providing that notification, the Inspector  
31 General shall further notify the senior official that an audit  
32 or investigation was not initiated. The further notification  
33 under this clause shall be made not later than 3 days after  
34 the end of that 90-day period.

35 (iv) The senior official may investigate a matter referred  
36 under clause (i) if—

37 (I) the Inspector General notifies the senior official  
38 under clause (ii) that the Inspector General does not in-  
39 tend to initiate an audit or investigation relating to that  
40 matter; or

1 (II) the Inspector General provides a further notifica-  
2 tion under clause (iii) relating to that matter.

3 (v) An employee of the Office of Inspector General who au-  
4 dits or investigates a matter referred under clause (i) shall  
5 be required to receive adequate training on privacy laws,  
6 rules, and regulations, to be provided by an entity approved  
7 by the Inspector General in consultation with the senior offi-  
8 cial appointed under subsection (a).

9 (d) NOTIFICATION TO CONGRESS ON REMOVAL.—If the Secretary re-  
10 moves the senior official appointed under subsection (a) or transfers that  
11 senior official to another position or location within the Department, the  
12 Secretary shall—

13 (1) promptly submit a written notification of the removal or transfer  
14 to Houses of Congress; and

15 (2) include in a notification the reasons for the removal or transfer.

16 (e) REPORTS BY SENIOR OFFICIAL TO CONGRESS.—The senior official  
17 appointed under subsection (a) shall—

18 (1) submit reports directly to Congress regarding performance of the  
19 responsibilities of the senior official under this section, without prior  
20 comment or amendment by the Secretary, Deputy Secretary of Home-  
21 land Security, or any other officer or employee of the Department or  
22 the Office of Management and Budget; and

23 (2) inform the Committee on Homeland Security and Governmental  
24 Affairs of the Senate and the Committee on Homeland Security of the  
25 House of Representatives not later than—

26 (A) 30 days after the Secretary disapproves the senior official's  
27 request for a subpoena under subsection (b)(1)(C) or the Sec-  
28 retary substantively modifies the requested subpoena; or

29 (B) 45 days after the senior official's request for a subpoena  
30 under subsection (b)(1)(C), if that subpoena has not either been  
31 approved or disapproved by the Secretary.

32 **§ 10543. Enhancement of Non-Federal cybersecurity**

33 In carrying out the responsibilities under section 10501 of this title, the  
34 Under Secretary for Intelligence and Analysis, in cooperation with the As-  
35 sistant Secretary for Infrastructure Protection, shall—

36 (1) as appropriate, provide to State and local government entities,  
37 and upon request to private entities that own or operate critical infor-  
38 mation systems—

39 (A) analysis and warnings related to threats to, and vulnerabili-  
40 ties of, critical information systems; and

- 1 (B) crisis management support in response to threats to, or at-  
2 tacks on, critical information systems; and  
3 (2) as appropriate, provide technical assistance, upon request, to the  
4 private sector and other government entities, with respect to emergency  
5 recovery plans to respond to major failures of critical information sys-  
6 tems.

7 **§ 10544. NET Guard**

8 The Assistant Secretary for Infrastructure Protection may establish a na-  
9 tional technology guard, to be known as “NET Guard”, comprised of local  
10 teams of volunteers with expertise in relevant areas of science and tech-  
11 nology, to assist local communities to respond and recover from attacks on  
12 information systems and communications networks.

13 **Subchapter IV—Supporting Anti—Terrorism by Fostering**  
14 **Effective Technologies**

15 **§ 10551. Definitions**

16 In this subchapter:

17 (1) ACT OF TERRORISM.—The term “act of terrorism” means an act  
18 that the Secretary determines meets all of the following requirements,  
19 as the requirements are further defined and specified by the Secretary:

20 (A) The act is unlawful.

21 (B) The act causes harm to a person, property, or entity, in the  
22 United States, or in the case of a domestic United States air car-  
23 rier or a United States-flag vessel (or a vessel based principally  
24 in the United States on which United States income tax is paid  
25 and whose insurance coverage is subject to regulation in the  
26 United States), in or outside the United States.

27 (C) The act uses or attempts to use instrumentalities, weapons  
28 or other methods designed or intended to cause mass destruction,  
29 injury or other loss to citizens or institutions of the United States.

30 (2) INSURANCE CARRIER.—The term “insurance carrier” means a  
31 corporation, association, society, order, firm, company, mutual, part-  
32 nership, individual aggregation of individuals, or another legal entity  
33 that provides commercial property and casualty insurance, including an  
34 affiliate of a commercial insurance carrier.

35 (3) LIABILITY INSURANCE.—The term “liability insurance” means  
36 insurance for legal liabilities incurred by the insured resulting from—

37 (A) loss of or damage to property of others;

38 (B) ensuing loss of income or extra expense incurred because  
39 of loss of or damage to property of others;

40 (C) bodily injury (including) to persons other than the insured  
41 or its employees; or

1 (D) loss resulting from debt or default of another.

2 (4) LOSS.—The term “loss” means death, bodily injury, or loss of  
3 or damage to property, including business interruption loss.

4 (5) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term “non-Fed-  
5 eral Government customers” means a customer of a Seller that is not  
6 an agency or instrumentality of the United States Government with au-  
7 thority under Public Law 85–804 (50 U.S.C. 1431 et seq.) to provide  
8 for indemnification under certain circumstances for third-party claims  
9 against its contractors, including State and local authorities and com-  
10 mercial entities.

11 (6) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—The term “quali-  
12 fied anti-terrorism technology” means a product, equipment, service  
13 (including support services), device, or technology (including informa-  
14 tion technology) designed, developed, modified, or procured for the spe-  
15 cific purpose of preventing, detecting, identifying, or deterring acts of  
16 terrorism or limiting the harm the acts might otherwise cause, that is  
17 designated as such by the Secretary.

## 18 **§ 10552. Administration**

19 (a) IN GENERAL.—The Secretary is responsible for the administration of  
20 this subchapter.

21 (b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—  
22 The Secretary may designate anti-terrorism technologies that qualify for  
23 protection under the system of risk management set forth in this subchapter  
24 in accordance with criteria that shall include the following:

25 (1) Prior United States Government use or demonstrated substantial  
26 utility and effectiveness.

27 (2) Availability of the technology for immediate deployment in public  
28 and private settings.

29 (3) Existence of extraordinarily large or extraordinarily unquantifi-  
30 able potential third party liability risk exposure to the Seller or other  
31 provider of the anti-terrorism technology.

32 (4) Substantial likelihood that the anti-terrorism technology will not  
33 be deployed unless protections under the system of risk management  
34 provided under this subchapter are extended.

35 (5) Magnitude of risk exposure to the public if the anti-terrorism  
36 technology is not deployed.

37 (6) Evaluation of all scientific studies that can be feasibly conducted  
38 in order to assess the capability of the technology to substantially re-  
39 duce risks of harm.

1 (7) Anti-terrorism technology that would be effective in facilitating  
2 the defense against acts of terrorism, including technologies that pre-  
3 vent, defeat or respond to the acts.

4 (c) REGULATIONS.—The Secretary may issue regulations, after notice  
5 and comment under section 553 of title 5, necessary to carry out this sub-  
6 chapter.

7 **§ 10553. Litigation management**

8 (a) FEDERAL CAUSE OF ACTION.—

9 (1) IN GENERAL.—There shall exist a Federal cause of action for  
10 claims arising out of, relating to, or resulting from an act of terrorism  
11 when qualified anti-terrorism technologies have been deployed in de-  
12 fense against or response or recovery from the act and the claims result  
13 or may result in loss to the Seller. The substantive law for decision in  
14 any action shall be derived from the law, including choice of law prin-  
15 ciples, of the State in which the act of terrorism occurred, unless the  
16 law is inconsistent with or preempted by Federal law. The Federal  
17 cause of action shall be brought only for claims for injuries that are  
18 proximately caused by sellers that provide qualified anti-terrorism tech-  
19 nology to Federal and non-Federal government customers.

20 (2) JURISDICTION.—An appropriate district court of the United  
21 States shall have original and exclusive jurisdiction over all actions for  
22 any claim for loss of property, personal injury, or death arising out of,  
23 relating to, or resulting from an act of terrorism when qualified anti-  
24 terrorism technologies have been deployed in defense against or re-  
25 sponse or recovery from the act and the claims result or may result  
26 in loss to the Seller.

27 (b) SPECIAL RULES.—In an action brought under this section for dam-  
28 ages the following provisions apply:

29 (1) PUNITIVE DAMAGES; INTEREST.—No punitive damages intended  
30 to punish or deter, exemplary damages, or other damages not intended  
31 to compensate a plaintiff for actual losses may be awarded, nor shall  
32 any party be liable for interest prior to the judgment.

33 (2) NONECONOMIC DAMAGES.—

34 (A) DEFINITION.—In this paragraph, the term “noneconomic  
35 damages” means damages for losses for physical and emotional  
36 pain, suffering, inconvenience, physical impairment, mental an-  
37 guish, disfigurement, loss of enjoyment of life, loss of society and  
38 companionship, loss of consortium, hedonic damages, injury to  
39 reputation, and any other nonpecuniary losses.

40 (B) WHEN AWARDED. NONECONOMIC DAMAGES MAY BE AWARDED  
41 AGAINST A DEFENDANT ONLY IN AN AMOUNT DIRECTLY PRO-

1           PORTIONAL TO THE PERCENTAGE OF RESPONSIBILITY OF THE DE-  
2           FENDANT FOR THE HARM TO THE PLAINTIFF, AND NO PLAINTIFF  
3           MAY RECOVER NONECONOMIC DAMAGES UNLESS THE PLAINTIFF  
4           SUFFERED PHYSICAL HARM.

5       (c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action  
6 under this section shall be reduced by the amount of collateral source com-  
7 pensation, if any, that the plaintiff has received or is entitled to receive as  
8 a result of the act of terrorism that results or may result in loss to the Sell-  
9 er.

10       (d) GOVERNMENT CONTRACTOR DEFENSE.—

11           (1) IN GENERAL.—Should a product liability or other lawsuit be filed  
12 for claims arising out of, relating to, or resulting from an act of terror-  
13 ism when qualified anti-terrorism technologies approved by the Sec-  
14 retary, as provided in paragraphs (2) and (3) of this subsection, have  
15 been deployed in defense against or response or recovery from the act  
16 and the claims result or may result in loss to the Seller, there shall  
17 be a rebuttable presumption that the government contractor defense  
18 applies in the lawsuit. This presumption shall only be overcome by evi-  
19 dence showing that the Seller acted fraudulently or with willful mis-  
20 conduct in submitting information to the Secretary during the course  
21 of the Secretary's consideration of the technology under this subsection.  
22 This presumption of the government contractor defense shall apply re-  
23 gardless of whether the claim against the Seller arises from a sale of  
24 the product to Federal Government or non-Federal Government cus-  
25 tomers.

26           (2) EXCLUSIVE RESPONSIBILITY.—The Secretary is exclusively re-  
27 sponsible for the review and approval of anti-terrorism technology for  
28 purposes of establishing a government contractor defense in any prod-  
29 uct liability lawsuit for claims arising out of, relating to, or resulting  
30 from an act of terrorism when qualified anti-terrorism technologies ap-  
31 proved by the Secretary, as provided in this paragraph and paragraph  
32 (3), have been deployed in defense against or response or recovery from  
33 the act and the claims result or may result in loss to the Seller. Upon  
34 the Seller's submission to the Secretary for approval of anti-terrorism  
35 technology, the Secretary shall conduct a comprehensive review of the  
36 design of the technology and determine whether it will perform as in-  
37 tended, conforms to the Seller's specifications, and is safe for use as  
38 intended. The Seller shall conduct safety and hazard analyses on the  
39 technology and shall supply the Secretary with all such information/the  
40 analyses.

1           (3) CERTIFICATE.—For anti-terrorism technology reviewed and ap-  
2           proved by the Secretary, the Secretary shall issue a certificate of con-  
3           formance to the Seller and place the anti-terrorism technology on an  
4           Approved Product List for Homeland Security.

5           (e) EXCLUSION.—Nothing in this section shall in any way limit the ability  
6           of any person to seek any form of recovery from any person, government,  
7           or other entity that—

8           (1) attempts to commit, knowingly participates in, aids and abets,  
9           or commits any act of terrorism, or any criminal act related to or re-  
10          sulting from the act of terrorism; or

11          (2) participates in a conspiracy to commit an act of terrorism or a  
12          criminal act.

13       **§ 10554. Risk management**

14          (a) IN GENERAL.—

15           (1) LIABILITY INSURANCE REQUIRED.—A person or entity that sells  
16           or otherwise provides a qualified anti-terrorism technology to Federal  
17           and non-Federal Government customers (in this section referred to as  
18           the “Seller”) shall obtain liability insurance of the types and in the  
19           amounts as required under this section and certified by the Secretary  
20           to satisfy otherwise compensable third-party claims arising out of, re-  
21           lating to, or resulting from an act of terrorism when qualified anti-ter-  
22           rorism technologies have been deployed in defense against or response  
23           or recovery from the act.

24           (2) MAXIMUM AMOUNT.—For the total claims related to one act of  
25           terrorism, the Seller is not required to obtain liability insurance of  
26           more than the maximum amount of liability insurance reasonably avail-  
27           able from private sources on the world market at prices and terms that  
28           will not unreasonably distort the sales price of Seller’s anti-terrorism  
29           technologies.

30           (3) SCOPE OF COVERAGE.—Liability insurance obtained under this  
31           subsection shall, in addition to the Seller, protect the following, to the  
32           extent of their potential liability for involvement in the manufacture,  
33           qualification, sale, use, or operation of qualified anti-terrorism tech-  
34           nologies deployed in defense against or response or recovery from an  
35           act of terrorism:

36           (A) Contractors, subcontractors, suppliers, vendors and cus-  
37           tomers of the Seller.

38           (B) Contractors, subcontractors, suppliers, and vendors of the  
39           customer.

40           (4) THIRD PARTY CLAIMS.—The liability insurance under this sec-  
41           tion shall provide coverage against third party claims arising out of,

1 relating to, or resulting from the sale or use of anti-terrorism tech-  
2 nologies.

3 (b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a re-  
4 ciprocal waiver of claims with its contractors, subcontractors, suppliers, ven-  
5 dors and customers, and contractors and subcontractors of the customers,  
6 involved in the manufacture, sale, use or operation of qualified anti-terror-  
7 ism technologies, under which each party to the waiver agrees to be respon-  
8 sible for losses, including business interruption losses, that it sustains, or  
9 for losses sustained by its own employees resulting from an activity result-  
10 ing from an act of terrorism when qualified anti-terrorism technologies have  
11 been deployed in defense against or response or recovery from the act.

12 (c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law,  
13 liability for all claims against a Seller arising out of, relating to, or resulting  
14 from an act of terrorism when qualified anti-terrorism technologies have  
15 been deployed in defense against or response or recovery from the act and  
16 the claims result or may result in loss to the Seller, whether for compen-  
17 satory or punitive damages or for contribution or indemnity, shall not be  
18 in an amount greater than the limits of liability insurance coverage required  
19 to be maintained by the Seller under this section.

20 **Subchapter V—Secure Handling of Ammonium Nitrate**  
21 **§ 10561. Definitions**

22 In this subchapter:

23 (1) AMMONIUM NITRATE.—The term “ammonium nitrate” means—

24 (A) solid ammonium nitrate that is chiefly the ammonium salt  
25 of nitric acid and contains not less than 33 percent nitrogen by  
26 weight; and

27 (B) a mixture containing a percentage of ammonium nitrate  
28 that is equal to or greater than the percentage determined by the  
29 Secretary under section 10552(b) of this title.

30 (2) AMMONIUM NITRATE FACILITY.—The term “ammonium nitrate  
31 facility” means an entity that produces, sells or otherwise transfers  
32 ownership of, or provides application services for ammonium nitrate.

33 (3) AMMONIUM NITRATE PURCHASER.—The term “ammonium ni-  
34 trate purchaser” means a person who purchases ammonium nitrate  
35 from an ammonium nitrate facility.

36 **§ 10562. Regulation of the sale and transfer of ammonium**  
37 **nitrate**

38 (a) IN GENERAL.—The Secretary shall regulate the sale and transfer of  
39 ammonium nitrate by an ammonium nitrate facility in accordance with this  
40 subchapter to prevent the misappropriation or use of ammonium nitrate in  
41 an act of terrorism.



1 (b) AMMONIUM NITRATE MIXTURES.—The Secretary, in consultation  
2 with the heads of appropriate Federal departments and agencies (including  
3 the Secretary of Agriculture), shall, after notice and an opportunity for  
4 comment, establish a threshold percentage for ammonium nitrate in a sub-  
5 stance.

6 (c) REGISTRATION OF OWNERS OF AMMONIUM NITRATE FACILITIES.—

7 (1) PROCESS.—The Secretary shall establish a process by which a  
8 person that—

9 (A) owns an ammonium nitrate facility is required to register  
10 with the Department; and

11 (B) registers under subparagraph (A) is issued a registration  
12 number for purposes of this subchapter.

13 (2) INFORMATION.—A person applying to register under paragraph

14 (1) shall submit to the Secretary—

15 (A) the name, address, and telephone number of each ammo-  
16 nium nitrate facility owned by that person;

17 (B) the name of the person designated by that person as the  
18 point of contact for each facility, for purposes of this subchapter;  
19 and

20 (C) other information the Secretary determines is appropriate.

21 (d) REGISTRATION OF AMMONIUM NITRATE PURCHASERS.—

22 (1) PROCESS.—The Secretary shall establish a process by which a  
23 person that—

24 (A) intends to be an ammonium nitrate purchaser is required  
25 to register with the Department; and

26 (B) after registration under subparagraph (A), is issued a reg-  
27 istration number for purposes of this subchapter.

28 (2) INFORMATION.—A person applying to register under paragraph

29 (1) as an ammonium nitrate purchaser shall submit to the Secretary—

30 (A) the name, address, and telephone number of the applicant;  
31 and

32 (B) the intended use of ammonium nitrate to be purchased by  
33 the applicant.

34 (e) RECORDS.—

35 (1) MAINTENANCE OF RECORDS.—The owner of an ammonium ni-  
36 trate facility shall—

37 (A) maintain a record of each sale or transfer of ammonium ni-  
38 trate, during the two-year period beginning on the date of that  
39 sale or transfer; and

40 (B) include in the record the information described in para-  
41 graph (2).

1           (2) SPECIFIC INFORMATION REQUIRED.—For each sale or transfer  
2 of ammonium nitrate, the owner of an ammonium nitrate facility  
3 shall—

4           (A) record the name, address, telephone number, and registra-  
5 tion number issued under subsection (c) or (d) of each person that  
6 purchases ammonium nitrate, in a manner prescribed by the Sec-  
7 retary;

8           (B) if applicable, record the name, address, and telephone num-  
9 ber of an agent acting on behalf of the person described in sub-  
10 paragraph (A), at the point of sale;

11           (C) record the date and quantity of ammonium nitrate sold or  
12 transferred; and

13           (D) verify the identity of the persons described in subpara-  
14 graphs (A) and (B), as applicable, in accordance with a procedure  
15 established by the Secretary.

16           (3) PROTECTION OF INFORMATION.—In maintaining records under  
17 paragraph (1), the owner of an ammonium nitrate facility shall take  
18 reasonable actions to ensure the protection of the information included  
19 in the records.

20           (f) EXEMPTION FOR EXPLOSIVE PURPOSES.—The Secretary may exempt  
21 from this subchapter a person producing, selling, or purchasing ammonium  
22 nitrate exclusively for use in the production of an explosive under a license  
23 or permit issued under chapter 40 of title 18.

24           (g) CONSULTATION.—In carrying out this section, the Secretary shall  
25 consult with the Secretary of Agriculture, States, and appropriate private-  
26 sector entities, to ensure that the access of agricultural producers to ammo-  
27 nium nitrate is not unduly burdened.

28           (h) DATA CONFIDENTIALITY.—

29           (1) IN GENERAL.—Notwithstanding section 552 of title 5 or the  
30 USA PATRIOT ACT (Public Law 107–56, 115 Stat. 272), and except  
31 as provided in paragraph (2), the Secretary may not disclose to any  
32 person any information obtained under this subchapter.

33           (2) EXCEPTION.—The Secretary may disclose information obtained  
34 by the Secretary under this subchapter to—

35           (A) an officer or employee of the United States, or a person  
36 that has entered into a contract with the United States, who has  
37 a need to know the information to perform the duties of the offi-  
38 cer, employee, or person; or

39           (B) to a State agency under section 10554 of this title, under  
40 appropriate arrangements to ensure the protection of the informa-  
41 tion.

1 (i) REGISTRATION PROCEDURES AND CHECK OF TERRORIST SCREENING  
2 DATABASE.—

3 (1) REGISTRATION PROCEDURES.—

4 (A) IN GENERAL.—The Secretary shall establish procedures to  
5 efficiently receive applications for registration numbers under this  
6 subchapter, conduct the checks required under paragraph (2), and  
7 promptly issue or deny a registration number.

8 (B) INITIAL 6-MONTH REGISTRATION PERIOD.—The Secretary  
9 shall take steps to maximize the number of registration applica-  
10 tions that are submitted and processed during the 6-month period  
11 described in section 10566(e) of this title.

12 (2) CHECK OF TERRORIST SCREENING DATABASE.—

13 (A) CHECK REQUIRED.—The Secretary shall conduct a check of  
14 appropriate identifying information of a person seeking to register  
15 with the Department under subsection (c) or (d) against identify-  
16 ing information that appears in the terrorist screening database of  
17 the Department.

18 (B) AUTHORITY TO DENY REGISTRATION NUMBER.—If the  
19 identifying information of a person seeking to register with the  
20 Department under subsection (c) or (d) appears in the terrorist  
21 screening database of the Department, the Secretary may deny is-  
22 suance of a registration number under this subchapter.

23 (3) EXPEDITED REVIEW OF APPLICATIONS.—

24 (A) IN GENERAL.—Following the six-month period described in  
25 section 10566(e) of this title, the Secretary shall, to the extent  
26 practicable, issue or deny registration numbers under this sub-  
27 chapter not later than 72 hours after the time the Secretary re-  
28 ceives a complete registration application, unless the Secretary de-  
29 termines, in the interest of national security, that additional time  
30 is necessary to review an application.

31 (B) NOTICE OF APPLICATION STATUS.—In all cases, the Sec-  
32 retary shall notify a person seeking to register with the Depart-  
33 ment under subsection (c) or (d) of the status of the application  
34 of that person not later than 72 hours after the time the Secretary  
35 receives a complete registration application.

36 (4) EXPEDITED APPEALS PROCESS.—

37 (A) REQUIREMENT.—

38 (i) The Secretary shall establish an expedited appeals proc-  
39 ess for persons denied a registration number under this sub-  
40 chapter.

1 (ii) The Secretary shall, to the extent practicable, resolve  
2 appeals not later than 72 hours after receiving a complete re-  
3 quest for appeal unless the Secretary determines, in the inter-  
4 est of national security, that additional time is necessary to  
5 resolve an appeal.

6 (B) CONSULTATION.—The Secretary, in developing the appeals  
7 process under subparagraph (A), shall consult with appropriate  
8 stakeholders.

9 (C) GUIDANCE.—The Secretary shall provide guidance regard-  
10 ing the procedures and information required for an appeal under  
11 subparagraph (A) to any person denied a registration number  
12 under this subchapter.

13 (5) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

14 (A) IN GENERAL.—Information constituting grounds for denial  
15 of a registration number under this section shall be maintained  
16 confidentially by the Secretary and may be used only for making  
17 determinations under this section.

18 (B) SHARING OF INFORMATION.—Notwithstanding any other  
19 provision of this subchapter, the Secretary may share information  
20 with Federal, State, local, and tribal law enforcement agencies, as  
21 appropriate.

22 (6) **Registration information.**—

23 (A) AUTHORITY TO REQUIRE INFORMATION.—The Secretary  
24 may require a person applying for a registration number under  
25 this subchapter to submit information necessary to carry out the  
26 requirements of this section.

27 (B) REQUIREMENT TO UPDATE INFORMATION.—The Secretary  
28 may require persons issued a registration under this subchapter to  
29 update registration information submitted to the Secretary under  
30 this subchapter, as appropriate.

31 (7) RE-CHECKS AGAINST TERRORIST SCREENING DATABASE.—

32 (A) IN GENERAL.—The Secretary shall, as appropriate, recheck  
33 persons provided a registration number pursuant to this sub-  
34 chapter against the terrorist screening database of the Depart-  
35 ment, and may revoke the registration number if the Secretary de-  
36 termines the person may pose a threat to national security.

37 (B) NOTICE OF REVOCATION.—The Secretary shall, as appro-  
38 priate, provide prior notice to a person whose registration number  
39 is revoked under this section and the person shall have an oppor-  
40 tunity to appeal, as provided in paragraph (4).

1     **§ 10563. Inspection and auditing of records**

2         The Secretary shall establish a process for the periodic inspection and au-  
3     diting of the records maintained by owners of ammonium nitrate facilities  
4     for the purpose of monitoring compliance with this subchapter or for the  
5     purpose of deterring or preventing the misappropriation or use of ammo-  
6     nium nitrate in an act of terrorism.

7     **§ 10564. Administrative provisions**

8         (a) COOPERATIVE AGREEMENTS.—The Secretary—

9             (1) may enter into a cooperative agreement with the Secretary of Ag-  
10         riculture, or the head of any State department of agriculture or its des-  
11         ignee involved in agricultural regulation, in consultation with the State  
12         agency responsible for homeland security, to carry out the provisions  
13         of this subchapter; and

14             (2) wherever possible, shall seek to cooperate with State agencies or  
15         their designees that oversee ammonium nitrate facility operations when  
16         seeking cooperative agreements to implement the registration and en-  
17         forcement provisions of this subchapter.

18         (b) DELEGATION.—

19             (1) AUTHORITY.—The Secretary may delegate to a State the author-  
20         ity to assist the Secretary in the administration and enforcement of  
21         this subchapter.

22             (2) DELEGATION REQUIRED.—At the request of a Governor of a  
23         State, the Secretary shall delegate to that State the authority to carry  
24         out functions under sections 10562 and 10563 of this title, if the Sec-  
25         retary determines that the State is capable of satisfactorily carrying  
26         out the functions.

27             (3) FUNDING.—Subject to the availability of appropriations, if the  
28         Secretary delegates functions to a State under this subsection, the Sec-  
29         retary shall provide to that State sufficient funds to carry out the dele-  
30         gated functions.

31         (c) PROVISION OF GUIDANCE AND NOTIFICATION MATERIALS TO AMMO-  
32     NIUM NITRATE FACILITIES.—

33             (1) GUIDANCE.—The Secretary shall make available to each owner  
34         of an ammonium nitrate facility registered under section 10562(c) of  
35         this title guidance on—

36                 (A) the identification of suspicious ammonium nitrate purchases  
37                 or transfers or attempted purchases or transfers;

38                 (B) the appropriate course of action to be taken by the ammo-  
39                 nium nitrate facility owner with respect to such a purchase or  
40                 transfer or attempted purchase or transfer, including—

- 1 (i) exercising the right of the owner of the ammonium ni-  
2 trate facility to decline sale of ammonium nitrate; and  
3 (ii) notifying appropriate law enforcement entities; and  
4 (C) additional subjects determined appropriate to prevent the  
5 misappropriation or use of ammonium nitrate in an act of terror-  
6 ism.

7 (2) USE OF MATERIALS AND PROGRAMS.—In providing guidance  
8 under this subsection, the Secretary shall, to the extent practicable, le-  
9 verage relevant materials and programs.

10 (3) NOTIFICATION MATERIALS.—

11 (A) IN GENERAL.—The Secretary shall make available materials  
12 suitable for posting at locations where ammonium nitrate is sold.

13 (B) DESIGN.—Materials made available under subparagraph  
14 (A) shall be designed to notify prospective ammonium nitrate pur-  
15 chasers of—

16 (i) the record-keeping requirements under section 10562 of  
17 this title; and

18 (ii) the penalties for violating the requirements.

19 **§ 10565. Theft reporting requirement**

20 A person who is required to comply with section 10562(e) of this title  
21 who has knowledge of the theft or unexplained loss of ammonium nitrate  
22 shall report the theft or loss to the appropriate Federal law enforcement au-  
23 thorities not later than one calendar day of the date on which the person  
24 becomes aware of the theft or loss. Upon receipt of the report, the relevant  
25 Federal authorities shall inform State, local, and tribal law enforcement en-  
26 tities, as appropriate.

27 **§ 10566. Prohibitions and penalty**

28 (a) PROHIBITIONS.—

29 (1) TAKING POSSESSION.—A person may not purchase ammonium  
30 nitrate from an ammonium nitrate facility unless the person is reg-  
31 istered under subsection (c) or (d) of section 10562 of this title, or is  
32 an agent of a person registered under subsection (c) or (d) of section  
33 10562.

34 (2) TRANSFERRING POSSESSION.—An owner of an ammonium ni-  
35 trate facility shall not transfer possession of ammonium nitrate from  
36 the ammonium nitrate facility to an ammonium nitrate purchaser who  
37 is not registered under subsection (c) or (d) of section 10562 of this  
38 title, or to an agent acting on behalf of an ammonium nitrate pur-  
39 chaser when the purchaser is not registered under subsection (c) or (d)  
40 of section 10562.

41 (3) OTHER PROHIBITIONS.—A person may not—

1 (A) purchase ammonium nitrate without a registration number  
2 required under subsection (c) or (d) of section 10562 of this title;

3 (B) own or operate an ammonium nitrate facility without a reg-  
4 istration number required under section 10562(c) of this title; or

5 (C) fail to comply with a requirement or violate another prohibi-  
6 tion under this subchapter.

7 (b) CIVIL PENALTY.—A person that violates this subchapter may be as-  
8 sessed a civil penalty by the Secretary of not more than \$50,000 per viola-  
9 tion.

10 (c) PENALTY CONSIDERATIONS.—In determining the amount of a civil  
11 penalty under this section, the Secretary shall consider—

12 (1) the nature and circumstances of the violation;

13 (2) with respect to the person who commits the violation, any history  
14 of prior violations, the ability to pay the penalty, and any effect the  
15 penalty is likely to have on the ability of the person to do business;  
16 and

17 (3) any other matter that the Secretary determines that justice re-  
18 quires.

19 (d) NOTICE AND OPPORTUNITY FOR A HEARING.—A civil penalty may  
20 not be assessed under this subchapter unless the person liable for the pen-  
21 alty has been given notice and an opportunity for a hearing on the violation  
22 for which the penalty is to be assessed in the county, parish, or incorporated  
23 city of residence of that person.

24 (e) DELAY IN APPLICATION OF PROHIBITION.—Paragraphs (1) and (2)  
25 of subsection (a) shall apply on and after the date that is 6 months after  
26 the date that the Secretary issues a final rule implementing this subchapter.

27 **§ 10567. Protection from civil liability**

28 (a) IN GENERAL.—Notwithstanding any other provision of law, an owner  
29 of an ammonium nitrate facility that in good faith refuses to sell or transfer  
30 ammonium nitrate to a person, or that in good faith discloses to the Depart-  
31 ment or to appropriate law enforcement authorities an actual or attempted  
32 purchase or transfer of ammonium nitrate, based upon a reasonable belief  
33 that the person seeking purchase or transfer of ammonium nitrate may use  
34 the ammonium nitrate to create an explosive device to be employed in an  
35 act of terrorism (as defined in section 3077 of title 18), or to use ammo-  
36 nium nitrate for any other unlawful purpose, shall not be liable in any civil  
37 action relating to that refusal to sell ammonium nitrate or that disclosure.

38 (b) REASONABLE BELIEF.—A reasonable belief that a person may use  
39 ammonium nitrate to create an explosive device to be employed in an act  
40 of terrorism under subsection (a) may not solely be based on the race, sex,

1 national origin, creed, religion, status as a veteran, or status as a member  
2 of the Armed Forces of the United States of that person.

3 **§ 10568. Preemption of other laws**

4 (a) OTHER FEDERAL REGULATIONS.—Except as provided in section  
5 10567 of this title, nothing in this subchapter affects a regulation issued  
6 by an agency other than an agency of the Department.

7 (b) STATE LAW.—Subject to section 10567 of this title, this subchapter  
8 preempts the laws of a State to the extent that the laws are inconsistent  
9 with this subchapter, except that this subchapter shall not preempt any  
10 State law that provides additional protection against the acquisition of am-  
11 monium nitrate by terrorists or the use of ammonium nitrate in explosives  
12 in acts of terrorism or for other illicit purposes, as determined by the Sec-  
13 retary.

14 **Chapter 107 Science and Technology in Support of**  
15 **Homeland Security**

Sec.

10701. Responsibilities and authorities of the Under Secretary for Science and Technology.

10702. Functions transferred.

10703. Conduct of certain public health-related activities.

10704. Federally funded research and development centers.

10705. Miscellaneous provisions.

10706. Homeland Security Advanced Research Projects Agency.

10707. Conduct of research, development, demonstration, testing and evaluation.

10708. Utilization of Department of Energy national laboratories and sites in support of  
homeland security activities.

10709. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

10710. Homeland Security Science and Technology Advisory Committee.

10711. Homeland Security Institute.

10712. Technology clearinghouse to encourage and support innovative solutions to enhance  
homeland security.

10713. Enhancement of public safety communications interoperability.

10714. Office for Interoperability and Compatibility.

10715. Emergency communications interoperability research and development.

10716. National Biosurveillance Integration Center.

10717. Promoting antiterrorism through international cooperation program.

16 **§ 10701. Responsibilities and authorities of the Under Sec-**  
17 **retary for Science and Technology**

18 The Secretary, acting through the Under Secretary for Science and Tech-  
19 nology, is responsible for—

20 (1) advising the Secretary regarding research and development ef-  
21 forts and priorities in support of the Department's missions;

22 (2) developing, in consultation with other appropriate executive agen-  
23 cies, a national policy and strategic plan for, identifying priorities,  
24 goals, objectives and policies for, and coordinating the Federal Govern-  
25 ment's civilian efforts to identify and develop countermeasures to chem-  
26 ical, biological, and other emerging terrorist threats, including the de-  
27 velopment of comprehensive, research-based definable goals for the ef-



1           forts and development of annual measurable objectives and specific tar-  
2           gets to accomplish and evaluate the goals for the efforts;

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

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

11          (5) establishing priorities for, directing, funding, and conducting na-  
12          tional research, development, test and evaluation, and procurement of  
13          technology and systems for—

14                (A) preventing the importation of chemical, biological, and relat-  
15                ed weapons and material; and

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

18          (6) establishing a system for transferring homeland security develop-  
19          ments or technologies to Federal, State, local government, and private-  
20          sector entities;

21          (7) entering into work agreements, joint sponsorships, contracts, or  
22          other agreements with the Department of Energy regarding the use of  
23          the national laboratories or sites and support of the science and tech-  
24          nology base at those facilities;

25          (8) collaborating with the Secretary of Agriculture and the Attorney  
26          General as provided in section 212 of the Agricultural Bioterrorism  
27          Protection Act of 2002 (7 U.S.C. 8401);

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

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

34          (11) establishing and administering the primary research and devel-  
35          opment activities of the Department, including the long-term research  
36          and development needs and capabilities for all elements of the Depart-  
37          ment;

38          (12) coordinating and integrating all research, development, dem-  
39          onstration, testing, and evaluation activities of the Department;

1 (13) coordinating with other appropriate executive agencies in devel-  
2 oping and carrying out the science and technology agenda of the De-  
3 partment to reduce duplication and identify unmet needs; and

4 (14) developing and overseeing the administration of guidelines for  
5 merit review of research and development projects throughout the De-  
6 partment, and for the dissemination of research conducted or sponsored  
7 by the Department.

8 **§ 10702. Functions transferred**

9 The Secretary succeeds to the functions, personnel, assets, and liabilities  
10 of the following entities:

11 (1) The following programs and activities of the Department of En-  
12 ergy, including the functions of the Secretary of Energy relating there-  
13 to (but not including programs and activities relating to the strategic  
14 nuclear defense posture of the United States):

15 (A) The chemical and biological national security and support-  
16 ing programs and activities of the nonproliferation and verification  
17 research and development program.

18 (B) The nuclear smuggling programs and activities within the  
19 proliferation detection program of the nonproliferation and ver-  
20 ification research and development program. The programs and  
21 activities described in this subparagraph may be designated by the  
22 President either for transfer to the Department or for joint oper-  
23 ation by the Secretary and the Secretary of Energy.

24 (C) The nuclear assessment program and activities of the as-  
25 sessment, detection, and cooperation program of the international  
26 materials protection and cooperation program.

27 (D) Life sciences activities of the biological and environmental  
28 research program related to microbial pathogens designated by the  
29 President for transfer to the Department.

30 (E) The Environmental Measurements Laboratory.

31 (F) The advanced scientific computing research program and  
32 activities at Lawrence Livermore National Laboratory.

33 (2) The National Bio-Weapons Defense Analysis Center of the De-  
34 partment of Defense, including the functions of the Secretary of De-  
35 fense related thereto.

36 **§ 10703. Conduct of certain public health-related activities**

37 (a) IN GENERAL.—With respect to civilian human health-related research  
38 and development activities relating to countermeasures for chemical, biologi-  
39 cal, radiological, and nuclear and other emerging terrorist threats carried  
40 out by the Department of Health and Human Services (including the Public  
41 Health Service), the Secretary of Health and Human Services shall set pri-

1 orities, goals, objectives, and policies and develop a coordinated strategy for  
2 the activities in collaboration with the Secretary of Homeland Security to  
3 ensure consistency with the national policy and strategic plan developed  
4 under section 10701 of this title.

5 (b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Sec-  
6 retary of Health and Human Services shall collaborate with the Secretary  
7 in developing specific benchmarks and outcome measurements for evaluating  
8 progress toward achieving the priorities and goals described in the sub-  
9 section.

#### 10 **§ 10704. Federally funded research and development centers**

11 The Secretary, acting through the Under Secretary for Science and Tech-  
12 nology, shall have the authority to establish or contract with one or more  
13 federally funded research and development centers to provide independent  
14 analysis of homeland security issues, or to carry out other responsibilities  
15 under this subtitle, including coordinating and integrating both the extra-  
16 mural and intramural programs described in section 10707 of this title.

#### 17 **§ 10705. Miscellaneous provisions**

18 (a) CLASSIFICATION.—To the greatest extent practicable, research con-  
19 ducted or supported by the Department shall be unclassified.

20 (b) Construction.—Nothing in this chapter shall be construed to preclude  
21 any Under Secretary of the Department from carrying out research, devel-  
22 opment, demonstration, or deployment activities, as long as the activities are  
23 coordinated through the Under Secretary for Science and Technology.

24 (c) Regulations.—The Secretary, acting through the Under Secretary for  
25 Science and Technology, may issue necessary regulations with respect to re-  
26 search, development, demonstration, testing, and evaluation activities of the  
27 Department, including the conducting, funding, and reviewing of the activi-  
28 ties.

#### 29 **§ 10706. Homeland Security Advanced Research Projects** 30 **Agency**

31 (a) DEFINITIONS.—In this section:

32 (1) FUND.—The term “Fund” means the Acceleration Fund for Re-  
33 search and Development of Homeland Security Technologies estab-  
34 lished in subsection (c).

35 (2) HOMELAND SECURITY RESEARCH.—The term “homeland secu-  
36 rity research” means research relevant to the detection of, prevention  
37 of, protection against, response to, attribution of, and recovery from  
38 homeland security threats, particularly acts of terrorism.

39 (3) HSARPA.—The term “HSARPA” means the Homeland Secu-  
40 rity Advanced Research Projects Agency established in subsection (b).

1 (4) UNDER SECRETARY.—The term “Under Secretary” means  
2 the Under Secretary for Science and Technology.

3 (b) HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—

4 (1) ESTABLISHMENT.—There is in the Department the Homeland  
5 Security Advanced Research Projects Agency.

6 (2) DIRECTOR.—THE DIRECTOR IS THE HEAD OF HSARPA. THE  
7 DIRECTOR IS APPOINTED BY THE SECRETARY. THE DIRECTOR RE-  
8 PORTS TO THE UNDER SECRETARY.

9 (3) RESPONSIBILITIES.—The Director shall administer the Fund to  
10 award competitive, merit-reviewed grants, cooperative agreements or  
11 contracts to public or private entities, including businesses, federally  
12 funded research and development centers, and universities. The Direc-  
13 tor shall administer the Fund to—

14 (A) support basic and applied homeland security research to  
15 promote revolutionary changes in technologies that would promote  
16 homeland security;

17 (B) advance the development, testing and evaluation, and de-  
18 ployment of critical homeland security technologies; and

19 (C) accelerate the prototyping and deployment of technologies  
20 that would address homeland security vulnerabilities.

21 (4) TARGETED COMPETITIONS.—The Director may solicit proposals  
22 to address specific vulnerabilities identified by the Director.

23 (5) COORDINATION.—The Director shall ensure that the activities of  
24 HSARPA are coordinated with those of other relevant research agen-  
25 cies, and may run projects jointly with other agencies.

26 (6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary  
27 has the hiring and management authorities described in section 1101  
28 of the Strom Thurmond National Defense Authorization Act for Fiscal  
29 Year 1999 (Public Law 105–261, 5 U.S.C. 3104 note). The term of  
30 appointments for employees under subsection (c)(1) of that section may  
31 not exceed 5 years before the granting of an extension under subsection  
32 (c)(2) of that section.

33 (7) DEMONSTRATIONS.—The Director, periodically, shall hold home-  
34 land security technology demonstrations to improve contact among  
35 technology developers, vendors and acquisition personnel.

36 (c) FUND.—

37 (1) ESTABLISHMENT.—There is in the Department the Acceleration  
38 Fund for Research and Development of Homeland Security Tech-  
39 nologies (in this subsection referred to as the “Acceleration Fund”).  
40 The Director administers the Acceleration Fund.

1           (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
2           be appropriated to the Acceleration Fund such sums as may be nec-  
3           essary.

4       **§ 10707. Conduct of research, development, demonstration,**  
5           **testing and evaluation**

6           (a) IN GENERAL.—The Secretary, acting through the Under Secretary  
7           for Science and Technology, shall carry out the responsibilities under section  
8           10701(4) of this title through both extramural and intramural programs.

9           (b) EXTRAMURAL PROGRAMS.—

10           (1) IN GENERAL.—The Secretary, acting through the Under Sec-  
11           retary for Science and Technology, shall operate extramural research,  
12           development, demonstration, testing, and evaluation programs so as  
13           to—

14           (A) ensure that colleges, universities, private research institutes,  
15           and companies (and consortia thereof) from as many areas of the  
16           United States as practicable participate;

17           (B) ensure that the research funded is of high quality, as deter-  
18           mined through merit review processes developed under section  
19           10701(14) of this title; and

20           (C) distribute funds through grants, cooperative agreements,  
21           and contracts.

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

23           (A) DESIGNATION.—The Secretary, acting through the Under  
24           Secretary for Science and Technology, shall designate a university-  
25           based center or several university-based centers for homeland secu-  
26           rity. The purpose of the center or these centers shall be to estab-  
27           lish a coordinated, university-based system to enhance the Na-  
28           tion's homeland security.

29           (B) CRITERIA FOR DESIGNATION.—Criteria for the designation  
30           of colleges or universities as a center for homeland security, shall  
31           include demonstrated expertise in—

32           (i) The training of first responders.

33           (ii) Responding to incidents involving weapons of mass de-  
34           struction and biological warfare.

35           (iii) Emergency and diagnostic medical services.

36           (iv) Chemical, biological, radiological, and nuclear counter-  
37           measures or detection.

38           (v) Animal and plant health and diagnostics.

39           (vi) Food safety.

40           (vii) Water and wastewater operations.

41           (viii) Port and waterway security.

- 1 (ix) Multi-modal transportation.
- 2 (x) Information security and information engineering.
- 3 (xi) Engineering.
- 4 (xii) Educational outreach and technical assistance.
- 5 (xiii) Border transportation and security.
- 6 (xiv) The public policy implications and public dissemina-
- 7 tion of homeland security related research and development.

8 (C) DISCRETION OF SECRETARY.—To the extent that exercising  
9 discretion is in the interest of homeland security, and with respect  
10 to the designation of any given university-based center for home-  
11 land security, the Secretary may except certain criteria as speci-  
12 fied in subsection (b)(2)(B) and consider additional criteria be-  
13 yond those specified in subsection (b)(2)(B). On designation of a  
14 university-based center for homeland security, the Secretary shall  
15 that day publish in the Federal Register the criteria that were ex-  
16 cepted or added in the selection process and the justification for  
17 the set of criteria that were used for that designation.

18 (D) REPORT TO CONGRESS.—The Secretary shall report annu-  
19 ally to Congress concerning the implementation of this section.  
20 The report shall indicate which center or centers have been des-  
21 ignated and how the designation or designations enhance home-  
22 land security, as well as report any decisions to revoke or modify  
23 the designations.

24 (E) AUTHORIZATION OF APPROPRIATIONS.—There is authorized  
25 to be appropriated such sums as may be necessary to carry out  
26 this paragraph.

27 (c) INTRAMURAL PROGRAMS.—

28 (1) CONSULTATION.—In carrying out the duties under section 10701  
29 of this title, the Secretary, acting through the Under Secretary for  
30 Science and Technology, may draw upon the expertise of any labora-  
31 tory of the Federal Government, whether operated by a contractor or  
32 the Government.

33 (2) LABORATORIES.—The Secretary, acting through the Under Sec-  
34 retary for Science and Technology, may establish a headquarters lab-  
35 oratory for the Department at any laboratory or site and may establish  
36 additional laboratory units at other laboratories or sites.

37 (3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary  
38 chooses to establish a headquarters laboratory under paragraph (2), the  
39 Secretary shall do the following:

1 (A) Establish criteria for the selection of the headquarters labo-  
2 ratory in consultation with the National Academy of Sciences, ap-  
3 propriate Federal agencies, and other experts.

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

5 (C) Evaluate all appropriate laboratories or sites against the  
6 criteria.

7 (D) Select a laboratory or site on the basis of the criteria.

8 (E) Report to the appropriate congressional committees on  
9 which laboratory was selected, how the selected laboratory meets  
10 the published criteria, and what duties the headquarters labora-  
11 tory shall perform.

12 (4) LIMITATION ON OPERATION OF LABORATORIES.—A laboratory  
13 may not begin operating as the headquarters laboratory of the Depart-  
14 ment until at least 30 days after the transmittal of the report required  
15 by paragraph (3)(E).

16 **§ 10708. Utilization of Department of Energy national lab-**  
17 **oratories and sites in support of homeland secu-**  
18 **rity activities**

19 (a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

20 (1) IN GENERAL.—In carrying out the missions of the Department,  
21 the Secretary may utilize the Department of Energy national labora-  
22 tories and sites through one or more of the following methods, as the  
23 Secretary considers appropriate:

24 (A) A joint sponsorship arrangement referred to in subsection  
25 (b).

26 (B) A direct contract between the Department and the applica-  
27 ble Department of Energy laboratory or site, subject to subsection  
28 (c).

29 (C) A “work for others” basis made available by that laboratory  
30 or site.

31 (D) Any other method provided by law.

32 (2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Not-  
33 withstanding any other law governing the administration, mission, use,  
34 or operations of Department of Energy national laboratories and sites,  
35 the laboratories and sites may accept and perform work for the Sec-  
36 retary, consistent with resources provided, and perform work on an  
37 equal basis to other missions at the laboratory and not on a noninter-  
38 ference basis with other missions of the laboratory or site.

39 (b) JOINT SPONSORSHIP ARRANGEMENTS.—

40 (1) LABORATORIES.—The Department may be a joint sponsor, under  
41 a multiple agency sponsorship arrangement with the Department of

1 Energy, of one or more Department of Energy national laboratories in  
2 the performance of work.

3 (2) SITES.—The Department may be a joint sponsor of a Depart-  
4 ment of Energy site in the performance of work as if the site were a  
5 federally funded research and development center and the work were  
6 performed under a multiple agency sponsorship arrangement with the  
7 Department.

8 (3) PRIMARY SPONSOR.—The Department of Energy shall be the pri-  
9 mary sponsor under a multiple agency sponsorship arrangement re-  
10 ferred to in paragraph (1) or (2).

11 (4) LEAD AGENT.—The Secretary of Energy shall act as the lead  
12 agent in coordinating the formation and performance of a joint spon-  
13 sorship arrangement under this subsection between the Department  
14 and a Department of Energy national laboratory or site.

15 (5) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Work  
16 performed by a Department of Energy national laboratory or site under  
17 a joint sponsorship arrangement under this subsection shall comply  
18 with the policy on the use of federally funded research and development  
19 centers under the Federal Acquisition Regulation.

20 (6) FUNDING.—The Department shall provide funds for work at the  
21 Department of Energy national laboratories or sites, as the case may  
22 be, under a joint sponsorship arrangement under this subsection under  
23 the same terms and conditions as apply to the primary sponsor of a  
24 national laboratory under section 3303(a)(1)(C) of title 41 or of a site  
25 to the extent the section applies to the site as a federally funded re-  
26 search and development center by reason of this subsection.

27 (c) SEPARATE CONTRACTING.—To the extent that programs or activities  
28 transferred by the Homeland Security Act of 2002 (Public. Law 107-296,  
29 116 Stat. 2135) from the Department of Energy to the Department of  
30 Homeland Security are being carried out through direct contracts with the  
31 operator of a national laboratory or site of the Department of Energy, the  
32 Secretary of Homeland Security and the Secretary of Energy shall ensure  
33 that direct contracts for the programs and activities between the Depart-  
34 ment of Homeland Security and the operator are separate from the direct  
35 contracts of the Department of Energy with the operator.

36 (d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DE-  
37 VELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection  
38 with utilization of Department of Energy national laboratories and sites  
39 under this section, the Secretary may permit the director of a national lab-  
40 oratory or site to enter into cooperative research and development agree-  
41 ments or to negotiate licensing agreements with any person, any agency or



1 instrumentality, of the United States, any unit of State or local government,  
2 and any other entity under the authority granted by section 12 of the Ste-  
3 venson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a).  
4 Technology may be transferred to a non-Federal party to an agreement con-  
5 sistent with the provisions of sections 11 and 12 of that Act (15 U.S.C.  
6 3710, 3710a).

7 (e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out  
8 by the operator of a Department of Energy national laboratory or site in  
9 connection with the utilization of the laboratory or site under this section,  
10 the Department of Homeland Security shall reimburse the Department of  
11 Energy for costs of the activity through a method under which the Secretary  
12 of Energy waives any requirement for the Department of Homeland Secu-  
13 rity to pay administrative charges or personnel costs of the Department of  
14 Energy or its contractors in excess of the amount that the Secretary of En-  
15 ergy pays for an activity carried out by the contractor and paid for by the  
16 Department of Energy.

17 (f) LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT BY THE DE-  
18 PARTMENT OF ENERGY.—No funds authorized to be appropriated or other-  
19 wise made available to the Department in a fiscal year may be obligated  
20 or expended for laboratory directed research and development activities car-  
21 ried out by the Department of Energy unless the activities support the mis-  
22 sions of the Department.

23 (g) OFFICE FOR NATIONAL LABORATORIES.—There is in the Directorate  
24 of Science and Technology the Office for National Laboratories. The Office  
25 is responsible for the coordination and utilization of the Department of En-  
26 ergy national laboratories and sites under this section in a manner to create  
27 a networked laboratory system for the purpose of supporting the missions  
28 of the Department.

29 (h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY-  
30 RELATED RESEARCH.—The Secretary of Energy shall ensure that research,  
31 development, test, and evaluation activities conducted within the Depart-  
32 ment of Energy that are directly or indirectly related to homeland security  
33 are fully coordinated with the Secretary to minimize duplication of effort  
34 and maximize the effective application of Federal budget resources.

35 **§ 10709. Transfer of Plum Island Animal Disease Center, De-**  
36 **partment of Agriculture**

37 (a) IN GENERAL.— The Secretary succeeds the Secretary of Agriculture  
38 as head of the Plum Island Animal Disease Center of the Department of  
39 Agriculture, including the assets and liabilities of the Center.

40 (b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On comple-  
41 tion of the transfer of the Plum Island Animal Disease Center under sub-

1 section (a), the Secretary of Homeland Security and the Secretary of Agri-  
2 culture shall enter into an agreement to ensure that the Department of Ag-  
3 riculture is able to carry out research, diagnostic, and other activities of the  
4 Department of Agriculture at the Center.

5 (c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall con-  
6 tinue to direct the research, diagnostic, and other activities of the Depart-  
7 ment of Agriculture at the Center described in subsection (b).

8 (d) NOTIFICATION.—At least 180 days before a change in the biosafety  
9 level at the Plum Island Animal Disease Center, the President shall notify  
10 Congress of the change and describe the reasons for the change.

11 (e) RELOCATION OF NATIONAL BIO- AND AGRO-DEFENSE FACILITY.—

12 (1) IN GENERAL.—Notwithstanding any other provision of law, if the  
13 Secretary determines that the National Bio- and Agro-defense Facility  
14 should be located at a site other than Plum Island, New York, the Sec-  
15 retary shall ensure that the Administrator of General Services sells  
16 through public sale all real and related personal property and transpor-  
17 tation assets that support Plum Island operations, subject to terms and  
18 conditions necessary to protect Government interests and meet program  
19 requirements.

20 (2) PROCEEDS OF SALE.—The proceeds of the sale described in sub-  
21 section (a) shall be deposited as offsetting collections into the Depart-  
22 ment of Homeland Security Science and Technology “Research, Devel-  
23 opment, Acquisition, and Operations” account and, subject to appro-  
24 priation, shall be available until expended, for site acquisition, construc-  
25 tion, and costs related to the construction of the National Bio- and  
26 Agro-defense Facility, including the costs associated with the sale, in-  
27 cluding due diligence requirements, necessary environmental remedi-  
28 ation at Plum Island, and reimbursement of expenses incurred by the  
29 General Services Administration.

30 **§ 10710. Homeland Security Science and Technology Advi-**  
31 **sory Committee**

32 (a) ESTABLISHMENT.—There is in the Department a Homeland Security  
33 Science and Technology Advisory Committee (in this section referred to as  
34 the “Advisory Committee”). The Advisory Committee shall make recom-  
35 mendations with respect to the activities of the Under Secretary for Science  
36 and Technology, including identifying research areas of potential importance  
37 to the security of the Nation.

38 (b) MEMBERSHIP.—

39 (1) APPOINTMENT.—The Advisory Committee consists of 20 mem-  
40 bers appointed by the Under Secretary for Science and Technology, in-  
41 cluding emergency first-responders or representatives of organizations

1 or associations of emergency first-responders. The Advisory Committee  
2 also shall include representatives of citizen groups, including economi-  
3 cally disadvantaged communities. The individuals appointed as mem-  
4 bers of the Advisory Committee—

5 (A) shall be eminent in fields such as emergency response, re-  
6 search, engineering, new product development, business, and man-  
7 agement consulting;

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

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

11 (D) shall be selected to provide representation of a cross-section  
12 of the research, development, demonstration, and deployment ac-  
13 tivities supported by the Under Secretary for Science and Tech-  
14 nology.

15 (2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for  
16 Science and Technology may enter into an arrangement for the Na-  
17 tional Research Council to select members of the Advisory Committee,  
18 but only if the panel used by the National Research Council reflects  
19 the representation described in paragraph (1).

20 (c) TERMS OF OFFICE.—

21 (1) IN GENERAL.—Except as otherwise provided in this subsection,  
22 the term of office of each member of the Advisory Committee shall be  
23 3 years.

24 (2) VACANCIES.—A member appointed to fill a vacancy occurring be-  
25 fore the expiration of the term for which the member's predecessor was  
26 appointed shall be appointed for the remainder of the term.

27 (d) ELIGIBILITY.—A person who has completed two consecutive full terms  
28 of service on the Advisory Committee is ineligible for appointment during  
29 the 1-year period following the expiration of the second term.

30 (e) MEETINGS.—The Advisory Committee shall meet at least quarterly at  
31 the call of the Chair or whenever one-third of the members request a meet-  
32 ing in writing. Each member shall be given appropriate notice of the call  
33 of each meeting, whenever possible not less than 15 days before the meet-  
34 ing.

35 (f) QUORUM.—A majority of the members of the Advisory Committee not  
36 having a conflict of interest in the matter being considered by the Advisory  
37 Committee constitutes a quorum.

38 (g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall es-  
39 tablish rules for determining when one of its members has a conflict of in-  
40 terest in a matter being considered by the Advisory Committee.

41 (h) REPORTS.—

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

6 (2) ADDITIONAL REPORTS.—The Advisory Committee may render to  
7 the Under Secretary for transmittal to Congress additional reports on  
8 specific policy matters it considers appropriate.

9 (i) FEDERAL ADVISORY COMMITTEE ACT EXEMPTION.—Section 14 of  
10 the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the  
11 Advisory Committee.

## 12 **§ 10711. Homeland Security Institute**

13 (a) ESTABLISHMENT.—There is in the Department the Homeland Secu-  
14 rity Institute (in this section referred to as the “Institute”), established as  
15 a federally funded research and development center.

16 (b) ADMINISTRATION.—The Institute shall be administered as a separate  
17 entity by the Secretary.

18 (c) DUTIES.—The duties of the Institute shall be determined by the Sec-  
19 retary, and may include the following:

20 (1) Systems analysis, risk analysis, and simulation and modeling to  
21 determine the vulnerabilities of the Nation’s critical infrastructures and  
22 the effectiveness of the systems deployed to reduce those vulnerabilities.

23 (2) Economic and policy analysis to assess the distributed costs and  
24 benefits of alternative approaches to enhancing security.

25 (3) Evaluation of the effectiveness of measures deployed to enhance  
26 the security of institutions, facilities, and infrastructure that may be  
27 terrorist targets.

28 (4) Identification of instances when common standards and protocols  
29 could improve the interoperability and effective utilization of tools de-  
30 veloped for field operators and first responders.

31 (5) Assistance for Federal agencies and departments in establishing  
32 testbeds to evaluate the effectiveness of technologies under development  
33 and to assess the appropriateness of the technologies for deployment.

34 (6) Design of metrics and use of those metrics to evaluate the effec-  
35 tiveness of homeland security programs throughout the Federal Gov-  
36 ernment, including all national laboratories.

37 (7) Design of and support for the conduct of homeland security-re-  
38 lated exercises and simulations.

39 (8) Creation of strategic technology development plans to reduce vul-  
40 nerabilities in the Nation’s critical infrastructure and key resources.

1 (d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the du-  
2 ties described in subsection (c), the Institute shall consult widely with rep-  
3 resentatives from private industry, institutions of higher education, non-  
4 profit institutions, other Government agencies, and federally funded re-  
5 search and development centers.

6 (e) USE OF NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS  
7 CENTERS.—The Institute shall utilize the capabilities of the National Infra-  
8 structure Simulation and Analysis Center.

9 (f) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and  
10 Congress an annual report on the activities of the Institute under this sec-  
11 tion.

12 **§ 10712. Technology clearinghouse to encourage and sup-**  
13 **port innovative solutions to enhance homeland se-**  
14 **curity**

15 (a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the  
16 Under Secretary for Science and Technology, shall establish and promote  
17 a program to encourage technological innovation in facilitating the mission  
18 of the Department (as described in section 10301 of this title).

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

21 (1) The establishment of a centralized Federal clearinghouse for in-  
22 formation relating to technologies that would further the mission of the  
23 Department for dissemination, as appropriate, to Federal, State, and  
24 local government and private-sector entities for additional review, pur-  
25 chase, or use.

26 (2) The issuance of announcements seeking unique and innovative  
27 technologies to advance the mission of the Department.

28 (3) The establishment of a technical assistance team to assist in  
29 screening, as appropriate, proposals submitted to the Secretary (except  
30 as provided in subsection (c)(2)) to assess the feasibility, scientific and  
31 technical merits, and estimated cost of the proposals, as appropriate.

32 (4) The provision of guidance, recommendations, and technical as-  
33 sistance, as appropriate, to assist Federal, State, and local government  
34 and private-sector efforts to evaluate and implement the use of tech-  
35 nologies described in paragraph (1) or (2).

36 (5) The provision of information for persons seeking guidance on  
37 how to pursue proposals to develop or deploy technologies that would  
38 enhance homeland security, including information relating to Federal  
39 funding, regulation, or acquisition.

40 (c) MISCELLANEOUS PROVISIONS.—

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

6 (2) CERTAIN PROPOSALS.—The technical assistance team established  
7 under subsection (b)(3) shall not consider or evaluate proposals submit-  
8 ted in response to a solicitation for offers for a pending procurement  
9 or for a specific agency requirement.

10 (3) COORDINATION.—In carrying out this section, the Secretary shall  
11 coordinate with the Technical Support Working Group (organized  
12 under the April 1982 National Security Decision Directive Numbered  
13 30).

14 **§ 10713. Enhancement of public safety communications**  
15 **interoperability**

16 (a) DEFINITION.—In this section, the term “interoperable communica-  
17 tions” means the ability of emergency response providers and relevant Fed-  
18 eral, State, and local government agencies to communicate with each other  
19 as necessary, through a dedicated public safety network utilizing informa-  
20 tion technology systems and radio communications systems, and to exchange  
21 voice, data, and video with one another on demand, in real time, as nec-  
22 essary.

23 (b) COORDINATION OF PUBLIC SAFETY INTEROPERABLE COMMUNICA-  
24 TIONS PROGRAMS.—

25 (1) PROGRAM.—The Secretary, in consultation with the Secretary of  
26 Commerce and the Chairman of the Federal Communications Commis-  
27 sion, shall establish a program to enhance public safety interoperable  
28 communications at all levels of government. The program shall—

29 (A) establish a comprehensive national approach to achieving  
30 public safety interoperable communications;

31 (B) coordinate with other Federal agencies in carrying out sub-  
32 paragraph (A);

33 (C) develop, in consultation with other appropriate Federal  
34 agencies and State and local authorities, appropriate minimum ca-  
35 pabilities for communications interoperability for Federal, State,  
36 and local public safety agencies;

37 (D) accelerate, in consultation with other Federal agencies, in-  
38 cluding the National Institute of Standards and Technology, the  
39 private sector, and nationally recognized standards organizations  
40 as appropriate, the development of national voluntary consensus

1 standards for public safety interoperable communications, rec-  
2 ognizing

3 (i) the value, life cycle, and technical capabilities of existing  
4 communications infrastructure;

5 (ii) the need for cross-border interoperability between  
6 States and nations;

7 (iii) the unique needs of small, rural communities; and

8 (iv) the interoperability needs for daily operations and cata-  
9 strophic events;

10 (E) encourage the development and implementation of flexible  
11 and open architectures incorporating, where possible, technologies  
12 that currently are commercially available, with appropriate levels  
13 of security, for short-term and long-term solutions to public safety  
14 communications interoperability;

15 (F) assist other Federal agencies in identifying priorities for re-  
16 search, development, and testing and evaluation with regard to  
17 public safety interoperable communications;

18 (G) identify priorities within the Department of Homeland Se-  
19 curity for research, development, and testing and evaluation with  
20 regard to public safety interoperable communications;

21 (H) establish coordinated guidance for Federal grant programs  
22 for public safety interoperable communications;

23 (I) provide technical assistance to State and local public safety  
24 agencies regarding planning, acquisition strategies, interoperability  
25 architectures, training, and other functions necessary to achieve  
26 public safety communications interoperability;

27 (J) develop and disseminate best practices to improve public  
28 safety communications interoperability; and

29 (K) develop appropriate performance measures and milestones  
30 to systematically measure the Nation's progress toward achieving  
31 public safety communications interoperability, including the devel-  
32 opment of national voluntary consensus standards.

33 (2) OFFICE FOR INTEROPERABILITY AND COMPATIBILITY.—

34 (A) ESTABLISHMENT OF OFFICE.—The Secretary may establish  
35 an Office for Interoperability and Compatibility within the Direc-  
36 torate of Science and Technology to carry out this subsection.

37 (B) FUNCTIONS.—If the Secretary establishes an office, the  
38 Secretary shall, through the office—

39 (i) carry out Department of Homeland Security responsibil-  
40 ities and authorities relating to the SAFECOM Program; and

41 (ii) carry out section 11111 of this title.

1 (e) INTERNATIONAL INTEROPERABILITY.—The President shall establish a  
2 mechanism for coordinating cross-border interoperability issues between—

3 (1) the United States and Canada; and

4 (2) the United States and Mexico.

5 (d) MULTIYEAR INTEROPERABILITY GRANTS.—

6 (1) MULTIYEAR COMMITMENTS.—In awarding grants to a State, re-  
7 gion, local government, or Indian tribe for the purposes of enhancing  
8 interoperable communications capabilities for emergency response pro-  
9 viders, the Secretary may commit to obligate Federal assistance beyond  
10 the current fiscal year, subject to the limitations and restrictions in this  
11 subsection.

12 (2) RESTRICTIONS.—

13 (A) TIME LIMIT.—No multiyear interoperability commitment  
14 may exceed 3 years in duration.

15 (B) AMOUNT OF COMMITTED FUNDS.—The total amount of as-  
16 sistance the Secretary has committed to obligate for a future fiscal  
17 year under paragraph (1) may not exceed \$150,000,000.

18 (3) LETTERS OF INTENT.—

19 (A) ISSUANCE.—Under paragraph (1), the Secretary may issue  
20 a letter of intent to an applicant committing to obligate from fu-  
21 ture budget authority an amount, not more than the Federal Gov-  
22 ernment's share of the project's cost, for an interoperability com-  
23 munications project (including interest costs and costs of formulat-  
24 ing the project).

25 (B) SCHEDULE.—A letter of intent under this paragraph shall  
26 establish a schedule under which the Secretary will reimburse the  
27 applicant for the Federal Government's share of the project's  
28 costs, as amounts become available, if the applicant, after the Sec-  
29 retary issues the letter, carries out the project before receiving  
30 amounts under a grant issued by the Secretary.

31 (C) NOTICE TO SECRETARY.—An applicant that is issued a let-  
32 ter of intent under this subsection shall notify the Secretary of the  
33 applicant's intent to carry out a project pursuant to the letter be-  
34 fore the project begins.

35 (D) NOTICE TO CONGRESS.—The Secretary shall transmit a  
36 written notification to Congress no later than 3 days before the  
37 issuance of a letter of intent under this section.

38 (E) LIMITATIONS.—A letter of intent issued under this section  
39 is not an obligation of the Government under section 1501 of title  
40 31, and is not deemed to be an administrative commitment for fi-  
41 nancing. An obligation or administrative commitment may be



1           made only as amounts are provided in authorization and appro-  
2           priations laws.

3           (F) STATUTORY CONSTRUCTION.—Nothing in this subsection  
4           shall be construed

5                 (i) to prohibit the obligation of amounts pursuant to a let-  
6                 ter of intent under this subsection in the same fiscal year as  
7                 the letter of intent is issued; or

8                 (ii) to apply to, or replace, Federal assistance intended for  
9                 interoperable communications that is not provided pursuant  
10                to a commitment under this subsection.

11          (e) INTEROPERABLE COMMUNICATIONS PLANS.—An applicant requesting  
12          funding assistance from the Secretary for interoperable communications for  
13          emergency response providers shall submit an Interoperable Communica-  
14          tions Plan to the Secretary for approval. A plan shall—

15                (1) describe the current state of communications interoperability in  
16                the applicable jurisdictions among Federal, State, and local emergency  
17                response providers and other relevant private resources;

18                (2) describe the available and planned use of public safety frequency  
19                spectrum and resources for interoperable communications within the  
20                jurisdictions;

21                (3) describe how the planned use of spectrum and resources for  
22                interoperable communications is compatible with surrounding capabili-  
23                ties and interoperable communications plans of Federal, State, and  
24                local governmental entities, military installations, foreign governments,  
25                critical infrastructure, and other relevant entities;

26                (4) include a 5-year plan for the dedication of Federal, State, and  
27                local government and private resources to achieve a consistent, secure,  
28                and effective interoperable communications system, including planning,  
29                system design and engineering, testing and technology development,  
30                procurement and installation, training, and operations and mainte-  
31                nance;

32                (5) describe how the 5-year plan meets or exceeds applicable stand-  
33                ards and grant requirements established by the Secretary;

34                (6) include information on the governance structure used to develop  
35                the plan, including this information about all agencies and organiza-  
36                tions that participated in developing the plan and the scope and time-  
37                frame of the plan; and

38                (7) describe the method by which multi-jurisdictional, multidisci-  
39                plinary input is provided from all regions of the jurisdiction, including  
40                high-threat urban areas located in the jurisdiction, and the process for  
41                continuing to incorporate input.

1 (f) Expanded Reporting Requirement.—In addition to the committees  
2 specifically enumerated to receive reports under title XII of the Implement-  
3 ing Recommendations Of The 9/11 Commission Act Of 2007 (Public Law  
4 110–53, 121 Stat. 381), any report transmitted under the provisions of that  
5 Title shall also be transmitted to the appropriate congressional committees.

6 **§ 10714. Office for Interoperability and Compatibility**

7 (a) CLARIFICATION OF RESPONSIBILITIES.—The Director of the Office  
8 for Interoperability and Compatibility shall—

9 (1) assist the Secretary in developing and implementing the science  
10 and technology aspects of the program described in subparagraphs (D),  
11 (E), (F), and (G) of section 10713(b)(1) of this title;

12 (2) in coordination with the Federal Communications Commission,  
13 the National Institute of Standards and Technology, and other Federal  
14 departments and agencies with responsibility for standards, support the  
15 creation of national voluntary consensus standards for interoperable  
16 emergency communications;

17 (3) establish a comprehensive research, development, testing, and  
18 evaluation program for improving interoperable emergency communica-  
19 tions;

20 (4) establish, in coordination with the Director for Emergency Com-  
21 munications, requirements for interoperable emergency communications  
22 capabilities, which shall be nonproprietary where standards for the ca-  
23 pabilities exist, for all public safety radio and data communications sys-  
24 tems and equipment purchased using homeland security assistance ad-  
25 ministered by the Department, excluding an alert and warning device,  
26 technology, or system;

27 (5) carry out the Department’s responsibilities and authorities relat-  
28 ing to research, development, testing, evaluation, or standards-related  
29 elements of the SAFECOM Program;

30 (6) evaluate and assess new technology in real-world environments  
31 to achieve interoperable emergency communications capabilities;

32 (7) encourage more efficient use of existing resources, including  
33 equipment, to achieve interoperable emergency communications capa-  
34 bilities;

35 (8) test public safety communications systems that are less prone to  
36 failure, support new nonvoice services, use spectrum more efficiently,  
37 and cost less than existing systems;

38 (9) coordinate with the private sector to develop solutions to improve  
39 emergency communications capabilities and achieve interoperable emer-  
40 gency communications capabilities; and

1 (10) conduct pilot projects, in coordination with the Director for  
2 Emergency Communications, to test and demonstrate technologies, in-  
3 cluding data and video, that enhance

4 (A) the ability of emergency response providers and relevant  
5 government officials to continue to communicate in the event of  
6 natural disasters, acts of terrorism, and other man-made disasters;  
7 and

8 (B) interoperable emergency communications capabilities.

9 (b) COORDINATION.—The Director of the Office for Interoperability and  
10 Compatibility shall coordinate with the Director for Emergency Communica-  
11 tions with respect to the SAFECOM program.

12 (c) SUFFICIENCY OF RESOURCES.—The Secretary shall provide the Office  
13 for Interoperability and Compatibility the resources and staff necessary to  
14 carry out the responsibilities under this section.

15 **§ 10715. Emergency communications interoperability re-**  
16 **search and development**

17 (a) DEFINITION.—In this section, the term “interoperable emergency  
18 communications” has the meaning given the term “interoperable commu-  
19 nications” under section 10713(a) of this title.

20 (b) In General.—The Secretary, acting through the Under Secretary for  
21 Science and Technology and the Director of the Office for Interoperability  
22 and Compatibility, shall establish a comprehensive research and development  
23 program to support and promote

24 (1) the ability of emergency response providers and relevant govern-  
25 ment officials to continue to communicate in the event of natural disas-  
26 ters, acts of terrorism, and other man-made disasters; and

27 (2) interoperable emergency communications capabilities among  
28 emergency response providers and relevant government officials, includ-  
29 ing by—

30 (A) supporting research on a competitive basis, including  
31 through the Directorate of Science and Technology and Homeland  
32 Security Advanced Research Projects Agency; and

33 (B) considering the establishment of a Center of Excellence  
34 under the Department of Homeland Security Centers of Excel-  
35 lence Program focused on improving emergency response provid-  
36 ers’ communication capabilities.

37 (c) PURPOSES.—The purposes of the program established under sub-  
38 section (b) include—

39 (1) supporting research, development, testing, and evaluation on  
40 emergency communication capabilities;

1 (2) understanding the strengths and weaknesses of the public safety  
2 communications systems in use;

3 (3) examining how current and emerging technology can make emer-  
4 gency response providers more effective, and how Federal, State, local,  
5 and tribal government agencies can use this technology in a coherent  
6 and cost-effective manner;

7 (4) investigating technologies that could lead to long-term advance-  
8 ments in emergency communications capabilities and supporting re-  
9 search on advanced technologies and potential systemic changes to dra-  
10 matically improve emergency communications; and

11 (5) evaluating and validating advanced technology concepts, and fa-  
12 cilitating the development and deployment of interoperable emergency  
13 communication capabilities.

#### 14 **§ 10716. National Biosurveillance Integration Center**

15 (a) DEFINITIONS.—In this section:

16 (1) BIOLOGICAL AGENT.—The term “biological agent” has the mean-  
17 ing given that term in section 178 of title 18.

18 (2) BIOLOGICAL EVENT OF NATIONAL CONCERN.—The term “bio-  
19 logical event of national concern” means—

20 (A) an act of terrorism involving a biological agent or toxin; or

21 (B) a naturally occurring outbreak of an infectious disease that  
22 may result in a national epidemic.

23 (3) HOMELAND SECURITY INFORMATION.—The term “homeland se-  
24 curity information” has the meaning given that term in section 11706  
25 of this title.

26 (4) MEMBER AGENCY.—The term “Member Agency” means any  
27 Federal department or agency that, at the discretion of the head of  
28 that department or agency, has entered into a memorandum of under-  
29 standing regarding participation in the NBIC.

30 (5) PRIVACY OFFICER.—The term “Privacy Officer” means the Pri-  
31 vacy Officer appointed under section 10532 of this title.

32 (6) TOXIN.—The term “toxin” has the meaning given that term in  
33 section 178 of title 18.

34 (b) ESTABLISHMENT.—The Secretary shall establish, operate, and main-  
35 tain a National Biosurveillance Integration Center (in this section referred  
36 to as the “NBIC”), which shall be headed by a Directing Officer, under an  
37 office or directorate of the Department that is in existence as of August 3,  
38 2007.

39 (c) PRIMARY MISSION.—The primary mission of the NBIC is to—

40 (1) enhance the capability of the Federal Government to—

1 (A) rapidly identify, characterize, localize, and track a biological  
2 event of national concern by integrating and analyzing data relat-  
3 ing to human health, animal, plant, food, and environmental mon-  
4 itoring systems (both national and international); and

5 (B) disseminate alerts and other information to Member Agen-  
6 cies and, in coordination with (and where possible through) Mem-  
7 ber Agencies, to agencies of State, local, and tribal governments,  
8 as appropriate, to enhance the ability of the agencies to respond  
9 to a biological event of national concern; and

10 (2) oversee development and operation of the National Biosurveil-  
11 lance Integration System.

12 (d) REQUIREMENTS.—The NBIC shall detect, as early as possible, a bio-  
13 logical event of national concern that presents a risk to the United States  
14 or the infrastructure or key assets of the United States, including by—

15 (1) consolidating data from all relevant surveillance systems main-  
16 tained by Member Agencies to detect biological events of national con-  
17 cern across human, animal, and plant species;

18 (2) seeking private sources of surveillance, both foreign and domes-  
19 tic, when the sources would enhance coverage of critical surveillance  
20 gaps;

21 (3) using an information technology system that uses the best avail-  
22 able statistical and other analytical tools to identify and characterize  
23 biological events of national concern in as close to real-time as is prac-  
24 ticable;

25 (4) providing the infrastructure for such?? integration, including in-  
26 formation technology systems and space, and support for personnel  
27 from Member Agencies with sufficient expertise to enable analysis and  
28 interpretation of data;

29 (5) working with Member Agencies to create information technology  
30 systems that use the minimum amount of patient data necessary and  
31 consider patient confidentiality and privacy issues at all stages of devel-  
32 opment and apprise the Privacy Officer of these efforts; and

33 (6) alerting Member Agencies and, in coordination with (and where  
34 possible through) Member Agencies, public health agencies of State,  
35 local, and tribal governments regarding an incident that could develop  
36 into a biological event of national concern.

37 (e) RESPONSIBILITIES OF THE DIRECTING OFFICER OF THE NBIC.—

38 (1) IN GENERAL.—The Directing Officer of the NBIC shall—

39 (A) on an ongoing basis, monitor the availability and appro-  
40 priateness of surveillance systems used by the NBIC and those

1 systems that could enhance biological situational awareness or the  
2 overall performance of the NBIC;

3 (B) on an ongoing basis, review and seek to improve the statis-  
4 tical and other analytical methods used by the NBIC;

5 (C) receive and consider other relevant homeland security infor-  
6 mation, as appropriate; and

7 (D) provide technical assistance, as appropriate, to all Federal,  
8 regional, State, local, and tribal government entities and private-  
9 sector entities that contribute data relevant to the operation of the  
10 NBIC.

11 (2) ASSESSMENTS.—The Directing Officer of the NBIC shall—

12 (A) on an ongoing basis, evaluate available data for evidence of  
13 a biological event of national concern; and

14 (B) integrate homeland security information with NBIC data to  
15 provide overall situational awareness and determine whether a bio-  
16 logical event of national concern has occurred.

17 (3) INFORMATION SHARING.—

18 (A) IN GENERAL.—The Directing Officer of the NBIC shall—

19 (i) establish a method of real-time communication with the  
20 National Operations Center;

21 (ii) in the event that a biological event of national concern  
22 is detected, notify the Secretary and disseminate results of  
23 NBIC assessments relating to that biological event of national  
24 concern to appropriate Federal response entities and, in co-  
25 ordination with relevant Member Agencies, regional, State,  
26 local, and tribal governmental response entities in a timely  
27 manner;

28 (iii) provide any report on NBIC assessments to Member  
29 Agencies and, in coordination with relevant Member Agencies,  
30 an affected regional, State, local, or tribal government, and  
31 any private-sector entity considered appropriate that may en-  
32 hance the mission of the Member Agencies, governments, or  
33 entities or the ability of the Nation to respond to biological  
34 events of national concern; and

35 (iv) share NBIC incident or situational awareness reports,  
36 and other relevant information, consistent with the informa-  
37 tion sharing environment established under section 11707 of  
38 this title and policies, guidelines, procedures, instructions, or  
39 standards established under that section.

40 (B) CONSULTATION.—The Directing Officer of the NBIC shall  
41 implement the activities described in subparagraph (A) consistent

1 with the policies, guidelines, procedures, instructions, or standards  
2 established under section 11707 of this title and in consultation  
3 with the Director of National Intelligence, the Under Secretary for  
4 Intelligence and Analysis, and other offices or agencies of the Fed-  
5 eral Government, as appropriate.

6 (f) RESPONSIBILITIES OF THE NBIC MEMBER AGENCIES.—Each Mem-  
7 ber Agency shall—

8 (1) use its best efforts to integrate biosurveillance information into  
9 the NBIC, with the goal of promoting information sharing between  
10 Federal, State, local, and tribal governments to detect biological events  
11 of national concern;

12 (2) provide timely information to assist the NBIC in maintaining bi-  
13 ological situational awareness for accurate detection and response pur-  
14 poses;

15 (3) enable the NBIC to receive and use biosurveillance information  
16 from member agencies to carry out its requirements under subsection  
17 (e);

18 (4) connect the biosurveillance data systems of that Member Agency  
19 to the NBIC data system under mutually agreed protocols that are  
20 consistent with subsection (e)(5);

21 (5) participate in the formation of strategy and policy for the oper-  
22 ation of the NBIC and its information sharing;

23 (6) provide personnel to the NBIC under an interagency personnel  
24 agreement and consider the qualifications of the personnel necessary to  
25 provide human, animal, and environmental data analysis and interpre-  
26 tation support to the NBIC; and

27 (7) retain responsibility for the surveillance and intelligence systems  
28 of that department or agency, if applicable.

29 (g) ADMINISTRATIVE AUTHORITIES.—

30 (1) HIRING OF EXPERTS.—The Directing Officer of the NBIC shall  
31 hire individuals with the necessary expertise to develop and operate the  
32 NBIC.

33 (2) DETAIL OF PERSONNEL.—Upon the request of the Directing Of-  
34 ficer of the NBIC, the head of a Federal department or agency may  
35 detail, on a reimbursable basis, personnel of the department or agency  
36 to the Department to assist the NBIC in carrying out this section.

37 (h) NBIC INTERAGENCY WORKING GROUP.—The Directing Officer of the  
38 NBIC shall—

39 (1) establish an interagency working group to facilitate interagency  
40 cooperation and to advise the Directing Officer of the NBIC regarding

1 recommendations to enhance the biosurveillance capabilities of the De-  
2 partment; and

3 (2) invite Member Agencies to serve on that working group.

4 (i) RELATIONSHIP TO OTHER DEPARTMENTS AND AGENCIES.—The au-  
5 thority of the Directing Officer of the NBIC under this section shall not  
6 affect the authority or responsibility of another department or agency of the  
7 Federal Government with respect to biosurveillance activities under a pro-  
8 gram administered by that department or agency.

9 (j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
10 propriated such sums as are necessary to carry out this section.

11 **§ 10717. Promoting antiterrorism through international co-**  
12 **operation program**

13 (a) DEFINITIONS.—In this section:

14 (1) DIRECTOR.—The term “Director” means the Director selected  
15 under subsection (b)(2).

16 (2) INTERNATIONAL COOPERATIVE ACTIVITY.—The term “inter-  
17 national cooperative activity” includes—

18 (A) coordinated research projects, joint research projects, or  
19 joint ventures;

20 (B) joint studies or technical demonstrations;

21 (C) coordinated field exercises, scientific seminars, conferences,  
22 symposia, and workshops;

23 (D) training of scientists and engineers;

24 (E) visits and exchanges of scientists, engineers, or other appro-  
25 priate personnel;

26 (F) exchanges or sharing of scientific and technological informa-  
27 tion; and

28 (G) joint use of laboratory facilities and equipment.

29 (b) SCIENCE AND TECHNOLOGY HOMELAND SECURITY INTERNATIONAL  
30 COOPERATIVE PROGRAMS OFFICE.—

31 (1) ESTABLISHMENT.—There is in the Department the Science and  
32 Technology Homeland Security International Cooperative Programs Of-  
33 fice.

34 (2) DIRECTOR.—The Office shall be headed by a Director, who—

35 (A) shall be selected, in consultation with the Assistant Sec-  
36 retary for International Affairs, by and shall report to the Under  
37 Secretary for Science and Technology; and

38 (B) may be an officer of the Department serving in another po-  
39 sition.

40 (3) RESPONSIBILITIES.—



1 (A) DEVELOPMENT OF MECHANISMS.—The Director is respon-  
2 sible for developing, in coordination with the Department of State  
3 and, as appropriate, the Department of Defense, the Department  
4 of Energy, and other Federal agencies, understandings and agree-  
5 ments to allow and to support international cooperative activity in  
6 support of homeland security.

7 (B) PRIORITIES.—The Director is responsible for developing, in  
8 coordination with the Office of International Affairs and other  
9 Federal agencies, strategic priorities for international cooperative  
10 activity for the Department in support of homeland security.

11 (C) ACTIVITIES.—The Director shall facilitate the planning, de-  
12 velopment, and implementation of international cooperative activ-  
13 ity to address the strategic priorities developed under subpara-  
14 graph (B) through mechanisms the Under Secretary considers ap-  
15 propriate, including grants, cooperative agreements, or contracts  
16 to or with foreign public or private entities, governmental organi-  
17 zations, businesses (including small businesses and socially and  
18 economically disadvantaged small businesses (as those terms are  
19 defined in sections 3 and 8 of the Small Business Act (15 U.S.C.  
20 632 and 637), respectively)), federally funded research and devel-  
21 opment centers, and universities.

22 (D) IDENTIFICATION OF PARTNERS.—The Director shall facili-  
23 tate the matching of United States entities engaged in homeland  
24 security research with non-United States entities engaged in home-  
25 land security research so that they may partner in homeland secu-  
26 rity research activities.

27 (4) COORDINATION.—The Director shall ensure that the activities  
28 under this subsection are coordinated with the Office of International  
29 Affairs and the Department of State and, as appropriate, the Depart-  
30 ment of Defense, the Department of Energy, and other relevant Fed-  
31 eral agencies or interagency bodies. The Director may enter into joint  
32 activities with other Federal agencies.

33 (e) MATCHING FUNDING.—

34 (1) In general.—

35 (A) EQUITABILITY.—The Director shall ensure that funding  
36 and resources expended in international cooperative activity will be  
37 equitably matched by the foreign partner government or other en-  
38 tity through direct funding, funding of complementary activities,  
39 or the provision of staff, facilities, material, or equipment.

40 (B) GRANT MATCHING AND REPAYMENT.—

1 (i) The Secretary may require a recipient of a grant under  
2 this section—

3 (I) to make a matching contribution of not more than  
4 50 percent of the total cost of the proposed project for  
5 which the grant is awarded; and

6 (II) to repay to the Secretary the amount of the grant  
7 (or a portion thereof), interest on the amount at an ap-  
8 propriate rate, and charges for administration of the  
9 grant the Secretary determines appropriate.

10 (ii) The Secretary may not require that repayment under  
11 clause (i)(II) be more than 150 percent of the amount of the  
12 grant, adjusted for inflation on the basis of the Consumer  
13 Price Index.

14 (2) FOREIGN PARTNERS.—Partners may include Israel, the United  
15 Kingdom, Canada, Australia, Singapore, and other allies in the global  
16 war on terrorism as determined to be appropriate by the Secretary and  
17 the Secretary of State.

18 (3) LOANS OF EQUIPMENT.—The Director may make or accept loans  
19 of equipment for research and development and comparative testing  
20 purposes.

21 (d) FOREIGN REIMBURSEMENTS.—If the Science and Technology Home-  
22 land Security International Cooperative Programs Office participates in an  
23 international cooperative activity with a foreign partner on a cost-sharing  
24 basis, reimbursements or contributions received from that foreign partner  
25 to meet its share of the project may be credited to appropriate current ap-  
26 propriations accounts of the Directorate of Science and Technology.

27 (e) REPORT TO CONGRESS ON INTERNATIONAL COOPERATIVE ACTIVI-  
28 TIES.—The Secretary, acting through the Under Secretary for Science and  
29 Technology and the Director, shall submit to Congress every five years a  
30 report containing

31 (1) a brief description of each grant, cooperative agreement, or con-  
32 tract made or entered into under subsection (b)(3)(C), including the  
33 participants, goals, and amount and sources of funding; and

34 (2) a list of international cooperative activities underway, including  
35 the participants, goals, expected duration, and amount and sources of  
36 funding, including resources provided to support the activities in lieu  
37 of direct funding.

38 (f) ANIMAL AND ZOO NOTIC DISEASES.—As part of the international co-  
39 operative activities authorized in this section, the Under Secretary, in co-  
40 ordination with the Chief Medical Officer, the Department of State, and ap-  
41 propriate officials of the Department of Agriculture, the Department of De-

1 fense, and the Department of Health and Human Services, may enter into  
 2 cooperative activities with foreign countries, including African nations, to  
 3 strengthen American preparedness against foreign animal and zoonotic dis-  
 4 eases overseas that could harm the Nation's agricultural and public health  
 5 sectors if they were to reach the United States.

6 (g) CONSTRUCTION; AUTHORITIES OF THE SECRETARY OF STATE.—  
 7 Nothing in this section shall be construed to alter or affect the following  
 8 provisions of law:

- 9 (1) Section 112b(c) of title 1.  
 10 (2) Title V of the Foreign Relations Authorization Act, Fiscal Year  
 11 1979 (22 U.S.C. 2656a et seq.).  
 12 (3) Section 1(e)(2) of the State Department Basic Authorities Act  
 13 of 1956 (22 U.S.C. 2651a(e)(2)).  
 14 (4) Sections 2 and 27 of the Arms Export Control Act (22 U.S.C.  
 15 2752, 2767).  
 16 (5) Section 622(c) of the Foreign Assistance Act of 1961 (22 U.S.C.  
 17 2382(c)).

18 (h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
 19 propriated to carry out this section such sums as are necessary.

## 20 **Chapter 109 Border and Transportation Security**

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10971. Coordination of information and information technology.

10972. Visa issuance.

10973. Information on visa denials required to be entered into electronic data system .

10974. Purpose and responsibilities of Office of Cargo Security Policy.

10975. Purpose, composition, and operation of Border Enforcement Security Task Force.

**Subchapter I Directorate of Border and Transportation Security**

**§ 10901. Responsibilities**

The Secretary, acting through the Under Secretary for Border and Transportation Security, is responsible for the following:

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

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or an officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 10931 of this title takes effect.

(4) Establishing and administering rules, under section 10972 of this title, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subchapter III, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 10903 of this title.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

1    **§ 10902. Functions transferred**

2       The Secretary succeeds to the functions, personnel, assets, and liabilities  
3 of—

4           (1) the United States Customs Service of the Department of the  
5 Treasury, including the functions of the Secretary of the Treasury re-  
6 lating thereto;

7           (2) the Transportation Security Administration of the Department of  
8 Transportation, including the functions of the Secretary of Transpor-  
9 tation, and of the Under Secretary of Transportation for Security, re-  
10 lating thereto;

11           (3) the Federal Protective Service of the General Services Adminis-  
12 tration, including the functions of the Administrator of General Serv-  
13 ices relating thereto;

14           (4) the Federal Law Enforcement Training Center of the Depart-  
15 ment of the Treasury; and

16           (5) the Office for Domestic Preparedness of the Office of Justice  
17 Programs, including the functions of the Attorney General relating  
18 thereto.

19    **§ 10903. Transfer of certain agricultural inspection func-**  
20           **tions of the Department of Agriculture**

21       (a) EXCLUSION OF QUARANTINE ACTIVITIES.—In this section, the term  
22 “functions” does not include quarantine activities carried out under the laws  
23 specified in subsection (c).

24       (b) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION  
25 FUNCTIONS.—The Secretary succeeds to the functions of the Secretary of  
26 Agriculture relating to agricultural import and entry inspection activities  
27 under the laws specified in subsection (c).

28       (c) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws re-  
29 ferred to in subsection (b) are the following:

30           (1) The 8th paragraph under the heading “Bureau of Animal Indus-  
31 try” in the Act of March 4, 1913 (commonly known as the Virus-  
32 Serum-Toxin Act) (21 U.S.C. 151 et seq.).

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

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

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

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

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

40           (7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C.  
41 1540).

1 (d) EFFECT OF TRANSFER.—

2 (1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULA-  
3 TIONS.—The authority transferred under subsection (b) shall be exer-  
4 cised by the Secretary in accordance with the regulations, policies, and  
5 procedures issued by the Secretary of Agriculture regarding the admin-  
6 istration of the laws specified in subsection (c).

7 (2) RULEMAKING COORDINATION.—The Secretary of Agriculture  
8 shall coordinate with the Secretary whenever the Secretary of Agri-  
9 culture prescribes regulations, policies, or procedures for administering  
10 the functions transferred under subsection (b) under a law specified in  
11 subsection (c).

12 (3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation  
13 with the Secretary of Agriculture, may issue directives and guidelines  
14 necessary to ensure the effective use of personnel of the Department  
15 to carry out the functions transferred under subsection (a).

16 (e) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND  
17 SECURITY.—

18 (1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized  
19 under sections 2508 and 2509 of the Food, Agriculture, Conservation,  
20 and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agri-  
21 culture shall transfer, from time to time to the Secretary funds for ac-  
22 tivities carried out by the Secretary for which fees were collected.

23 (2) LIMITATION.—The proportion of fees collected under sections  
24 2508 and 2509 that are transferred to the Secretary under this sub-  
25 section may not exceed the proportion of the costs incurred by the Sec-  
26 retary to all costs incurred to carry out activities funded by the fees.

27 **§ 10904. Office for Domestic Preparedness**

28 (a) ESTABLISHMENT.—The Office for Domestic Preparedness is in the  
29 Directorate of Border and Transportation Security. There is a Director of  
30 the Office for Domestic Preparedness. The Director is appointed by the  
31 President. The Director reports directly to the Under Secretary for Border  
32 and Transportation Security.

33 (b) RESPONSIBILITIES.—The Office for Domestic Preparedness has the  
34 primary responsibility in the executive branch for the preparedness of the  
35 United States for acts of terrorism, including

36 (1) coordinating preparedness efforts at the Federal level, and work-  
37 ing with all State, local, tribal, parish, and private-sector emergency re-  
38 sponse providers on all matters pertaining to combating terrorism, in-  
39 cluding training, exercises, and equipment support;

1 (2) coordinating or, as appropriate, consolidating communications  
2 and systems of communications relating to homeland security at all lev-  
3 els of government;

4 (3) directing and supervising terrorism preparedness grant programs  
5 of the Federal Government (other than those programs administered by  
6 the Department of Health and Human Services) for all emergency re-  
7 sponse providers;

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

11 (5) providing agency-specific training for agents and analysts within  
12 the Department, other agencies, and State and local agencies and inter-  
13 national entities;

14 (6) as the lead executive branch agency for preparedness of the  
15 United States for acts of terrorism, cooperating closely with the Fed-  
16 eral Emergency Management Agency, which shall have the primary re-  
17 sponsibility within the executive branch to prepare for and mitigate the  
18 effects of nonterrorist-related disasters in the United States;

19 (7) assisting and supporting the Secretary, in coordination with  
20 other Directorates and entities outside the Department, in conducting  
21 appropriate risk analysis and risk management activities of State, local,  
22 and tribal governments consistent with the mission and functions of the  
23 Directorate of Border and Transportation Security;

24 (8) administering those elements of the Office of National Prepared-  
25 ness of the Federal Emergency Management Agency that relate to ter-  
26 rorism, which shall be consolidated within the Department in the Office  
27 for Domestic Preparedness; and

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

31 **§ 10905. Limitation on reorganization of functions and units**

32 The authority provided by section 1502 of the Homeland Security Act of  
33 2002 (Public Law 107–296, 116 Stat. 2308) may be used to reorganize  
34 functions or organizational units in the Bureau of Immigration and Cus-  
35 toms Enforcement or the Bureau of Citizenship and Immigration Services,  
36 but may not be used to recombine the 2 Bureaus into a single agency or  
37 otherwise to combine, join, or consolidate functions or organizational units  
38 of the 2 Bureaus with each other.





1    **§ 10912. Retention of customs revenue functions by Sec-**  
2                                   **retary of the Treasury**

3           (a)

4           Retention of Customs Revenue Functions by Secretary of the Treasury.—

5               (1) RETENTION OF AUTHORITY.—Notwithstanding section 10902(1)  
6               of this title, authority related to customs revenue functions that was  
7               vested in the Secretary of the Treasury by law before January 24,  
8               2003, under those provisions of law set forth in paragraph (2) shall  
9               not be transferred to the Secretary by reason of the Homeland Security  
10              Act of 2002 (Public Law 107–296, 116 Stat. 2135) and, on and after  
11              January 24, 2004, the Secretary of the Treasury may delegate any  
12              such authority to the Secretary at the discretion of the Secretary of  
13              the Treasury. The Secretary of the Treasury shall consult with the Sec-  
14              retary regarding the exercise of authority not delegated to the Sec-  
15              retary.

16             (2) STATUTES.—The provisions of law referred to in paragraph (1)  
17             are the following:

18               (A) The Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

19               (B) Section 249 of the Revised Statutes of the United States  
20               (19 U.S.C. 3).

21               (C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

22               (D) Section 13031 of the Consolidated Omnibus Budget Rec-  
23               onciliation Act of 1985 (19 U.S.C. 58c).

24               (E) Section 251 of the Revised Statutes of the United States  
25               (19 U.S.C. 66).

26               (F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

27               (G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

28               (H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

29               (I) The Trade Act of 1974 (19 U.S.C. 2101 et seq.).

30               (J) The Trade Agreements Act of 1979 (Public Law 96–39, 93  
31               Stat. 144).

32               (K) The North American Free Trade Area Implementation Act  
33               (Public Law 103–182, 107 Stat. 2057).

34               (L) The Uruguay Round Agreements Act (Public Law 103–465,  
35               108 Stat. 4809).

36               (M) The Caribbean Basin Economic Recovery Act (Public Law  
37               98–67, 97 Stat. 384).

38               (N) The Andean Trade Preference Act (19 U.S.C. 3201 et  
39               seq.).

40               (O) The African Growth and Opportunity Act (Public Law 106–  
41               200, 114 Stat. 252).

1 (P) Any other provision of law vesting customs revenue func-  
2 tions in the Secretary of the Treasury.

3 (b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

4 (1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other pro-  
5 vision of this subtitle, the Secretary may not consolidate, discontinue,  
6 or diminish those functions described in paragraph (2) performed by  
7 the Bureau of Customs and Border Protection on or after January 24,  
8 2003, reduce the staffing level, or reduce the resources attributable to  
9 the functions, and the Secretary shall ensure that an appropriate man-  
10 agement structure is implemented to carry out the functions.

11 (2) FUNCTIONS.—The functions referred to in paragraph (1) are  
12 those functions performed by the following personnel, and associated  
13 support staff, of the United States Customs Service on January 23,  
14 2003:

15 (A) Import Specialists.

16 (B) Entry Specialists.

17 (C) Drawback Specialists.

18 (D) National Import Specialists.

19 (E) Fines and Penalties Specialists.

20 (F) Attorneys of the Office of Regulations and Rulings.

21 (G) Customs Auditors.

22 (H) International Trade Specialists.

23 (I) Financial Systems Specialists.

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

27 **§ 10913. Preservation of customs funds**

28 Notwithstanding any other provision of this subtitle, no funds available  
29 to the Bureau of Customs and Border Protection or collected under section  
30 13031(a) (1) through (8) of the Consolidated Omnibus Budget Reconcili-  
31 ation Act of 1985 (19 U.S.C. 58e(a)(1) through (8)) may be transferred  
32 for use by another agency or office in the Department.

33 **§ 10914. Separate budget request for Bureau of Customs and**  
34 **Border Protection**

35 (a) IN GENERAL.—The President shall include in each budget transmit-  
36 ted to Congress under section 1105 of title 31 a separate budget request  
37 for the Bureau of Customs and Border Protection.

38 (b) FIVE-YEAR PLAN FOR LAND BORDER PORT OF ENTRY PROJECTS.—  
39 The annual budget submission of the Bureau of Customs and Border Pro-  
40 tection for “Construction and Facilities Management” shall, in consultation  
41 with the General Services Administration, include a detailed 5-year plan for

1 all Federal land border port of entry projects, with a yearly update of total  
2 projected future funding needs delineated by land port of entry.

3 **§ 10915. Allocation of resources by the Secretary**

4 (a) DEFINITION.—In this section, the term “customs revenue services”  
5 means those customs revenue functions described in section 10911(1)  
6 through (6) and (8) of this title.

7 (b) IN GENERAL.—The Secretary shall ensure that adequate staffing is  
8 provided to assure that levels of customs revenue services provided on Janu-  
9 ary 23, 2003, shall continue to be provided.

10 (c) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Com-  
11 mittee on Ways and Means of the House of Representatives and the Com-  
12 mittee on Finance of the Senate at least 90 days prior to taking an action  
13 that would—

14 (1) result in a significant reduction in customs revenue services, in-  
15 cluding hours of operation, provided at an office within the Department  
16 or a port of entry;

17 (2) eliminate or relocate an office of the Department that provides  
18 customs revenue services; or

19 (3) eliminate a port of entry.

20 **§ 10916. Reports to Congress**

21 The Bureau of Customs and Border Protection shall continue to submit  
22 to the Committee on Ways and Means of the House of Representatives and  
23 the Committee on Finance of the Senate any report required, on January  
24 23, 2003, to be so submitted under any provision of law.

25 **§ 10917. Methamphetamine and methamphetamine precursor  
26 chemicals**

27 (a) DEFINITION.—In this section, the term “methamphetamine precursor  
28 chemicals” means the chemicals ephedrine, pseudoephedrine, or phenyl-  
29 propanolamine, including each of the salts, optical isomers, and salts of opti-  
30 cal isomers of the chemicals.

31 (b) COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.—As part  
32 of the annual performance plan required in the budget submission of the  
33 Bureau of Customs and Border Protection under section 1115 of title 31,  
34 the Commissioner shall establish performance indicators relating to the sei-  
35 zure of methamphetamine and methamphetamine precursor chemicals in  
36 order to evaluate the performance goals of the Bureau of Customs and Bor-  
37 der Protection with respect to the interdiction of illegal drugs entering the  
38 United States.

39 (c) STUDY AND REPORT RELATING TO METHAMPHETAMINE AND METH-  
40 AMPHETAMINE PRECURSOR CHEMICALS.—

1           (1) ANALYSIS.—The Commissioner shall, on an ongoing basis, ana-  
2 lyze the movement of methamphetamine and methamphetamine precur-  
3 sor chemicals into the United States. In conducting the analysis, the  
4 Commissioner shall—

5           (A) consider the entry of methamphetamine and methamphet-  
6 amine precursor chemicals through ports of entry, between ports  
7 of entry, through international mails, and through international  
8 courier services;

9           (B) examine the export procedures of each foreign country  
10 where the shipments of methamphetamine and methamphetamine  
11 precursor chemicals originate and determine if changes in the  
12 country's customs over time provisions would alleviate the export  
13 of methamphetamine and methamphetamine precursor chemicals;  
14 and

15           (C) identify emerging trends in smuggling techniques and strat-  
16 egies.

17           (2) REPORT.—Not later than September 30 of each odd-numbered  
18 year, the Commissioner, in the consultation with the Attorney General,  
19 United States Immigration and Customs Enforcement, the United  
20 States Drug Enforcement Administration, and the United States De-  
21 partment of State, shall submit a report to the Committee on Finance  
22 of the Senate, the Committee on Foreign Relations of the Senate, the  
23 Committee on the Judiciary of the Senate, the Committee on Ways and  
24 Means of the House of Representatives, the Committee on Foreign Af-  
25 fairs of the House of Representatives, and the Committee on the Judi-  
26 ciary of the House of Representatives, that includes—

27           (A) a comprehensive summary of the analysis described in para-  
28 graph (1); and

29           (B) a description of how the Bureau of Customs and Border  
30 Protection utilized the analysis described in paragraph (1) to tar-  
31 get shipments presenting a high risk for smuggling or circumven-  
32 tion of the Combat Methamphetamine Epidemic Act of 2005  
33 (Public Law 109–177, title VII, 120 Stat. 256).

34           (3) AVAILABILITY OF ANALYSIS.—The Commissioner shall ensure  
35 that the analysis described in paragraph (1) is made available in a  
36 timely manner to the Secretary of State to facilitate the Secretary in  
37 fulfilling the Secretary's reporting requirements in section 722 of the  
38 Combat Methamphetamine Epidemic Act of 2005 (Public Law 109–  
39 177, title VII, 120 Stat. 268).

1    **§ 10918. Polygraph and background examinations for law**  
2                                   **enforcement personnel of Bureau of Customs and**  
3                                   **Border Protection**

4       The Secretary shall ensure that—

5           (1) all applicants for law enforcement positions with the Bureau of  
6           Customs and Border Protection receive polygraph examinations before  
7           being hired for a position; and

8           (2) the Bureau of Customs and Border Protection initiates all peri-  
9           odic background reinvestigations for all law enforcement personnel of  
10          the Bureau who should receive periodic background reinvestigations  
11          pursuant to relevant policies of the Bureau in effect on January 3,  
12          2011.

13    **§ 10919. Fees authorized for Advanced Training Center**

14       The Bureau of Customs and Border Protection’s Advanced Training Cen-  
15       ter may charge fees for a service and/or thing of value it provides to Federal  
16       Government or non-government entities or individuals, so long as the fees  
17       charged do not exceed the full costs associated with the service or thing of  
18       value provided Notwithstanding 31 U.S.C. 3302(b), fees collected by the Ad-  
19       vanced Training Center—

20           (1) shall be deposited in a separate account entitled “Advanced  
21           Training Center Revolving Fund;

22           (2) are available, without further appropriations, for necessary ex-  
23           penses of the Advanced Training Center program; and

24           (3) remain available until expended.

25                           **Subchapter III—Immigration Enforcement Functions**

26    **§ 10931. Transfer of functions to Under Secretary for Border**  
27                                   **and Transportation Security**

28       The Secretary, acting through the Under Secretary for Border and  
29       Transportation Security, succeeds to the functions, personnel, assets, and li-  
30       abilities of the following programs of the Commissioner of Immigration and  
31       Naturalization:

32           (1) The Border Patrol program.

33           (2) The detention and removal program.

34           (3) The intelligence program.

35           (4) The investigations program.

36           (5) The inspections program.

37    **§ 10932. Responsibilities of Bureau of Immigration and Cus-**  
38                                   **toms Enforcement officials**

39       (a) ASSISTANT SECRETARY OF IMMIGRATION AND CUSTOMS ENFORCE-  
40       MENT.—

1 (1) FUNCTIONS.—The Assistant Secretary of Immigration and Customs Enforcement—

2 (A) shall establish the policies for performing functions—

3 (i) transferred to the Under Secretary for Border and  
4 Transportation Security by section 10931 of this title and  
5 delegated to the Assistant Secretary by the Under Secretary;

6 or

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

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

9 (C) shall advise the Under Secretary for Border and Transportation Security with respect to a policy or operation of the Bureau of Immigration and Customs Enforcement that may affect the Bureau of Citizenship and Immigration Services established under subchapter IV of this chapter, including potentially conflicting policies or operations.

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

11 (3) MANAGERIAL ROTATION PROGRAM.—The Assistant Secretary of Immigration and Customs Enforcement shall design and implement a managerial rotation program under which employees of the Bureau of Immigration and Customs Enforcement holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, as a GS-14 or above, shall—

12 (A) gain some experience in all the major functions performed by the Bureau; and

13 (B) work in at least one local office of the Bureau.

14 (b) CHIEF OF POLICY AND STRATEGY.—

15 (1) IN GENERAL.—There is a Chief of Policy and Strategy for the Bureau of Immigration and Customs Enforcement.

16 (2) FUNCTIONS.—In consultation with Bureau of Immigration and Customs Enforcement personnel in local offices, the Chief of Policy and Strategy is responsible for—

1 (A) making policy recommendations and performing policy re-  
2 search and analysis on immigration enforcement issues; and

3 (B) coordinating immigration policy issues with the Chief of  
4 Policy and Strategy for the Bureau of Citizenship and Immigra-  
5 tion Services, as appropriate.

6 (c) **LEGAL ADVISOR.**—There is a principal legal advisor to the Assistant  
7 Secretary of Immigration and Customs Enforcement. The legal advisor shall  
8 provide specialized legal advice to the Assistant Secretary and shall rep-  
9 resent the Bureau of Immigration and Customs Enforcement in all exclu-  
10 sion, deportation, and removal proceedings before the Executive Office for  
11 Immigration Review.

### 12 **§ 10933. Professional responsibility and quality review**

13 The Under Secretary for Border and Transportation Security is respon-  
14 sible for—

15 (1) conducting investigations of noncriminal allegations of mis-  
16 conduct, corruption, and fraud involving an employee of the Bureau of  
17 Immigration and Customs Enforcement that are not subject to inves-  
18 tigation by the Inspector General for the Department;

19 (2) inspecting the operations of the Bureau of Immigration and Cus-  
20 toms Enforcement and providing assessments of the quality of the op-  
21 erations of the Bureau as a whole and each of its components; and

22 (3) providing an analysis of the management of the Bureau of Immi-  
23 gration and Customs Enforcement.

### 24 **§ 10934. Employee discipline**

25 Notwithstanding any other provision of law, the Under Secretary for Bor-  
26 der and Transportation Security may impose disciplinary action, including  
27 termination of employment, pursuant to policies and procedures applicable  
28 to employees of the Federal Bureau of Investigation, on an employee of the  
29 Bureau of Immigration and Customs Enforcement who willfully deceives  
30 Congress or agency leadership on any matter.

### 31 **§ 10935. Annual report on cross-border tunnels**

32 (a) **IN GENERAL.**—The Secretary shall submit an annual report to the  
33 congressional committees set forth in subsection (b) that includes a descrip-  
34 tion of—

35 (1) the cross-border tunnels along the border between Mexico and  
36 the United States discovered during the preceding fiscal year; and

37 (2) the needs of the Department to effectively prevent, investigate  
38 and prosecute border tunnel construction along the border between  
39 Mexico and the United States.

40 (b) **CONGRESSIONAL COMMITTEES.**—The congressional committees set  
41 forth in this subsection are—

- 1 (1) the Committee on Homeland Security and Governmental Affairs
- 2 of the Senate;
- 3 (2) the Committee on the Judiciary of the Senate;
- 4 (3) the Committee on Appropriations of the Senate;
- 5 (4) the Committee on Homeland Security of the House of Represent-
- 6 atives;
- 7 (5) the Committee on the Judiciary of the House of Representatives;
- 8 and
- 9 (6) the Committee on Appropriations of the House of Representa-
- 10 tives.

#### 11 **Subchapter IV Citizenship and Immigration Services**

#### 12 **§ 10941. Transfer of functions to Director of Bureau of Citi-**

#### 13 **zenship and Immigration Services**

14 The Director of the Bureau of Citizenship and Immigration Services suc-  
15 ceeds to the following functions of the Commissioner of Immigration and  
16 Naturalization, and all personnel, infrastructure, and funding provided to  
17 the Commissioner in support of the functions immediately before March 1,  
18 2003:

- 19 (1) Adjudications of immigrant visa petitions.
- 20 (2) Adjudications of naturalization petitions.
- 21 (3) Adjudications of asylum and refugee applications.
- 22 (4) Adjudications performed at service centers.
- 23 (5) All other adjudications performed by the Immigration and Natu-
- 24 ralization Service immediately before March 1, 2003.

#### 25 **§ 10942. Responsibilities of Bureau of Citizenship and Immi-**

#### 26 **gration Services officials**

27 (a) DIRECTOR OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERV-  
28 ICES.—

29 (1) FUNCTIONS.—The Director of the Bureau of Citizenship and Im-  
30 migration Services—

31 (A) shall establish the policies for performing the functions  
32 transferred to the Director by this section, the Homeland Security  
33 Act of 2002 (Public Law 107–296, 116 Stat. 2135), or otherwise  
34 vested in the Director by law;

35 (B) shall oversee the administration of the policies;

36 (C) shall advise the Deputy Secretary of Homeland Security  
37 with respect to a policy or operation of the Bureau of Citizenship  
38 and Immigration Services that may affect the Bureau of Immigra-  
39 tion and Customs Enforcement, including potentially conflicting  
40 policies or operations;



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

3 (E) shall meet regularly with the Ombudsman described in sec-  
4 tion 10943 of this title to correct serious service problems identi-  
5 fied by the Ombudsman; and

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

9 (2) MANAGERIAL ROTATION PROGRAM.—The Director of the Bureau  
10 of Citizenship and Immigration Services shall design and implement a  
11 managerial rotation program under which employees of the Bureau  
12 holding positions involving supervisory or managerial responsibility and  
13 classified, in accordance with chapter 51 of title 5, as a GS-14 or  
14 above, shall—

15 (A) gain some experience in all the major functions performed  
16 by the Bureau; and

17 (B) work in at least one field office and one service center of  
18 the Bureau.

19 (3) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director  
20 of the Bureau of Citizenship and Immigration Services may implement  
21 innovative pilot initiatives to eliminate a remaining backlog in the pro-  
22 cessing of immigration benefit applications, and to prevent a backlog in  
23 the processing of applications from recurring, under section 204(a) of  
24 the Immigration Services and Infrastructure Improvements Act of  
25 2000 (8 U.S.C. 1573(a)). Initiatives may include measures such as in-  
26 creasing personnel, transferring personnel to focus on areas with the  
27 largest potential for backlog, and streamlining paperwork.

28 (b) CHIEF OF POLICY AND STRATEGY.—

29 (1) IN GENERAL.—There is a Chief of Policy and Strategy for the  
30 Bureau of Citizenship and Immigration Services.

31 (2) FUNCTIONS.—In consultation with Bureau of Citizenship and  
32 Immigration Services personnel in field offices, the Chief of Policy and  
33 Strategy is responsible for—

34 (A) making policy recommendations and performing policy re-  
35 search and analysis on immigration services issues; and

36 (B) coordinating immigration policy issues with the Chief of  
37 Policy and Strategy for the Bureau of Immigration and Customs  
38 Enforcement.

39 (c) LEGAL ADVISOR.—

40 (1) IN GENERAL.—There is a principal legal advisor to the Director  
41 of the Bureau of Citizenship and Immigration Services.

1 (2) FUNCTIONS.—The legal advisor is responsible for—

2 (A) providing specialized legal advice, opinions, determinations,  
3 regulations, and other assistance to the Director of the Bureau of  
4 Citizenship and Immigration Services with respect to legal matters  
5 affecting the Bureau; and

6 (B) representing the Bureau of Citizenship and Immigration  
7 Services in visa petition appeal proceedings before the Executive  
8 Office for Immigration Review.

9 (d) BUDGET OFFICER.—

10 (1) IN GENERAL.—There is a Budget Officer for the Bureau of Citi-  
11 zenship and Immigration Services.

12 (2) Functions.—The Budget Officer is responsible for—

13 (A) formulating and executing the budget of the Bureau of Citi-  
14 zenship and Immigration Services;

15 (B) financial management of the Bureau of Citizenship and Im-  
16 migration Services; and

17 (C) collecting all payments, fines, and other debts for the Bu-  
18 reau of Citizenship and Immigration Services.

19 (e) CHIEF OF OFFICE OF CITIZENSHIP.—

20 (1) IN GENERAL.—There is a Chief of the Office of Citizenship for  
21 the Bureau of Citizenship and Immigration Services.

22 (2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bu-  
23 reau of Citizenship and Immigration Services is responsible for promot-  
24 ing instruction and training on citizenship responsibilities for aliens in-  
25 terested in becoming naturalized citizens of the United States, includ-  
26 ing the development of educational materials.

27 (f) OFFICE OF FBI LIAISON.—

28 (1) IN GENERAL.—There is in the Department the Office of the FBI  
29 Liaison.

30 (2) Functions.—The Office of the FBI Liaison shall monitor the  
31 progress of the functions of the Federal Bureau of Investigation in the  
32 naturalization process to assist in the expeditious completion of the  
33 functions pertaining to naturalization applications filed by, or on behalf  
34 of—

35 (A) current or former members of the Armed Forces under sec-  
36 tion 328 or 329 of the Immigration and Nationality Act (8 U.S.C.  
37 1439, 1440);

38 (B) current spouses of United States citizens who are currently  
39 serving on active duty in the Armed Forces, who qualify for natu-  
40 ralization under section 319(b) of the Immigration and Nationality  
41 Act (8 U.S.C. 1430(b)), and surviving spouses and children who

1           qualify for naturalization under section 319(d) of the Act (8  
2           U.S.C. 1430(d)); or

3           (C) a deceased individual who is eligible for posthumous citizen-  
4           ship under section 329A of the Immigration and Nationality Act  
5           (8 U.S.C. 1440-1).

6           (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
7           be appropriated such sums as may be necessary to carry out this sub-  
8           section.

9           **§ 10943. Citizenship and Immigration Services Ombudsman**

10          (a) IN GENERAL.—There is in the Department a Citizenship and Immi-  
11          gration Services Ombudsman (in this section referred to as the “Ombuds-  
12          man”). The Ombudsman shall report directly to the Deputy Secretary of  
13          Homeland Security. The Ombudsman shall have a background in customer  
14          service as well as immigration law.

15          (b) Functions.—The Ombudsman—

16               (1) shall assist individuals and employers in resolving problems with  
17               the Bureau of Citizenship and Immigration Services;

18               (2) shall identify areas in which individuals and employers have  
19               problems in dealing with the Bureau of Citizenship and Immigration  
20               Services; and

21               (3) to the extent possible, shall propose changes in the administrative  
22               practices of the Bureau of Citizenship and Immigration Services to  
23               mitigate problems identified under paragraph (2).

24          (c) ANNUAL REPORT.—

25               (1) OBJECTIVES.—Not later than June 30 each year, the Ombuds-  
26          man shall report to the Committees on the Judiciary of the House of  
27          Representatives and the Senate on the objectives of the Office of the  
28          Ombudsman for the fiscal year beginning in that year. The report shall  
29          contain full and substantive analysis, in addition to statistical informa-  
30          tion, and—

31                   (A) shall identify the recommendations the Office of the Om-  
32                   budsman has made on improving services and responsiveness of  
33                   the Bureau of Citizenship and Immigration Services;

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

37                   (C) shall contain an inventory of the items described in sub-  
38                   paragraphs (A) and (B) for which action has been taken and the  
39                   result of the action;

40                   (D) shall contain an inventory of the items described in sub-  
41                   paragraphs (A) and (B) for which action remains to be completed

1 and the period during which each item has remained on the inven-  
2 tory;

3 (E) shall contain an inventory of the items described in sub-  
4 paragraphs (A) and (B) for which no action has been taken, the  
5 period during which each item has remained on the inventory, the  
6 reasons for the inaction, and shall identify any official of the Bu-  
7 reau of Citizenship and Immigration Services who is responsible  
8 for inaction;

9 (F) shall contain recommendations for administrative action ap-  
10 propriate to resolve problems encountered by individuals and em-  
11 ployers, including problems created by excessive backlogs in the  
12 adjudication and processing of immigration benefit petitions and  
13 applications; and

14 (G) shall include other information the Ombudsman may deem  
15 advisable.

16 (2) REPORT TO BE SUBMITTED DIRECTLY TO COMMITTEES.—Each  
17 report required under this subsection shall be provided directly to the  
18 committees described in paragraph (1) without prior comment or  
19 amendment from the Secretary, the Deputy Secretary of Homeland Se-  
20 curity, the Director of the Bureau of Citizenship and Immigration  
21 Services, or another officer or employee of the Department or the Of-  
22 fice of Management and Budget.

23 (d) OTHER RESPONSIBILITIES.—The Ombudsman—

24 (1) shall monitor the coverage and geographic allocation of local of-  
25 fices of the Ombudsman;

26 (2) shall develop guidance to be distributed to all officers and em-  
27 ployees of the Bureau of Citizenship and Immigration Services outlin-  
28 ing the criteria for referral of inquiries to local offices of the Ombuds-  
29 man;

30 (3) shall ensure that the local telephone number for each local office  
31 of the Ombudsman is published and available to individuals and em-  
32 ployers served by the office; and

33 (4) shall meet regularly with the Director of the Bureau of Citizen-  
34 ship and Immigration Services to identify serious service problems and  
35 to present recommendations for administrative action appropriate to re-  
36 solve problems encountered by individuals and employers.

37 (e) PERSONNEL ACTIONS.—

38 (1) IN GENERAL.—The Ombudsman has the responsibility and au-  
39 thority

40 (A) to appoint local ombudsmen and make available at least one  
41 ombudsman for each State; and

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

3 (2) CONSULTATION.—The Ombudsman may consult with the appro-  
4 priate supervisory personnel of the Bureau of Citizenship and Immigra-  
5 tion Services in carrying out the Ombudsman’s responsibilities under  
6 this subsection.

7 (f) RESPONSIBILITIES OF DIRECTOR OF BUREAU OF CITIZENSHIP AND  
8 IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and  
9 Immigration Services shall establish procedures requiring a formal response  
10 to all recommendations submitted to the Director by the Ombudsman within  
11 3 months after submission.

12 (g) OPERATION OF LOCAL OFFICES.—

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

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

15 (B) may consult with the appropriate supervisory personnel of  
16 the Bureau of Citizenship and Immigration Services regarding the  
17 daily operation of the local office of the Ombudsman;

18 (C) shall, at the initial meeting with an individual or employer  
19 seeking the assistance of the local office, notify the individual or  
20 employer that the local offices of the Ombudsman operate inde-  
21 pendently of any other component of the Department and report  
22 directly to Congress through the Ombudsman; and

23 (D) at the local ombudsman’s discretion, may determine not to  
24 disclose to the Bureau of Citizenship and Immigration Services  
25 contact with, or information provided by, the individual or em-  
26 ployer.

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

32 **§ 10944. Professional responsibility and quality review**

33 (a) IN GENERAL.—The Director of the Bureau of Citizenship and Immi-  
34 gration Services is responsible for—

35 (1) conducting investigations of noncriminal allegations of mis-  
36 conduct, corruption, and fraud involving an employee of the Bureau of  
37 Citizenship and Immigration Services that are not subject to investiga-  
38 tion by the Inspector General for the Department;

39 (2) inspecting the operations of the Bureau of Citizenship and Immi-  
40 gration Services and providing assessments of the quality of the oper-  
41 ations of the Bureau as a whole and each of its components; and

1 (3) providing an analysis of the management of the Bureau of Citi-  
2 zenship and Immigration Services.

3 (b) Special Considerations.—In providing assessments under subsection  
4 (a)(2) with respect to a decision of the Bureau of Citizenship and Immigra-  
5 tion Services, or of its components, consideration shall be given to—

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

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

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

#### 10 **§ 10945. Employee discipline**

11 The Director of the Bureau of Citizenship and Immigration Services may,  
12 notwithstanding any other provision of law, impose disciplinary action, in-  
13 cluding termination of employment, pursuant to policies and procedures ap-  
14 plicable to employees of the Federal Bureau of Investigation, on an em-  
15 ployee of the Bureau of Citizenship and Immigration Services who willfully  
16 deceives Congress or agency leadership on any matter.

#### 17 **§ 10946. Transition**

18 (a) REFERENCES.—With respect to a function transferred by this sub-  
19 chapter to, and exercised on or after March 1, 2003 by, the Director of the  
20 Bureau of Citizenship and Immigration Services, a reference in any other  
21 Federal law, Executive order, rule, regulation, delegation of authority, or  
22 document of or pertaining to a component of government from which the  
23 function is transferred—

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

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

28 (b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law,  
29 a Federal official to whom a function is transferred by this subchapter may,  
30 for purposes of performing the function, exercise all authorities under any  
31 other provision of law that were available with respect to the performance  
32 of that function to the official responsible for the performance of the func-  
33 tion immediately before March 1, 2003.

#### 34 **§ 10947. Application of Internet-based technologies**

35 (a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, in consulta-  
36 tion with the Technology Advisory Committee established under subsection  
37 (c), shall establish an Internet-based system, that will permit a person, em-  
38 ployer, immigrant, or nonimmigrant who has filings with the Secretary for  
39 a benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et  
40 seq.), access to online information about the processing status of the filing  
41 involved.

1 (b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESS-  
2 ING.—

3 (1) ONLINE FILING.—The Secretary, in consultation with the Tech-  
4 nology Advisory Committee established under subsection (c), shall con-  
5 duct a feasibility study on the online filing of the filings described in  
6 subsection (a). The study shall include a review of computerization and  
7 technology of the Immigration and Naturalization Service relating to  
8 the immigration services and processing of filings relating to immigrant  
9 services. The study shall also include an estimate of the timeframe and  
10 cost and shall consider other factors in implementing such a filing sys-  
11 tem, including the feasibility of fee payment online.

12 (2) REPORT.—A report on the study under this subsection shall be  
13 submitted to the Committees on the Judiciary of the House of Rep-  
14 resentatives and the Senate not later than January 24, 2004.

15 (c) TECHNOLOGY ADVISORY COMMITTEE.—

16 (1) ESTABLISHMENT.—The Secretary shall establish the Technology  
17 Advisory Committee to assist the Secretary in—

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

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

20 (2) CONSULTATION.—The Technology Advisory Committee shall be  
21 established after consultation with the Committees on the Judiciary of  
22 the House of Representatives and the Senate.

23 (3) COMPOSITION.—The Technology Advisory Committee shall be  
24 composed of representatives from high technology companies capable of  
25 establishing and implementing the system in an expeditious manner,  
26 and representatives of persons who may use the tracking system de-  
27 scribed in subsection (a) and the online filing system described in sub-  
28 section (b)(1).

## 29 **Subchapter V—General Immigration Provisions**

### 30 **§ 10961. Director of Shared Services**

31 (a) IN GENERAL.THERE IS IN THE OFFICE OF THE DEPUTY SECRETARY  
32 OF HOMELAND SECURITY A DIRECTOR OF SHARED SERVICES.

33 (b) FUNCTIONS.—The Director of Shared Services is responsible for the  
34 coordination of resources for the Bureau of Immigration and Customs En-  
35 forcement and the Bureau of Citizenship and Immigration Services, includ-  
36 ing

37 (1) information resources management, including computer data-  
38 bases and information technology;

39 (2) records and file management; and

40 (3) forms management.

1     **§ 10962. Separation of funding**

2         (a) IN GENERAL.—There are in the Treasury separate accounts for ap-  
3         propriated funds and other deposits available for the Bureau of Citizenship  
4         and Immigration Services and the Bureau of Immigration and Customs En-  
5         forcement.

6         (b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and  
7         Immigration Services and the Bureau of Immigration and Customs Enforce-  
8         ment are funded to the extent necessary to fully carry out their respective  
9         functions, the Director of the Office of Management and Budget shall sepa-  
10        rate the budget requests for each entity.

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

14        (d) FEES NOT TRANSFERABLE.—A fee may not be transferred between  
15        the Bureau of Citizenship and Immigration Services and the Bureau of Im-  
16        migration and Customs Enforcement for purposes not authorized by section  
17        286 of the Immigration and Nationality Act (8 U.S.C. 1356).

18     **§ 10963. Annual immigration functions report**

19         (a) ANNUAL REPORT.—The Secretary shall submit a report annually to  
20         the President, to the Committees on the Judiciary and Oversight and Gov-  
21         ernment Reform of the House of Representatives, and to the Committees  
22         on the Judiciary and Homeland Security and Governmental Affairs of the  
23         Senate, on the impact the transfers made by Subtitle F of Title IV of the  
24         Homeland Security Act of 2002 (Public Law 107–296, 116 Stat. 2135) has  
25         had on immigration functions.

26         (b) CONTENT.—The report shall address the following with respect to the  
27         period covered by the report:

28             (1) The aggregate number of all immigration applications and peti-  
29             tions received, and processed, by the Department.

30             (2) Region-by-region statistics on the aggregate number of immigra-  
31             tion applications and petitions filed by an alien (or filed on behalf of  
32             an alien) and denied, disaggregated by category of denial and applica-  
33             tion or petition type.

34             (3) The quantity of backlogged immigration applications and peti-  
35             tions that have been processed, the aggregate number awaiting process-  
36             ing, and a detailed plan for eliminating the backlog.

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

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



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

2 (7) Whether immigration-related fees were used consistent with legal  
3 requirements regarding their use.

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

#### 7 **Subchapter VI—Miscellaneous Provisions**

#### 8 **§ 10971. Coordination of information and information tech-** 9 **nology**

10 (a) Definition.—In this section, the term “affected agency” means—

11 (1) the Department;

12 (2) the Department of Agriculture;

13 (3) the Department of Health and Human Services; and

14 (4) any other department or agency determined to be appropriate by  
15 the Secretary.

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

#### 23 **§ 10972. Visa issuance**

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

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

30 (1) shall be vested exclusively with all authorities to issue regulations  
31 with respect to, administer, and enforce the provisions of the Act, and  
32 of all other immigration and nationality laws, relating to the functions  
33 of consular officers of the United States in connection with the grant-  
34 ing or refusal of visas, and shall have the authority to refuse visas in  
35 accordance with law and to develop programs of homeland security  
36 training for consular officers (in addition to consular training provided  
37 by the Secretary of State), which authorities shall be exercised through  
38 the Secretary of State, except that the Secretary shall not have author-  
39 ity to alter or reverse the decision of a consular officer to refuse a visa  
40 to an alien; and

1 (2) shall have authority to confer or impose upon an officer or em-  
2 ployee of the United States, with the consent of the head of the execu-  
3 tive agency under whose jurisdiction the officer or employee is serving,  
4 any of the functions specified in paragraph (1).

5 (c) AUTHORITY OF THE SECRETARY OF STATE.—

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

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

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

17 (B) Section 204(d)(2) of the Immigration and Nationality Act  
18 (8 U.S.C. 1154) (as it will take effect upon the entry into force  
19 of the Convention on Protection of Children and Cooperation in  
20 Respect to Inter-Country adoption).

21 (C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

23 (D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nation-  
24 ality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

25 (E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Na-  
26 tionality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

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

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

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

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

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

37 (K) Section 401 of the Cuban Liberty and Democratic Solidar-  
38 ity (LIBERTAD) Act of 1996 (22 U.S.C. 6091).

39 (L) Section 616 of the Departments of Commerce, Justice, and  
40 State, the Judiciary, and Related Agencies Appropriations Act,  
41 1999 (section 101(b) of division A of the Omnibus Consolidated

1 and Emergency Supplemental Appropriations Act, 1999, Public  
2 Law 105–277, 112 Stat. 2681–114).

3 (M) Section 103(f) of the Chemical Weapons Convention Imple-  
4 mentation Act of 1998 (22 U.S.C. 6713(f)).

5 (N) Section 801 of the Admiral James W. Nance and Meg  
6 Donovan Foreign Relations Authorization Act, Fiscal Years 2000  
7 and 2001 (8 U.S.C. 1182e).

8 (O) Section 568 of the Foreign Operations, Export Financing,  
9 and Related Programs Appropriations Act, 2002 (Public Law  
10 107–115).

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

13 (d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

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

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

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

20 (2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—

21 Nothing in this section shall be construed to affect any delegation of  
22 authority to the Secretary of State by the President pursuant to any  
23 proclamation issued under section 212(f) of the Immigration and Na-  
24 tionality Act (8 U.S.C. 1182(f)), consistent with the Secretary of  
25 Homeland Security’s authority to refuse visas in accordance with law.

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

28 (1) IN GENERAL.—The Secretary may assign employees of the De-  
29 partment to each diplomatic and consular post at which visas are is-  
30 sued, unless the Secretary determines that an assignment at a particu-  
31 lar post would not promote homeland security.

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

34 (A) Provide expert advice and training to consular officers re-  
35 garding specific security threats relating to the adjudication of in-  
36 dividual visa applications or classes of applications.

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

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

1           (3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State  
2 shall evaluate, in consultation with the Secretary, as considered appro-  
3 priate by the Secretary, the performance of consular officers with re-  
4 spect to the processing and adjudication of applications for visas in ac-  
5 cordance with performance standards developed by the Secretary for  
6 these procedures.

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

11           (5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOK-  
12 OUT COMMITTEE.—When appropriate, employees of the Department as-  
13 signed to perform functions described in paragraph (2) may be as-  
14 signed permanently to overseas diplomatic or consular posts with coun-  
15 try-specific or regional responsibility. If the Secretary so directs, an  
16 employee, when present at an overseas post, shall participate in the ter-  
17 rorist lookout committee established under section 304 of the Enhanced  
18 Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

19           (6) TRAINING AND HIRING.—

20           (A) IN GENERAL.—The Secretary shall ensure, to the extent  
21 possible, that employees of the Department assigned to perform  
22 functions under paragraph (2) and, as appropriate, consular offi-  
23 cers, shall be provided the necessary training to enable them to  
24 carry out the functions, including training in foreign languages,  
25 interview techniques, and fraud detection techniques, in conditions  
26 in the particular country where each employee is assigned, and in  
27 other appropriate areas of study.

28           (B) USE OF CENTER.—The Secretary is authorized to use the  
29 National Foreign Affairs Training Center (George P. Shultz Na-  
30 tional Foreign Affairs Training Center), on a reimbursable basis,  
31 to obtain the training described in subparagraph (A).

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

36           (g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—On-site personnel of  
37 the Department shall review all visa applications for Saudi Arabia prior to  
38 adjudication.

1    **§ 10973. Information on visa denials required to be entered**  
2                   **into electronic data system**

3           (a) IN GENERAL.—Whenever a consular officer of the United States de-  
4           nies a visa to an applicant, the consular officer shall enter the fact and the  
5           basis of the denial and the name of the applicant into the interoperable elec-  
6           tronic data system implemented under section 202(a) of the Enhanced Bor-  
7           der Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

8           (b) PROHIBITION.—In the case of an alien with respect to whom a visa  
9           has been denied under subsection (a)—

10           (1) no subsequent visa may be issued to the alien unless the consular  
11           officer considering the alien’s visa application has reviewed the infor-  
12           mation concerning the alien placed in the interoperable electronic data  
13           system, has indicated on the alien’s application that the information  
14           has been reviewed, and has stated for the record why the visa is being  
15           issued or a waiver of visa ineligibility recommended in spite of that in-  
16           formation; and

17           (2) the alien may not be admitted to the United States without a  
18           visa issued in accordance with the procedures described in paragraph  
19           (1).

20    **§ 10974. Purpose and responsibilities of Office of Cargo Se-**  
21                   **curity Policy**

22           (a) PURPOSES.—The Office of Cargo Security Policy—

23           (1) coordinates all Department policies relating to cargo security;  
24           and

25           (2) consults with stakeholders and coordinate with other Federal  
26           agencies in the establishment of standards and regulations and to pro-  
27           mote best practices.

28           (b) RESPONSIBILITIES OF DIRECTOR.THE DIRECTOR OF THE OFFICE OF  
29           CARGO SECURITY POLICY—

30           (1) advises the Assistant Secretary for Policy in the development of  
31           Department-wide policies regarding cargo security;

32           (2) coordinates all policies relating to cargo security among the agen-  
33           cies and offices within the Department relating to cargo security; and

34           (3) coordinates the cargo security policies of the Department with  
35           the policies of other executive agencies.

36           (c) RELATIONSHIP WITH COAST GUARD.—Nothing in this section shall be  
37           construed to affect—

38           (1) the authorities, functions, or capabilities of the Coast Guard to  
39           perform its missions; or

40           (2) the requirement under section 10313 of this title that those au-  
41           thorities, functions, and capabilities be maintained intact.

1     **§ 10975. Purpose, composition, and operation of Border En-**  
2                     **forcement Security Task Force**

3             (a) PURPOSE.—The purpose of the Border Enforcement Security Task  
4 Force (in this section referred to as “BEST”) is to establish units to en-  
5 hance border security by addressing and reducing border security threats  
6 and violence by—

7                 (1) facilitating collaboration among Federal, State, local, tribal, and  
8 foreign law enforcement agencies to execute coordinated activities in  
9 furtherance of border security, and homeland security; and

10                (2) enhancing information-sharing, including the dissemination of  
11 homeland security information among these agencies.

12             (b) COMPOSITION AND ESTABLISHMENT OF UNITS.—

13                (1) COMPOSITION.—BEST units may be comprised of personnel  
14 from—

15                     (A) the Bureau of Immigration and Customs Enforcement;

16                     (B) the Bureau of Customs and Border Protection;

17                     (C) the Coast Guard;

18                     (D) other Department personnel, as appropriate;

19                     (E) other Federal agencies, as appropriate;

20                     (F) appropriate State law enforcement agencies;

21                     (G) foreign law enforcement agencies, as appropriate;

22                     (H) local law enforcement agencies from affected border cities  
23 and communities; and

24                     (I) appropriate tribal law enforcement agencies.

25                (2) ESTABLISHMENT.—The Secretary may establish BEST units in  
26 jurisdictions in which the units can contribute to BEST missions, as  
27 appropriate. Before establishing a BEST unit, the Secretary shall con-  
28 sider—

29                     (A) whether the area in which the BEST unit would be estab-  
30 lished is significantly impacted by cross-border threats;

31                     (B) the availability of Federal, State, local, tribal, and foreign  
32 law enforcement resources to participate in the BEST unit;

33                     (C) the extent to which border security threats are having a sig-  
34 nificant harmful impact in the jurisdiction in which the BEST  
35 unit is to be established, and other jurisdictions in the country;  
36 and

37                     (D) whether or not an Integrated Border Enforcement Team al-  
38 ready exists in the area in which the BEST unit would be estab-  
39 lished.

40                (3) DUPLICATION OF EFFORTS.—In determining whether to establish  
41 a new BEST unit or to expand an existing BEST unit in a given juris-

1           diction, the Secretary shall ensure that the BEST unit under consider-  
2           ation does not duplicate the efforts of other existing interagency task  
3           forces or centers within that jurisdiction.

4           (e) OPERATION.—After determining the jurisdictions in which to establish  
5           BEST units under subsection (b)(2), and in order to provide Federal assist-  
6           ance to the jurisdictions, the Secretary may—

7           (1) direct the assignment of Federal personnel to BEST, subject to  
8           the approval of the head of the department or agency that employs  
9           such personnel; and

10          (2) take other actions to assist Federal, State, local, and tribal enti-  
11          ties to participate in BEST, including providing financial assistance, as  
12          appropriate, for operational, administrative, and technological costs as-  
13          sociated with the participation of Federal, State, local, and tribal law  
14          enforcement agencies in BEST

15          (e) REPORT.—Not later than June 5, 2013, and annually thereafter for  
16          the following 5 years, the Secretary shall submit a report to Congress that  
17          describes the effectiveness of BEST in enhancing border security and reduc-  
18          ing the drug trafficking, arms smuggling, illegal alien trafficking and smug-  
19          gling, violence, and kidnapping along and across the international borders  
20          of the United States, as measured by crime statistics, including violent  
21          deaths, incidents of violence, and drug-related arrests.  
22          Chapter 111 — Na-  
            tional Emergency Management  
            Sec.

11101. Definitions.

11102. Federal Emergency Management Agency.

11103. Authority and responsibilities.

11104. Preparedness programs.

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11106. Preserving the Federal Emergency Management Agency.

11107. Regional Offices.

11108. National Advisory Council.

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11110. Credentialing and typing.

11111. The National Infrastructure Simulation and Analysis Center.

11112. Evacuation plans and exercises.

11113. Disability coordinator.

11114. National Operations Center.

11115. Responsibilities of Chief Medical Officer.

11116. Nuclear incident response.

11117. Conduct of certain public health-related activities.

11118. Use of national private-sector networks in emergency response.

11119. Model standards and guidelines for critical infrastructure workers.

11120. Guidance and recommendations.

11121. Voluntary private-sector preparedness accreditation and certification program.

11122. Acceptance of gifts.

## 23       **§ 11101. Definitions**

24       In this chapter:

25           (1) ADMINISTRATOR.—the term “Administrator” means the Admin-  
26           istrator of the Agency.

1 (2) AGENCY.—The term “Agency” means the Federal Emergency  
2 Management Agency.

3 (3) CATASTROPHIC INCIDENT.—The term “catastrophic incident”  
4 means a natural disaster, act of terrorism, or other man-made disaster  
5 that results in extraordinary levels of casualties or damage or disrup-  
6 tion severely affecting the population (including mass evacuations), in-  
7 frastructure, environment, economy, national morale, or government  
8 functions in an area.

9 (4) CREDENTIALLED; CREDENTIALING.—The terms “credentialed”  
10 and “credentialing” can having provided, or providing, respectively,  
11 documentation that identifies personnel and authenticates and verifies  
12 the qualifications of the personnel by ensuring that the personnel pos-  
13 sess a minimum common level of training, experience, physical and  
14 medical fitness, and capability appropriate for a particular position in  
15 accordance with standards created under section 11110 of this title.

16 (5) FEDERAL COORDINATING OFFICER.—The term “Federal coordi-  
17 nating officer” means a Federal coordinating officer as described in  
18 section 302 of the Robert T. Stafford Disaster Relief and Emergency  
19 Assistance Act (42 U.S.C. 5143).

20 (6) INTEROPERABLE COMMUNICATIONS.—The term “interoperable  
21 communications” has the meaning given the term “interoperable com-  
22 munications” under section 10713(a) of this title.

23 (7) NATIONAL INCIDENT MANAGEMENT SYSTEM.—The term “Na-  
24 tional Incident Management System” means a system to enable effec-  
25 tive, efficient, and collaborative incident management.

26 (8) NATIONAL RESPONSE PLAN.—The term “National Response  
27 Plan” means the National Response Plan or a successor plan prepared  
28 under section 11104(a)(6) of this title.

29 (9) NUCLEAR INCIDENT RESPONSE TEAM.—The term “Nuclear Inci-  
30 dent Response Team” means a resource that includes—

31 (A) those entities of the Department of Energy that perform  
32 nuclear or radiological emergency support functions (including ac-  
33 cident response, search response, advisory, and technical oper-  
34 ations functions), radiation exposure functions at the medical as-  
35 sistance facility known as the Radiation Emergency Assistance  
36 Center/Training Site (REAC/TS), radiological assistance func-  
37 tions, and related functions; and

38 (B) those entities of the Environmental Protection Agency that  
39 perform such support functions (including radiological emergency  
40 response functions) and related functions.



1 (10) REGIONAL ADMINISTRATOR.—The term “Regional Adminis-  
2 trator” means Regional Administrator appointed under section 11107  
3 of this title.

4 (11) REGIONAL OFFICE.—The term “Regional Office” means a Re-  
5 gional Office established under section 11107 of this title.

6 (12) RESOURCES.—The term “resources” means personnel and  
7 major items of equipment, supplies, and facilities available or poten-  
8 tially available for responding to a natural disaster, act of terrorism,  
9 or other man-made disaster.

10 (13) SURGE CAPACITY.—The term “surge capacity” means the abil-  
11 ity to rapidly and substantially increase the provision of search and res-  
12 cue capabilities, food, water, medicine, shelter and housing, medical  
13 care, evacuation capacity, staffing (including disaster assistance em-  
14 ployees), and other resources necessary to save lives and protect prop-  
15 erty during a catastrophic incident.

16 (14) TRIBAL GOVERNMENT.—The term “tribal government” means  
17 the government of an entity described in section 10101(11)(B) of this  
18 title.

19 (15) TYPED; TYPING.—The terms “typed” and “typing” mean having  
20 evaluated, or evaluating, respectively, a resource in accordance with  
21 standards created under section 11110 of this title.

## 22 **§ 11102. Federal Emergency Management Agency**

23 (a) MISSION.—

24 (1) PRIMARY MISSION.—The primary mission of the Agency is to re-  
25 duce the loss of life and property and protect the Nation from all haz-  
26 ards, including natural disasters, acts of terrorism, and other man-  
27 made disasters, by leading and supporting the Nation in a risk-based,  
28 comprehensive emergency management system of preparedness, protec-  
29 tion, response, recovery, and mitigation.

30 (2) SPECIFIC ACTIVITIES.—In support of the primary mission of the  
31 Agency, the Secretary, acting through the Administrator, shall—

32 (A) lead the Nation’s efforts to prepare for, protect against, re-  
33 spond to, recover from, and mitigate against the risk of natural  
34 disasters, acts of terrorism, and other man-made disasters, includ-  
35 ing catastrophic incidents;

36 (B) partner with State, local, and tribal governments and emer-  
37 gency response providers, with other Federal agencies, with the  
38 private sector, and with nongovernmental organizations to build a  
39 national system of emergency management that can effectively and  
40 efficiently utilize the full measure of the Nation’s resources to re-

1           spond to natural disasters, acts of terrorism, and other man-made  
2           disasters, including catastrophic incidents;

3           (C) develop a Federal response capability that, when necessary  
4           and appropriate, can act effectively and rapidly to deliver assist-  
5           ance essential to saving lives or protecting or preserving property  
6           or public health and safety in a natural disaster, act of terrorism,  
7           or other man-made disaster;

8           (D) integrate the Agency's emergency preparedness, protection,  
9           response, recovery, and mitigation responsibilities to confront ef-  
10          fectively the challenges of a natural disaster, act of terrorism, or  
11          other man-made disaster;

12          (E) develop and maintain robust Regional Offices that will work  
13          with State, local, and tribal governments, emergency response pro-  
14          viders, and other appropriate entities to identify and address re-  
15          gional priorities;

16          (F) under the leadership of the Secretary, coordinate with the  
17          Commandant of the Coast Guard, the Commissioner of Customs  
18          and Border Protection, the Assistant Secretary for Immigration  
19          and Customs Enforcement, the National Operations Center, and  
20          other agencies and offices in the Department to take full advan-  
21          tage of the substantial range of resources in the Department;

22          (G) provide funding, training, exercises, technical assistance,  
23          planning, and other assistance to build tribal, local, State, re-  
24          gional, and national capabilities (including communications capa-  
25          bilities), necessary to respond to a natural disaster, act of terror-  
26          ism, or other man-made disaster; and

27          (H) develop and coordinate the implementation of a risk-based,  
28          all-hazards strategy for preparedness that builds those common  
29          capabilities necessary to respond to natural disasters, acts of ter-  
30          rorism, and other man-made disasters while also building the  
31          unique capabilities necessary to respond to specific types of inci-  
32          dents that pose the greatest risk to our Nation.

33       (b) ADMINISTRATOR.—

34           (1) REPORTING.—The Administrator shall report to the Secretary,  
35           without being required to report through another official of the Depart-  
36           ment.

37           (2) PRINCIPAL ADVISOR ON EMERGENCY MANAGEMENT.—

38           (A) IN GENERAL.—The Administrator is the principal advisor to  
39           the President, the Homeland Security Council, and the Secretary  
40           for all matters relating to emergency management in the United  
41           States.

1 (B) ADVICE AND RECOMMENDATIONS.—

2 (i) RANGE OF OPTIONS.—In presenting advice with respect  
3 to a matter to the President, the Homeland Security Council,  
4 or the Secretary, the Administrator shall, as the Adminis-  
5 trator considers appropriate, inform the President, the Home-  
6 land Security Council, or the Secretary, as the case may be,  
7 of the range of emergency preparedness, protection, response,  
8 recovery, and mitigation options with respect to that matter.

9 (ii) ADVICE ON A PARTICULAR MATTER.—The Adminis-  
10 trator, as the principal advisor on emergency management,  
11 shall provide advice to the President, the Homeland Security  
12 Council, or the Secretary on a particular matter when the  
13 President, the Homeland Security Council, or the Secretary  
14 requests advice.

15 (iii) RECOMMENDATIONS.—After informing the Secretary,  
16 the Administrator may make recommendations to Congress  
17 relating to emergency management the Administrator consid-  
18 ers appropriate.

19 (3) CABINET STATUS.—

20 (A) IN GENERAL.—The President may designate the Adminis-  
21 trator to serve as a member of the Cabinet in the event of natural  
22 disasters, acts of terrorism, or other man-made disasters.

23 (B) RETENTION OF AUTHORITY.—Nothing in this paragraph  
24 shall be construed as affecting the authority of the Secretary  
25 under this subtitle.

26 **§ 11103. Authority and responsibilities**

27 (a) IN GENERAL.—The Secretary, acting through the Administrator,  
28 shall provide Federal leadership necessary to prepare for, protect against,  
29 respond to, recover from, or mitigate against a natural disaster, act of ter-  
30 rorism, or other man-made disaster, including—

31 (1) helping to ensure the effectiveness of emergency response provid-  
32 ers to terrorist attacks, major disasters, and other emergencies;

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

36 (A) establishing standards and certifying when those standards  
37 have been met;

38 (B) conducting joint and other exercises and training and evalu-  
39 ating performance; and

- 1 (C) providing funds to the Department of Energy and the Envi-  
2 ronmental Protection Agency, as appropriate, for homeland secu-  
3 rity planning, exercises and training, and equipment;
- 4 (3) providing the Federal Government's response to terrorist attacks  
5 and major disasters, including
- 6 (A) managing the response;
- 7 (B) directing the Domestic Emergency Support Team and  
8 (when operating as an organizational unit of the Department pur-  
9 suant to this chapter) the Nuclear Incident Response Team;
- 10 (C) overseeing the Metropolitan Medical Response System; and
- 11 (D) coordinating other Federal response resources, including re-  
12 quiring deployment of the Strategic National Stockpile, in the  
13 event of a terrorist attack or major disaster;
- 14 (4) aiding the recovery from terrorist attacks and major disasters;
- 15 (5) building a comprehensive national incident management system  
16 with Federal, State, and local government personnel, agencies, and au-  
17 thorities, to respond to attacks and disasters;
- 18 (6) consolidating existing Federal Government emergency response  
19 plans into a single, coordinated national response plan;
- 20 (7) helping ensure the acquisition of operable and interoperable com-  
21 munications capabilities by Federal, State, local, and tribal govern-  
22 ments and emergency response providers;
- 23 (8) assisting the President in carrying out the functions under the  
24 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42  
25 U.S.C. 5121 et seq.) and carrying out all functions and authorities  
26 given to the Administrator under that Act;
- 27 (9) carrying out the mission of the Agency to reduce the loss of life  
28 and property and protect the Nation from all hazards by leading and  
29 supporting the Nation in a risk-based, comprehensive emergency man-  
30 agement system of—
- 31 (A) mitigation, by taking sustained actions to reduce or elimi-  
32 nate long-term risks to people and property from hazards and  
33 their effects;
- 34 (B) preparedness, by planning, training, and building the emer-  
35 gency management profession to prepare effectively for, mitigate  
36 against, respond to, and recover from a hazard;
- 37 (C) response, by conducting emergency operations to save lives  
38 and property through positioning emergency equipment, personnel,  
39 and supplies, through evacuating potential victims, through provid-  
40 ing food, water, shelter, and medical care to those in need, and  
41 through restoring critical public services; and

- 1 (D) recovery, by rebuilding communities so individuals, busi-  
2 nesses, and governments can function on their own, return to nor-  
3 mal life, and protect against future hazards;
- 4 (10) increasing efficiencies, by coordinating efforts relating to pre-  
5 paredness, protection, response, recovery, and mitigation;
- 6 (11) helping to ensure the effectiveness of emergency response pro-  
7 viders in responding to a natural disaster, act of terrorism, or other  
8 man-made disaster;
- 9 (12) supervising grant programs administered by the Agency;
- 10 (13) administering and ensuring the implementation of the National  
11 Response Plan, including coordinating and ensuring the readiness of  
12 each emergency support function under the National Response Plan;
- 13 (14) coordinating with the National Advisory Council established  
14 under section 11108 of this title;
- 15 (15) preparing and implementing the plans and programs of the  
16 Federal Government for—
- 17 (A) continuity of operations;
- 18 (B) continuity of government; and
- 19 (C) continuity of plans;
- 20 (16) minimizing, to the extent practicable, overlapping planning and  
21 reporting requirements applicable to State, local, and tribal govern-  
22 ments and the private sector;
- 23 (17) maintaining and operating within the Agency the National Re-  
24 sponse Coordination Center or its successor;
- 25 (18) developing a national emergency management system that is ca-  
26 pable of preparing for, protecting against, responding to, recovering  
27 from, and mitigating against catastrophic incidents;
- 28 (19) assisting the President in carrying out the functions under the  
29 national preparedness goal and the national preparedness system and  
30 carrying out all functions and authorities of the Administrator under  
31 the national preparedness system;
- 32 (20) carrying out all authorities of the Federal Emergency Manage-  
33 ment Agency and the Directorate of Preparedness of the Department  
34 as transferred under section 11105 of this title; and
- 35 (21) otherwise carrying out the mission of the Agency as described  
36 in section 11102(a) of this title.
- 37 (b) ALL-HAZARDS APPROACH.—In carrying out the responsibilities under  
38 this section, the Secretary, acting through the Administrator, shall coordi-  
39 nate the implementation of a risk-based, all-hazards strategy that builds  
40 those common capabilities necessary to prepare for, protect against, respond  
41 to, recover from, or mitigate against natural disasters, acts of terrorism,

1 and other man-made disasters, while also building the unique capabilities  
2 necessary to prepare for, protect against, respond to, recover from, or miti-  
3 gate against the risks of specific types of incidents that pose the greatest  
4 risk to the Nation.

5 **§ 11104. Preparedness programs**

6 Notwithstanding any other provision of Federal law, the Secretary, acting  
7 through the Administrator, is responsible for the radiological emergency pre-  
8 paredness program and the chemical stockpile emergency preparedness pro-  
9 gram.

10 **§ 11105. Functions transferred**

11 (a) IN GENERAL.—Except as provided in subsection (b), there are trans-  
12 ferred to the Agency the following:

13 (1) AGENCY.—All functions of the Agency, including existing respon-  
14 sibilities for emergency alert systems and continuity of operations and  
15 continuity of government plans and programs as constituted on June  
16 1, 2006, including all of its personnel, assets, components, authorities,  
17 grant programs, and liabilities, and including the functions of the  
18 former Under Secretary for Federal Emergency Management relating  
19 to the Agency.

20 (2) DIRECTORATE.—The former Directorate of Preparedness, as  
21 constituted on June 1, 2006, including all of its functions, personnel,  
22 assets, components, authorities, grant programs, and liabilities, and in-  
23 cluding the functions of the Under Secretary for Preparedness relating  
24 to the Directorate.

25 (b) EXCEPTIONS.—The following in the former Directorate of Prepared-  
26 ness shall not be transferred:

- 27 (1) The Office of Infrastructure Protection.  
28 (2) The National Communications System.  
29 (3) The National Cybersecurity Division.  
30 (4) The Office of the Chief Medical Officer.  
31 (5) The functions, personnel, assets, components, authorities, and li-  
32 abilities of each component described under paragraphs (1) through  
33 (4).

34 **§ 11106. Preserving the Federal Emergency Management**  
35 **Agency**

36 (a) T4Distinct Entity.—The Agency shall be maintained as a distinct en-  
37 tity in the Department.

38 (b) T4Reorganization.—Section 10331(b) of this title shall not apply to  
39 the Agency, including any function or organizational unit of the Agency.

40 (c) Prohibition on Changes to Missions.—

1 (1) IN GENERAL.—The Secretary may not substantially or signifi-  
2 cantly reduce the authorities, responsibilities, or functions of the Agen-  
3 cy or the capability of the Agency to perform those missions, authori-  
4 ties, responsibilities, except as otherwise specifically provided in an Act  
5 enacted after October 4, 2006.

6 (2) CERTAIN TRANSFERS PROHIBITED.—No asset, function, or mis-  
7 sion of the Agency may be diverted to the principal and continuing use  
8 of another organization, unit, or entity of the Department, except for  
9 details or assignments that do not reduce the capability of the Agency  
10 to perform its missions.

11 (d) REPROGRAMMING AND TRANSFER OF FUNDS.—In reprogramming or  
12 transferring funds, the Secretary shall comply with applicable provisions of  
13 any Act making appropriations for the Department for any fiscal year relat-  
14 ing to the reprogramming or transfer of funds.

### 15 **§ 11107. Regional Offices**

16 (a) IN GENERAL.—There are in the Agency 10 regional offices, as identi-  
17 fied by the Secretary, acting through the Administrator.

18 (b) MANAGEMENT OF REGIONAL OFFICES.—

19 (1) REGIONAL ADMINISTRATOR.—Each Regional Office shall be  
20 headed by a Regional Administrator, who shall be appointed by the Ad-  
21 ministrator, after consulting with State, local, and tribal government  
22 officials in the region. Each Regional Administrator shall report di-  
23 rectly to the Administrator and be in the Senior Executive Service.

24 (2) QUALIFICATIONS.—

25 (A) IN GENERAL.—Each Regional Administrator shall be ap-  
26 pointed from among individuals who have a demonstrated ability  
27 in and knowledge of emergency management and homeland secu-  
28 rity.

29 (B) CONSIDERATIONS.—In selecting a Regional Administrator  
30 for a Regional Office, the Administrator shall consider the famili-  
31 arity of an individual with the geographical area and demographic  
32 characteristics of the population served by the Regional Office.

33 (c) RESPONSIBILITIES.—

34 (1) IN GENERAL.—The Regional Administrator shall work in part-  
35 nership with State, local, and tribal governments, emergency managers,  
36 emergency response providers, medical providers, the private sector,  
37 nongovernmental organizations, multijurisdictional councils of govern-  
38 ments, and regional planning commissions and organizations in the  
39 geographical area served by the Regional Office to carry out the re-  
40 sponsibilities of a Regional Administrator under this section.

1           (2) RESPONSIBILITIES.—The responsibilities of a Regional Adminis-  
2           trator include—

3                   (A) ensuring effective, coordinated, and integrated regional pre-  
4                   paredness, protection, response, recovery, and mitigation activities  
5                   and programs for natural disasters, acts of terrorism, and other  
6                   man-made disasters (including planning, training, exercises, and  
7                   professional development);

8                   (B) assisting in the development of regional capabilities needed  
9                   for a national catastrophic response system;

10                  (C) coordinating the establishment of effective regional operable  
11                  and interoperable emergency communications capabilities;

12                  (D) staffing and overseeing one or more strike teams within the  
13                  region under subsection (f), to serve as the focal point of the Fed-  
14                  eral Government's initial response efforts for natural disasters,  
15                  acts of terrorism, and other man-made disasters within that re-  
16                  gion, and otherwise building Federal response capabilities to re-  
17                  spond to natural disasters, acts of terrorism, and other man-made  
18                  disasters within that region;

19                  (E) designating an individual responsible for the development of  
20                  strategic and operational regional plans in support of the National  
21                  Response Plan;

22                  (F) fostering the development of mutual aid and other coopera-  
23                  tive agreements;

24                  (G) identifying critical gaps in regional capabilities to respond  
25                  to populations with special needs;

26                  (H) maintaining and operating a Regional Response Coordina-  
27                  tion Center or its successor;

28                  (I) coordinating with the private sector to help ensure private-  
29                  sector preparedness for natural disasters, acts of terrorism, and  
30                  other man-made disasters;

31                  (J) assisting State, local, and tribal governments, where appro-  
32                  priate, to pre-identify and evaluate suitable sites where a multi-  
33                  jurisdictional incident command system may quickly be established  
34                  and operated from, if the need for a system arises; and

35                  (K) performing other duties relating to these responsibilities the  
36                  Administrator may require.

37           (3) TRAINING AND EXERCISE REQUIREMENTS.—

38                   (A) TRAINING.—The Administrator shall require each Regional  
39                   Administrator to undergo specific training periodically to com-  
40                   plement the qualifications of the Regional Administrator. The  
41                   training, as appropriate, shall include training with respect to the



1 National Incident Management System, the National Response  
2 Plan, and other subjects determined by the Administrator.

3 (B) EXERCISES.—The Administrator shall require each Re-  
4 gional Administrator to participate as appropriate in regional and  
5 national exercises.

6 (d) AREA OFFICES.—

7 (1) IN GENERAL.—There is an Area Office for the Pacific and an  
8 Area Office for the Caribbean, as components in the appropriate Re-  
9 gional Offices.

10 (2) ALASKA.—The Administrator shall establish an Area Office in  
11 Alaska, as a component in the appropriate Regional Office.

12 (e) REGIONAL ADVISORY COUNCIL.—

13 (1) ESTABLISHMENT.—Each Regional Administrator shall establish  
14 a Regional Advisory Council.

15 (2) NOMINATIONS.—A State, local, or tribal government located  
16 within the geographic area served by the Regional Office may nominate  
17 officials, including Adjutants General and emergency managers, to  
18 serve as members of the Regional Advisory Council for that region.

19 (3) RESPONSIBILITIES.—Each Regional Advisory Council shall—

20 (A) advise the Regional Administrator on emergency manage-  
21 ment issues specific to that region;

22 (B) identify geographic, demographic, or other characteristics  
23 peculiar to a State, local, or tribal government within the region  
24 that might make preparedness, protection, response, recovery, or  
25 mitigation more complicated or difficult; and

26 (C) advise the Regional Administrator of weaknesses or defi-  
27 ciencies in preparedness, protection, response, recovery, and miti-  
28 gation for a State, local, and tribal government within the region  
29 of which the Regional Advisory Council is aware.

30 (f) REGIONAL OFFICE STRIKE TEAMS.—

31 (1) IN GENERAL.—In coordination with other relevant Federal agen-  
32 cies, each Regional Administrator shall oversee multi-agency strike  
33 teams authorized under section 303 of the Robert T. Stafford Disaster  
34 Relief and Emergency Assistance Act (42 U.S.C. 5144) that shall con-  
35 sist of—

36 (A) a designated Federal coordinating officer;

37 (B) personnel trained in incident management;

38 (C) public affairs, response and recovery, and communications  
39 support personnel;

40 (D) a defense coordinating officer;

41 (E) liaisons to other Federal agencies;

1 (F) Other personnel the Administrator or Regional Adminis-  
2 trator determines appropriate; and

3 (G) individuals from the agencies with primary responsibility for  
4 each of the emergency support functions in the National Response  
5 Plan.

6 (2) OTHER DUTIES TO BE CONSISTENT.—The duties of an individual  
7 assigned to a Regional Office strike team from another relevant agency  
8 when the individual is not functioning as a member of the strike team  
9 shall be consistent with the emergency preparedness activities of the  
10 agency that employs the individual.

11 (3) LOCATION OF MEMBERS.—The members of each Regional Office  
12 strike team, including representatives from agencies other than the De-  
13 partment, shall be based primarily within the region that corresponds  
14 to that strike team.

15 (4) COORDINATION.—Each Regional Office strike team shall coordi-  
16 nate the training and exercises of that strike team with the State, local,  
17 and tribal governments and private-sector and nongovernmental entities  
18 that the strike team shall support when a natural disaster, act of ter-  
19 rorism, or other man-made disaster occurs.

20 (5) PREPAREDNESS.—Each Regional Office strike team shall be  
21 trained as a unit on a regular basis and equipped and staffed to be  
22 well prepared to respond to natural disasters, acts of terrorism, and  
23 other man-made disasters, including catastrophic incidents.

24 (6) AUTHORITIES.—If the Administrator determines that statutory  
25 authority is inadequate for the preparedness and deployment of individ-  
26 uals in strike teams under this subsection, the Administrator shall re-  
27 port to Congress regarding the additional statutory authorities that the  
28 Administrator determines are necessary.

29 **§ 11108. National Advisory Council**

30 (a) ESTABLISHMENT.—There is in the Department the National Advisory  
31 Council, established as an advisory body under section 10371(a) of this title  
32 to ensure effective and ongoing coordination of Federal preparedness, pro-  
33 tection, response, recovery, and mitigation for natural disasters, acts of ter-  
34 rorism, and other man-made disasters.

35 (b) RESPONSIBILITIES.—

36 (1) IN GENERAL.—The National Advisory Council shall advise the  
37 Administrator on all aspects of emergency management. The National  
38 Advisory Council shall incorporate State, local, and tribal government  
39 and private-sector input in the development and revision of the national  
40 preparedness goal, the national preparedness system, the National Inci-

1           dent Management System, the National Response Plan, and other re-  
2           lated plans and strategies.

3           (2) CONSULTATION ON GRANTS.—To ensure input from and coordi-  
4           nation with State, local, and tribal governments and emergency re-  
5           sponse providers, the Administrator shall regularly consult and work  
6           with the National Advisory Council on the administration and assess-  
7           ment of grant programs administered by the Department, including  
8           with respect to the development of program guidance and the develop-  
9           ment and evaluation of risk-assessment methodologies, as appropriate.

10       (c) MEMBERSHIP.—

11           (1) IN GENERAL.—The members of the National Advisory Council  
12           shall be appointed by the Administrator, and shall, to the extent prac-  
13           ticable, represent a geographic (including urban and rural) and sub-  
14           stantive cross section of officials, emergency managers, and emergency  
15           response providers from State, local, and tribal governments, the pri-  
16           vate sector, and nongovernmental organizations, including as appro-  
17           priate

18           (A) members selected from the emergency management field  
19           and emergency response providers, including fire service, law en-  
20           forcement, hazardous materials response, emergency medical serv-  
21           ices, and emergency management personnel, or organizations rep-  
22           resenting these individuals;

23           (B) health scientists, emergency and inpatient medical provid-  
24           ers, and public health professionals;

25           (C) experts from Federal, State, local, and tribal governments,  
26           and the private sector, representing standards-setting and accred-  
27           iting organizations, including representatives from the voluntary  
28           consensus codes and standards development community, particu-  
29           larly those with expertise in the emergency preparedness and re-  
30           sponse field;

31           (D) State, local, and tribal government officials with expertise  
32           in preparedness, protection, response, recovery, and mitigation, in-  
33           cluding Adjutants General;

34           (E) elected State, local, and tribal government executives;

35           (F) experts in public and private-sector infrastructure protec-  
36           tion, cybersecurity, and communications;

37           (G) representatives of individuals with disabilities and other  
38           populations with special needs; and

39           (H) other individuals the Administrator determines to be appro-  
40           priate.

1 (2) COORDINATION WITH DEPARTMENTS OF HEALTH AND HUMAN  
2 SERVICES AND TRANSPORTATION.—In the selection of members of the  
3 National Advisory Council who are health or emergency medical serv-  
4 ices professionals, the Administrator shall work with the Secretary of  
5 Health and Human Services and the Secretary of Transportation.

6 (3) EX OFFICIO MEMBERS.—The Administrator shall designate one  
7 or more officers of the Federal Government to serve as ex officio mem-  
8 bers of the National Advisory Council.

9 (4) TERMS OF OFFICE.—The term of office of each member of the  
10 National Advisory Council shall be 3 years.

11 (d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—

12 (1) IN GENERAL.—Notwithstanding section 10371(a) of this title  
13 and subject to paragraph (2), the Federal Advisory Committee Act (5  
14 U.S.C. App.), including section 10(a), (b), and (d), and section 552b(c)  
15 of title 5, apply to the National Advisory Council.

16 (2) TERMINATION.—Section 14(a)(2) of the Federal Advisory Com-  
17 mittee Act (5 U.S.C. App.) does not apply to the National Advisory  
18 Council.

19 **§ 11109. National Integration Center**

20 (a) IN GENERAL.—There is in the Agency the National Integration Cen-  
21 ter.

22 (b) RESPONSIBILITIES.—

23 (1) IN GENERAL.—The Secretary, acting through the Administrator  
24 and the National Integration Center, and in consultation with other  
25 Federal departments and agencies and the National Advisory Council,  
26 shall ensure ongoing management and maintenance of the National In-  
27 cident Management System, the National Response Plan, and a succes-  
28 sor to the system or plan.

29 (2) REVIEW AND REVISION OF SYSTEM AND PLAN.—The National  
30 Integration Center shall periodically review, and revise as appropriate,  
31 the National Incident Management System and the National Response  
32 Plan, including

33 (A) establishing, in consultation with the Director of the Cor-  
34 poration for National and Community Service, a process to better  
35 use volunteers and donations;

36 (B) improving the use of Federal, State, local, and tribal re-  
37 sources and ensuring the effective use of emergency response pro-  
38 viders at emergency scenes; and

39 (C) revising the Catastrophic Incident Annex, finalizing and re-  
40 leasing the Catastrophic Incident Supplement to the National Re-

1           sponse Plan, and ensuring that both effectively address response  
2           requirements in the event of a catastrophic incident.

3       (c) INCIDENT MANAGEMENT.—

4           (1) IN GENERAL.—

5           (A) NATIONAL RESPONSE PLAN.—The Secretary, acting  
6           through the Administrator, shall ensure that the National Re-  
7           sponse Plan provides for a clear chain of command to lead and  
8           coordinate the Federal response to a natural disaster, act of ter-  
9           rorism, or other man-made disaster.

10          (B) ADMINISTRATOR.—The chain of the command specified in  
11          the National Response Plan shall provide for a role for—

12           (i) the Administrator consistent with the role of the Admin-  
13           istrator as the principal emergency management advisor to  
14           the President, the Homeland Security Council, and the Sec-  
15           retary under section 11102(b)(2) of this title and the respon-  
16           sibility of the Administrator under the Post-Katrina Emer-  
17           gency Management Reform Act of 2006 (Public Law 109-  
18           295, 120 Stat. 1394), and the amendments made by that  
19           Act, relating to natural disasters, acts of terrorism, and other  
20           man-made disasters; and

21           (ii) the Federal Coordinating Officer consistent with the re-  
22           sponsibilities under section 302(b) of the Robert T. Stafford  
23           Disaster Relief and Emergency Assistance Act (42 U.S.C.  
24           5143(b)).

25          (2) PRINCIPAL FEDERAL OFFICIAL.—The Principal Federal Official  
26          (or the successor to the Official) shall not—

27           (A) direct or replace the incident command structure established  
28           at the incident; or

29           (B) have directive authority over the Senior Federal Law En-  
30           forcement Official, Federal Coordinating Officer, or other Federal  
31           and State officials.

32       **§ 11110. Credentialing and typing**

33       (a) IN GENERAL.—The Secretary, acting through the Administrator,  
34       shall enter into a memorandum of understanding with the administrators  
35       of the Emergency Management Assistance Compact, State, local, and tribal  
36       governments, and organizations that represent emergency response provid-  
37       ers, to collaborate on developing standards for deployment capabilities, in-  
38       cluding for credentialing and typing of incident management personnel,  
39       emergency response providers, and other personnel (including temporary  
40       personnel) and resources likely needed to respond to natural disasters, acts  
41       of terrorism, and other man-made disasters.

1 (b) DISTRIBUTION.—

2 (1) IN GENERAL.—The Secretary, acting through the Administrator,  
3 shall provide the standards developed under subsection (a), including  
4 detailed written guidance, to—

5 (A) each Federal agency that has responsibilities under the Na-  
6 tional Response Plan to aid that agency with credentialing and  
7 typing incident management personnel, emergency response pro-  
8 viders, and other personnel (including temporary personnel) and  
9 resources likely needed to respond to a natural disaster, act of ter-  
10 rorism, or other man-made disaster; and

11 (B) State, local, and tribal governments, to aid the governments  
12 with credentialing and typing of State, local, and tribal incident  
13 management personnel, emergency response providers, and other  
14 personnel (including temporary personnel) and resources likely  
15 needed to respond to a natural disaster, act of terrorism, or other  
16 man-made disaster.

17 (2) ASSISTANCE.—The Secretary, acting through the Administrator,  
18 shall provide expertise and technical assistance to aid Federal, State,  
19 local, and tribal government agencies with credentialing and typing in-  
20 cident management personnel, emergency response providers, and other  
21 personnel (including temporary personnel) and resources likely needed  
22 to respond to a natural disaster, act of terrorism, or other man-made  
23 disaster.

24 (c) CREDENTIALING AND TYPING OF PERSONNEL.—Each Federal agency  
25 with responsibilities under the National Response Plan shall ensure that in-  
26 cident management personnel, emergency response providers, and other per-  
27 sonnel (including temporary personnel) and resources likely needed to re-  
28 spond to a natural disaster, act of terrorism, or other manmade disaster are  
29 credentialed and typed under this section.

30 (d) CONSULTATION ON HEALTH CARE STANDARDS.—In developing  
31 standards for credentialing health care professionals under this section, the  
32 Secretary, acting through the Administrator, shall consult with the Sec-  
33 retary of Health and Human Services.

34 **§ 11111. The National Infrastructure Simulation and Analy-**  
35 **sis Center**

36 (a) IN GENERAL.—There is in the Department the National Infrastruc-  
37 ture Simulation and Analysis Center established under section 1016(d) of  
38 the USA PATRIOT Act (42 U.S.C. 5195e(d)) which shall serve as a source  
39 of national expertise to address critical infrastructure protection and con-  
40 tinuity through support for activities related to—

41 (1) counterterrorism, threat assessment, and risk mitigation; and

1 (2) a natural disaster, act of terrorism, or other man-made disaster.

2 (b) INFRASTRUCTURE MODELING.—

3 (1) PARTICULAR SUPPORT.—The support provided under subsection

4 (a) includes modeling, simulation, and analysis of the systems and as-  
5 sets comprising critical infrastructure, to enhance preparedness, protec-  
6 tion, response, recovery, and mitigation activities.

7 (2) RELATIONSHIP WITH OTHER AGENCIES.—Each Federal agency  
8 and department with critical infrastructure responsibilities under  
9 Homeland Security Presidential Directive 7, or a successor to the Di-  
10 rective, shall establish a formal relationship, including an agreement re-  
11 garding information sharing, between the elements of the agency or de-  
12 partment and the National Infrastructure Simulation and Analysis  
13 Center, through the Department.

14 (3) PURPOSE.—The purpose of the relationship under paragraph (2)  
15 is to permit each Federal agency and department described in para-  
16 graph (2) to take full advantage of the capabilities of the National In-  
17 frastructure Simulation and Analysis Center (particularly vulnerability  
18 and consequence analysis), consistent with its work load capacity and  
19 priorities, for real-time response to reported and projected natural dis-  
20 asters, acts of terrorism, and other man-made disasters.

21 (4) RECIPIENT OF CERTAIN SUPPORT.—Modeling, simulation, and  
22 analysis provided under this subsection shall be provided to relevant  
23 Federal agencies and departments, including Federal agencies and de-  
24 partments with critical infrastructure responsibilities under Homeland  
25 Security Presidential Directive 7, or a successor to the Directive.

26 **§ 11112. Evacuation plans and exercises**

27 (a) IN GENERAL.—Notwithstanding any other provision of law, and sub-  
28 ject to subsection (d), grants made to States or local or tribal governments  
29 by the Department through the State Homeland Security Grant Program  
30 or the Urban Area Security Initiative may be used to—

31 (1) establish programs for the development and maintenance of mass  
32 evacuation plans under subsection (b) in the event of a natural disas-  
33 ter, act of terrorism, or other man-made disaster;

34 (2) prepare for the execution of the plans, including the development  
35 of evacuation routes and the purchase and stockpiling of necessary sup-  
36 plies and shelters; and

37 (3) conduct exercises of the plans.

38 (b) PLAN DEVELOPMENT.—In developing the mass evacuation plans au-  
39 thorized under subsection (a), each State, local, or tribal government shall,  
40 to the maximum extent practicable—

41 (1) establish incident command and decision making processes;

1 (2) ensure that State, local, and tribal government plans, including  
2 evacuation routes, are coordinated and integrated;

3 (3) identify primary and alternative evacuation routes and methods  
4 to increase evacuation capabilities along the routes, such as conversion  
5 of two-way traffic to one-way evacuation routes;

6 (4) identify evacuation transportation modes and capabilities, includ-  
7 ing the use of mass and public transit capabilities, and coordinating  
8 and integrating evacuation plans for all populations including for those  
9 individuals located in hospitals, nursing homes, and other institutional  
10 living facilities;

11 (5) develop procedures for informing the public of evacuation plans  
12 before and during an evacuation, including individuals—

13 (A) with disabilities or other special needs, including the elderly;

14 (B) with limited English proficiency; or

15 (C) who might otherwise have difficulty in obtaining informa-  
16 tion; and

17 (6) identify shelter locations and capabilities.

18 (c) ASSISTANCE.—

19 (1) IN GENERAL.—The Secretary, acting through the Administrator,  
20 may establish guidelines, standards, or requirements determined appro-  
21 priate to administer this section and to ensure effective mass evacua-  
22 tion planning for State, local, and tribal areas.

23 (2) REQUESTED ASSISTANCE.—The Secretary, acting through the  
24 Administrator, shall make assistance available upon request of a State,  
25 local, or tribal government to assist hospitals, nursing homes, and other  
26 institutions that house individuals with special needs to establish, main-  
27 tain, and exercise mass evacuation plans that are coordinated and inte-  
28 grated into the plans developed by that State, local, or tribal govern-  
29 ment under this section.

30 (d) MULTIPURPOSE FUNDS.—Nothing in this section may be construed  
31 to preclude a State, local, or tribal government from using grant funds in  
32 a manner that enhances preparedness for a natural or man-made disaster  
33 unrelated to an act of terrorism, if the use assists the government in build-  
34 ing capabilities for terrorism preparedness.

35 **§ 11113. Disability Coordinator**

36 (a) IN GENERAL.—After consultation with organizations representing in-  
37 dividuals with disabilities, the National Council on Disabilities, and the  
38 Interagency Coordinating Council on Preparedness and Individuals with  
39 Disabilities, established under Executive Order No. 13347 (July 22, 2004,  
40 69 Fed. Reg. 44573), the Administrator shall appoint a Disability Coordina-  
41 tor. The Disability Coordinator shall report directly to the Administrator,



1 in order to ensure that the needs of individuals with disabilities are being  
2 properly addressed in emergency preparedness and disaster relief.

3 (b) RESPONSIBILITIES.—The Disability Coordinator is responsible for—

4 (1) providing guidance and coordination on matters related to indi-  
5 viduals with disabilities in emergency planning requirements and relief  
6 efforts in the event of a natural disaster, act of terrorism, or other  
7 man-made disaster;

8 (2) interacting with the staff of the Agency, the National Council on  
9 Disabilities, the Interagency Coordinating Council on Preparedness and  
10 Individuals with Disabilities established under Executive Order No.  
11 13347 (69 Fed. Reg. 44573), other agencies of the Federal Govern-  
12 ment, and State, local, and tribal government authorities regarding the  
13 needs of individuals with disabilities in emergency planning require-  
14 ments and relief efforts in the event of a natural disaster, act of terror-  
15 ism, or other man-made disaster;

16 (3) consulting with organizations that represent the interests and  
17 rights of individuals with disabilities about the needs of individuals with  
18 disabilities in emergency planning requirements and relief efforts in the  
19 event of a natural disaster, act of terrorism, or other man-made disas-  
20 ter;

21 (4) ensuring the coordination and dissemination of best practices and  
22 model evacuation plans for individuals with disabilities;

23 (5) ensuring the development of training materials and a curriculum  
24 for training of emergency response providers, State, local, and tribal  
25 government officials, and others on the needs of individuals with dis-  
26 abilities;

27 (6) promoting the accessibility of telephone hotlines and websites re-  
28 garding emergency preparedness, evacuations, and disaster relief;

29 (7) working to ensure that video programming distributors, including  
30 broadcasters, cable operators, and satellite television services, make  
31 emergency information accessible to individuals with hearing and vision  
32 disabilities;

33 (8) ensuring the availability of accessible transportation options for  
34 individuals with disabilities in the event of an evacuation;

35 (9) providing guidance and implementing policies to ensure that the  
36 rights and wishes of individuals with disabilities regarding post-evacua-  
37 tion residency and relocation are respected;

38 (10) ensuring that meeting the needs of individuals with disabilities  
39 are included in the components of the national preparedness system es-  
40 tablished under section 644 of the Post-Katrina Emergency Manage-  
41 ment Reform Act of 2006; and

1 (11) other duties assigned by the Administrator.

2 **§ 11114. National Operations Center**

3 (a) DEFINITION.—In this section, the term “situational awareness”  
4 means information gathered from a variety of sources that, when commu-  
5 nicated to emergency managers and decision makers, can form the basis for  
6 incident management decisionmaking.

7 (b) ESTABLISHMENT.—The National Operations Center is the principal  
8 operations center for the Department and shall—

9 (1) provide situational awareness and a common operating picture  
10 for the entire Federal Government, and for State, local, and tribal gov-  
11 ernments as appropriate, in the event of a natural disaster, act of ter-  
12 rorism, or other man-made disaster; and

13 (2) ensure that critical terrorism and disaster-related information  
14 reaches government decision-makers.

15 (c) STATE AND LOCAL FIRE SERVICE REPRESENTATION.—

16 (1) ESTABLISHMENT OF POSITION.—The Secretary shall, in con-  
17 sultation with the Administrator of the United States Fire Administra-  
18 tion, establish a fire service position at the National Operations Center  
19 established under subsection (b) to ensure the effective sharing of in-  
20 formation between the Federal Government and State and local fire  
21 services.

22 (2) DESIGNATION OF POSITION.—The Secretary shall designate, on  
23 a rotating basis, a State or local fire service official for the position  
24 described in paragraph (1).

25 (3) MANAGEMENT.—The Secretary shall manage the position estab-  
26 lished under paragraph (1) in accordance with the rules, regulations,  
27 and practices that govern other similar rotating positions at the Na-  
28 tional Operations Center.

29 **§ 11115. Responsibilities of Chief Medical Officer**

30 The Chief Medical Officer has the primary responsibility in the Depart-  
31 ment for medical issues related to natural disasters, acts of terrorism, and  
32 other man-made disasters, including

33 (1) serving as the principal advisor to the Secretary and the Admin-  
34 istrator on medical and public health issues;

35 (2) coordinating the biodefense activities of the Department;

36 (3) ensuring internal and external coordination of all medical pre-  
37 paredness and response activities of the Department, including train-  
38 ing, exercises, and equipment support;

39 (4) serving as the Department’s primary point of contact with the  
40 Department of Agriculture, the Department of Defense, the Depart-  
41 ment of Health and Human Services, the Department of Transpor-

1           tation, the Department of Veterans Affairs, and other Federal depart-  
2           ments or agencies, on medical and public health issues;

3           (5) serving as the Department's primary point of contact for State,  
4           local, and tribal governments, the medical community, and others with-  
5           in and outside the Department, with respect to medical and public  
6           health matters;

7           (6) discharging, in coordination with the Under Secretary for Science  
8           and Technology, the responsibilities of the Department related to  
9           Project Bioshield; and

10          (7) performing other duties relating to these responsibilities the Sec-  
11          retary may require.

12       **§ 11116. Nuclear incident response**

13          (a) IN GENERAL.—At the direction of the Secretary (in connection with  
14          an actual or threatened terrorist attack, major disaster, or other emergency  
15          in the United States), the Nuclear Incident Response Team shall operate  
16          as an organizational unit of the Department. While so operating, the Nu-  
17          clear Incident Response Team shall be subject to the direction, authority,  
18          and control of the Secretary.

19          (b) RULE OF CONSTRUCTION.—Nothing in this chapter shall be con-  
20          strued to limit the ordinary responsibility of the Secretary of Energy and  
21          the Administrator of the Environmental Protection Agency for organizing,  
22          training, equipping, and utilizing their respective entities in the Nuclear In-  
23          cident Response Team, or (subject to the provisions of this chapter) from  
24          exercising direction, authority, and control over them when they are not op-  
25          erating as a unit of the Department.

26       **§ 11117. Conduct of certain public health-related activities**

27          (a) In General.—With respect to all public health-related activities to im-  
28          prove State, local, and hospital preparedness and response to chemical, bio-  
29          logical, radiological, and nuclear and other emerging terrorist threats car-  
30          ried out by the Department of Health and Human Services (including the  
31          Public Health Service), the Secretary of Health and Human Services shall  
32          set priorities and preparedness goals and further develop a coordinated  
33          strategy for these activities in collaboration with the Secretary.

34          (b) Evaluation of Progress.—In carrying out subsection (a), the Secretary  
35          of Health and Human Services shall collaborate with the Secretary in devel-  
36          oping specific benchmarks and outcome measurements for evaluating  
37          progress toward achieving the priorities and goals described in subsection  
38          (a).

1    **§ 11118. Use of national private-sector networks in emer-**  
2                                   **gency response**

3           To the maximum extent practicable, the Secretary shall use national pri-  
4    vate-sector networks and infrastructure for emergency response to chemical,  
5    biological, radiological, nuclear, or explosive disasters, and other major dis-  
6    asters.

7    **§ 11119. Model standards and guidelines for critical infra-**  
8                                   **structure workers**

9           (a) IN GENERAL.—In coordination with appropriate national professional  
10    organizations, Federal, State, local, and tribal government agencies, and pri-  
11    vate-sector and nongovernmental entities, the Secretary, acting through the  
12    Administrator, shall establish model standards and guidelines for credential-  
13    ing critical infrastructure workers that may be used by a State to credential  
14    critical infrastructure workers that may respond to a natural disaster, act  
15    of terrorism, or other man-made disaster.

16           (b) Distribution and Assistance.—The Secretary, acting through the Ad-  
17    ministrator, shall provide the standards developed under subsection (a), in-  
18    cluding detailed written guidance, to State, local, and tribal governments,  
19    and provide expertise and technical assistance to aid the governments with  
20    credentialing critical infrastructure workers that may respond to a natural  
21    disaster, act of terrorism, or other manmade disaster.

22    **§ 11120. Guidance and recommendations**

23           (a) IN GENERAL.—Consistent with their responsibilities and authorities  
24    under law, as of August 2, 2007, the Secretary, acting through the Admin-  
25    istrator, and the Assistant Secretary for Infrastructure Protection, in con-  
26    sultation with the private sector, may develop guidance or recommendations  
27    and identify best practices to assist or foster action by the private sector  
28    in—

- 29           (1) identifying potential hazards and assessing risks and impacts;  
30           (2) mitigating the impact of a wide variety of hazards, including  
31    weapons of mass destruction;  
32           (3) managing necessary emergency preparedness and response re-  
33    sources;  
34           (4) developing mutual aid agreements;  
35           (5) developing and maintaining emergency preparedness and re-  
36    sponse plans, and associated operational procedures;  
37           (6) developing and conducting training and exercises to support and  
38    evaluate emergency preparedness and response plans and operational  
39    procedures;

1 (7) developing and conducting training programs for security guards  
2 to implement emergency preparedness and response plans and oper-  
3 ations procedures; and

4 (8) developing procedures to respond to requests for information  
5 from the media or the public.

6 (b) ISSUANCE AND PROMOTION.—Any guidance or recommendations de-  
7 veloped or best practices identified under subsection (a) shall be—

8 (1) issued through the Secretary, acting through the Administrator;  
9 and

10 (2) promoted by the Secretary to the private sector.

11 (c) SMALL BUSINESS CONCERNS.—In developing guidance or recom-  
12 mendations or identifying best practices under subsection (a), the Secretary,  
13 acting through the Administrator, and the Assistant Secretary for Infra-  
14 structure Protection shall take into consideration small business concerns  
15 (under the meaning given that term in section 3 of the Small Business Act  
16 (15 U.S.C. 632)), including a need for separate guidance or recommenda-  
17 tions or best practices, as necessary and appropriate.

18 (d) RULE OF CONSTRUCTION.—Nothing in this section may be construed  
19 to supersede a requirement established under any other provision of law.

20 **§ 11121. Voluntary private-sector preparedness accredita-**  
21 **tion and certification program**

22 (a) ESTABLISHMENT.—

23 (1) IN GENERAL.—The Secretary, acting through the officer des-  
24 ignated under paragraph (2), shall establish and implement the vol-  
25 untary private-sector preparedness accreditation and certification pro-  
26 gram under this section.

27 (2) DESIGNATION OF OFFICER.—The Secretary shall designate an  
28 officer responsible for the accreditation and certification program under  
29 this section. The officer (in this section referred to as the “designated  
30 officer”) shall be one of the following:

31 (A) The Administrator, based on consideration of—

32 (i) the expertise of the Administrator in emergency man-  
33 agement and preparedness in the United States; and

34 (ii) the responsibilities of the Administrator as the prin-  
35 cipal advisor to the President for all matters relating to emer-  
36 gency management in the United States.

37 (B) The Assistant Secretary for Infrastructure Protection,  
38 based on consideration of the expertise of the Assistant Secretary  
39 in, and responsibilities for—

40 (i) protection of critical infrastructure;

41 (ii) risk assessment methodologies; and

1 (iii) interacting with the private sector on the issues de-  
2 scribed in clauses (i) and (ii).

3 (C) The Under Secretary for Science and Technology, based on  
4 consideration of the expertise of the Under Secretary in, and re-  
5 sponsibilities associated with, standards.

6 (3) COORDINATION.—In carrying out the accreditation and certifi-  
7 cation program under this section, the designated officer shall coordi-  
8 nate with—

9 (A) the other officers of the Department referred to in para-  
10 graph (2), using the expertise and responsibilities of the officers;  
11 and

12 (B) the Special Assistant to the Secretary for the private-sector,  
13 based on consideration of the expertise of the Special Assistant in,  
14 and responsibilities for, interacting with the private-sector.

15 (b) VOLUNTARY PRIVATE SECTOR PREPAREDNESS STANDARDS; VOL-  
16 UNTARY ACCREDITATION AND CERTIFICATION PROGRAM FOR THE PRIVATE  
17 SECTOR.—

18 (1) ACCREDITATION AND CERTIFICATION PROGRAM.—The designated  
19 officer shall—

20 (A) begin supporting the development and updating, as nec-  
21 essary, of voluntary preparedness standards through appropriate  
22 organizations that coordinate or facilitate the development and use  
23 of voluntary consensus standards and voluntary consensus stand-  
24 ards development organizations; and

25 (B) in consultation with representatives of appropriate organiza-  
26 tions that coordinate or facilitate the development and use of vol-  
27 untary consensus standards, appropriate voluntary consensus  
28 standards development organizations, each private sector advisory  
29 council created under section 10322(4) of this title, appropriate  
30 representatives of State and local governments, including emer-  
31 gency management officials, and appropriate private-sector advi-  
32 sory groups, such as sector coordinating councils and information  
33 sharing and analysis centers—

34 (i) develop and promote a program to certify the prepared-  
35 ness of private-sector entities that voluntarily choose to seek  
36 certification under the program; and

37 (ii) implement the program under this subsection through  
38 an entity with which the designated officer enters into an  
39 agreement under paragraph (3)(A), which shall accredit third  
40 parties to carry out the certification process under this sec-  
41 tion.

1 (2) PROGRAM ELEMENTS.—

2 (A) IN GENERAL.—

3 (i) The program developed and implemented under this  
4 subsection shall assess whether a private-sector entity com-  
5 plies with voluntary preparedness standards.

6 (ii) In developing the program under this subsection, the  
7 designated officer shall develop guidelines for the accredita-  
8 tion and certification processes established under this sub-  
9 section.

10 (B) STANDARDS.—The designated officer, in consultation with  
11 representatives of appropriate organizations that coordinate or fa-  
12 cilitate the development and use of voluntary consensus standards,  
13 representatives of appropriate voluntary consensus standards de-  
14 velopment organizations, each private-sector advisory council cre-  
15 ated under section 10322(4) of this title, appropriate representa-  
16 tives of State and local governments, including emergency manage-  
17 ment officials, and appropriate private-sector advisory groups such  
18 as sector coordinating councils and information sharing and analy-  
19 sis centers—

20 (i) shall adopt one or more appropriate voluntary prepared-  
21 ness standards that promote preparedness, which may be tai-  
22 lored to address the unique nature of various sectors within  
23 the private sector, as necessary and appropriate, that shall be  
24 used in the accreditation and certification program under this  
25 subsection; and

26 (ii) after the adoption of one or more standards under  
27 clause (i), may adopt additional voluntary preparedness  
28 standards or modify or discontinue the use of voluntary pre-  
29 paredness standards for the accreditation and certification  
30 program, as necessary and appropriate to promote prepared-  
31 ness.

32 (C) SUBMISSION OF RECOMMENDATIONS.—In adopting one or  
33 more standards under subparagraph (B), the designated officer  
34 may receive recommendations from an entity described in that  
35 subparagraph relating to appropriate voluntary preparedness  
36 standards, including appropriate sector specific standards, for  
37 adoption in the program.

38 (D) SMALL BUSINESS CONCERNS.—The designated officer and  
39 an entity with which the designated officer enters into an agree-  
40 ment under paragraph (3)(A) shall establish separate classifica-  
41 tions and methods of certification for small business concerns

1 (under the meaning given that term in section 3 of the Small  
2 Business Act (15 U.S.C. 632)) for the program under this sub-  
3 section.

4 (E) CONSIDERATIONS.—In developing and implementing the  
5 program under this subsection, the designated officer shall—

6 (i) consider the unique nature of various sectors within the  
7 private sector, including preparedness standards, business  
8 continuity standards, or best practices, established

9 (I) under any other provision of Federal law; or

10 (II) by a sector-specific agency, as defined under  
11 Homeland Security Presidential Directive 7; and

12 (ii) coordinate the program, as appropriate, with—

13 (I) other Department private-sector-related programs;  
14 and

15 (II) preparedness and business continuity programs in  
16 other Federal agencies.

17 (3) ACCREDITATION AND CERTIFICATION PROCESSES.—

18 (A) AGREEMENT.—

19 (i) The designated officer shall enter into one or more  
20 agreements with a highly qualified nongovernmental entity  
21 with experience or expertise in coordinating and facilitating  
22 the development and use of voluntary consensus standards  
23 and in managing or implementing accreditation and certifi-  
24 cation programs for voluntary consensus standards, or a simi-  
25 larly qualified private-sector entity, to carry out accreditations  
26 and oversee the certification process under this subsection. An  
27 entity entering into an agreement with the designated officer  
28 under this clause (in this section referred to as a “selected  
29 entity”) shall not perform certifications under this subsection.

30 (ii) A selected entity shall manage the accreditation process  
31 and oversee the certification process in accordance with the  
32 program established under this subsection and accredit quali-  
33 fied third parties to carry out the certification program estab-  
34 lished under this subsection.

35 (B) PROCEDURES AND REQUIREMENTS FOR ACCREDITATION  
36 AND CERTIFICATION.—

37 (i) A selected entity shall collaborate to develop procedures  
38 and requirements for the accreditation and certification proc-  
39 esses under this subsection, in accordance with the program  
40 established under this subsection and guidelines developed  
41 under paragraph (2)(A)(ii).



1 (ii) The procedures and requirements developed under  
2 clause (i) shall—

3 (I) ensure reasonable uniformity in accreditation and  
4 certification processes if there is more than one selected  
5 entity; and

6 (II) be used by a selected entity in conducting accredi-  
7 tations and overseeing the certification process under  
8 this subsection.

9 (iii) A disagreement among selected entities in developing  
10 procedures under clause (i) shall be resolved by the des-  
11 ignated officer.

12 (C) DESIGNATION.—A selected entity may accredit a qualified  
13 third party to carry out the certification process under this sub-  
14 section.

15 (D) DISADVANTAGED BUSINESS INVOLVEMENT.—In accrediting  
16 qualified third parties to carry out the certification process under  
17 this subsection, a selected entity shall ensure, to the extent prac-  
18 ticable, that the third parties include qualified small, minority,  
19 women-owned, or disadvantaged business concerns when appro-  
20 priate. The term “disadvantaged business concern” means a small  
21 business that is owned and controlled by socially and economically  
22 disadvantaged individuals, as defined in section 124 of title 13,  
23 Code of Federal Regulations.

24 (E) TREATMENT OF OTHER CERTIFICATIONS.—At the request  
25 of an entity seeking certification, a selected entity may consider,  
26 as appropriate, other relevant certifications acquired by the entity  
27 seeking certification. If the selected entity determines that the  
28 other certifications are sufficient to meet the certification require-  
29 ment or aspects of the certification requirement under this section,  
30 the selected entity may give credit to the entity seeking certifi-  
31 cation, as appropriate, to avoid unnecessarily duplicative certifi-  
32 cation requirements.

33 (F) THIRD PARTIES.—To be accredited under subparagraph  
34 (C), a third party shall—

35 (i) demonstrate that the third party has the ability to cer-  
36 tify private-sector entities in accordance with the procedures  
37 and requirements developed subparagraph (B);

38 (ii) agree to perform certifications in accordance with the  
39 procedures and requirements;

40 (iii) agree not to have a beneficial interest in or direct or  
41 indirect control over—

1 (I) a private-sector entity for which that third party  
2 conducts a certification under this subsection; or

3 (II) an organization that provides preparedness con-  
4 sulting services to private-sector entities;

5 (iv) agree not to have any other conflict of interest with re-  
6 spect to a private-sector entity for which the third party con-  
7 ducts a certification under this subsection;

8 (v) maintain liability insurance coverage at policy limits in  
9 accordance with the requirements developed under subpara-  
10 graph (B); and

11 (vi) enter into an agreement with the selected entity ac-  
12 crediting that third party to protect proprietary information  
13 of a private-sector entity obtained under this subsection.

14 (G) MONITORING.—

15 (i) The designated officer and an selected entity shall regu-  
16 larly monitor and inspect the operations of a third party con-  
17 ducting certifications under this subsection to ensure that the  
18 third party is complying with the procedures and require-  
19 ments established under subparagraph (B) and all other ap-  
20 plicable requirements.

21 (ii) If the designated officer or a selected entity determines  
22 that a third party is not meeting the procedures or require-  
23 ments established under subparagraph (B), the selected entity  
24 shall—

25 (I) revoke the accreditation of that third party to con-  
26 duct certifications under this subsection; and

27 (II) review the certification conducted by that third  
28 party, as necessary and appropriate.

29 (4) ANNUAL REVIEW.—

30 (A) IN GENERAL.—The designated officer, in consultation with  
31 representatives of appropriate organizations that coordinate or fa-  
32 cilitate the development and use of voluntary consensus standards,  
33 appropriate voluntary consensus standards development organiza-  
34 tions, appropriate representatives of State and local governments,  
35 including emergency management officials, and each private-sector  
36 advisory council created under section 10322(4) of this title, shall  
37 annually review the voluntary accreditation and certification pro-  
38 gram established under this subsection to ensure the effectiveness  
39 of the program (including the operations and management of the  
40 program by a selected entity and the selected entity's inclusion of  
41 qualified disadvantaged business concerns under paragraph

1 (3)(D)) and make improvements and adjustments to the program  
2 as necessary and appropriate.

3 (B) Review of standards.—Each review under subparagraph (A)  
4 shall include an assessment of the voluntary preparedness stand-  
5 ard or standards used in the program under this subsection.

6 (5) **Voluntary participation.**—Certification under this sub-  
7 section shall be voluntary for a private-sector entity.

8 (6) **Public listing.**—The designated officer shall maintain and  
9 make public a listing of any private-sector entity certified as being in  
10 compliance with the program established under this subsection, if that  
11 private-sector entity consents to the listing.

12 (c) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed  
13 as—

14 (1) a requirement to replace preparedness, emergency response, or  
15 business continuity standards, requirements, or best practices estab-  
16 lished

17 (A) under any other provision of federal law; or

18 (B) by a sector-specific agency, as those agencies are defined  
19 under Homeland Security Presidential Directive 7; or

20 (2) exempting a private-sector entity seeking certification or meeting  
21 certification requirements under subsection (b) from compliance with  
22 all applicable statutes, regulations, directives, policies, and industry  
23 codes of practice.

#### 24 **§ 11122. Acceptance of gifts**

25 (a) **AUTHORITY.**—The Secretary may accept and use gifts of property,  
26 both real and personal, and may accept gifts of services, including from  
27 guest lecturers, for otherwise authorized activities of the Center for Domes-  
28 tic Preparedness that are related to efforts to prevent, prepare for, protect  
29 against, or respond to a natural disaster, act of terrorism, or other man-  
30 made disaster, including the use of a weapon of mass destruction.

31 (b) **PROHIBITION.**—The Secretary may not accept a gift under this sec-  
32 tion if the Secretary determines that the use of the property or services  
33 would compromise the integrity or appearance of integrity of—

34 (1) a program of the Department; or

35 (2) an individual involved in a program of the Department.

36 (c) **REPORT.**—

37 (1) **IN GENERAL.**—The Secretary shall submit to the Committee on  
38 Homeland Security of the House of Representatives and the Committee  
39 on Homeland Security and Governmental Affairs of the Senate an an-  
40 nual report disclosing

1 (A) gifts that were accepted under this section during the year  
2 covered by the report;

3 (B) how the gifts contribute to the mission of the Center for  
4 Domestic Preparedness; and

5 (C) the amount of Federal savings that were generated from the  
6 acceptance of the gifts.

7 (2) PUBLICATION.—Each report required under paragraph (1) shall  
8 be made publicly available.

9 **Chapter 113 —Transportation Security Administration**

Sec.

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10 **§ 11301. Functions**

11 (a) FUNCTIONS.—The Secretary, acting through the Administrator of the  
12 Transportation Security Administration (in this chapter referred to as the  
13 “Administrator”), is responsible for security in all modes of transportation,  
14 including

15 (1) carrying out chapter 409 of this title relating to civil aviation se-  
16 curity, and related research and development activities; and

17 (2) security responsibilities over other modes of transportation that  
18 were exercised by the Department of Transportation prior to March 1,  
19 2003.

20 (b) SCREENING OPERATIONS.—The Secretary shall—

21 (1) be responsible for day-to-day Federal security screening oper-  
22 ations for passenger air transportation and intrastate air transpor-  
23 tation under sections 40911 and 40953 of this title;

24 (2) develop standards for the hiring and retention of security screen-  
25 ing personnel;

26 (3) train and test security screening personnel; and

27 (4) be responsible for hiring and training personnel to provide secu-  
28 rity screening at all airports in the United States where screening is

1 required under section 40911 of this title, in consultation with the Sec-  
2 retary of Transportation and the heads of other appropriate Federal  
3 agencies and departments.

4 (c) ADDITIONAL DUTIES AND POWERS.—In addition to carrying out the  
5 functions specified in subsections (a) and (b), the Secretary shall—

6 (1) receive, assess, and distribute intelligence information related to  
7 transportation security;

8 (2) assess threats to transportation;

9 (3) develop policies, strategies, and plans for dealing with threats to  
10 transportation security;

11 (4) make other plans related to transportation security, including co-  
12 ordinating countermeasures with appropriate departments, agencies,  
13 and instrumentalities of the United States Government;

14 (5) serve as the primary liaison for transportation security to the in-  
15 telligence and law enforcement communities;

16 (6) on a day-to-day basis, manage and provide operational guidance  
17 to the field security resources of the Administration, including Federal  
18 Security Managers as provided by section 40951 of this title;

19 (7) enforce security-related regulations and requirements;

20 (8) identify and undertake research and development activities nec-  
21 essary to enhance transportation security;

22 (9) inspect, maintain, and test security facilities, equipment, and sys-  
23 tems;

24 (10) ensure the adequacy of security measures for the transportation  
25 of cargo;

26 (11) oversee the implementation, and ensure the adequacy, of secu-  
27 rity measures at airports and other transportation facilities;

28 (12) require background checks for airport security screening person-  
29 nel, individuals with access to secure areas of airports, and other trans-  
30 portation security personnel;

31 (13) work in conjunction with the Administrator of the Federal Avia-  
32 tion Administration with respect to actions or activities that may affect  
33 aviation safety or air carrier operations;

34 (14) work with the International Civil Aviation Organization and ap-  
35 propriate aeronautic authorities of foreign governments under section  
36 40917 of this title, to address security concerns on passenger flights  
37 by foreign air carriers in foreign air transportation; and

38 (15) carry out other duties, and exercise other powers, relating to  
39 transportation security the Secretary considers appropriate, to the ex-  
40 tent authorized by law.

1     **§ 11302. National emergency responsibilities**

2           (a) IN GENERAL.—Subject to the direction and control of the Secretary,  
3 the Administrator, during a national emergency, has the following respon-  
4 sibilities:

5           (1) To coordinate domestic transportation, including aviation, rail,  
6 and other surface transportation, and maritime transportation (includ-  
7 ing port security).

8           (2) To coordinate and oversee the transportation-related responsibil-  
9 ities of other departments and agencies of the Federal Government  
10 other than the Department of Defense and the military departments.

11           (3) To coordinate and provide notice to other departments and agen-  
12 cies of the Federal Government, and appropriate agencies of State and  
13 local governments, including departments and agencies for transpor-  
14 tation, law enforcement, and border control, about threats to transpor-  
15 tation.

16           (4) To carry out other duties, and exercise other powers, relating to  
17 transportation during a national emergency the Secretary shall pre-  
18 scribe.

19           (b) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The author-  
20 ity of the Secretary under this subsection shall not supersede the authority  
21 of another department or agency of the Federal Government under law with  
22 respect to transportation or transportation-related matters, whether or not  
23 during a national emergency.

24           (c) CIRCUMSTANCES.—The Secretary shall prescribe the circumstances  
25 constituting a national emergency for purposes of this section.

26     **§ 11303. Management of security information**

27           In consultation with the Transportation Security Oversight Board, the  
28 Secretary, acting through the Administrator, shall—

29           (1) enter into memoranda of understanding with Federal agencies or  
30 other entities to share or otherwise cross-check as necessary data on  
31 individuals identified on Federal agency databases who may pose a risk  
32 to transportation or national security;

33           (2) establish procedures for notifying the Administrator of the Fed-  
34 eral Aviation Administration, appropriate State and local law enforce-  
35 ment officials, and airport or airline security officers of the identity of  
36 individuals known to pose, or suspected of posing, a risk of air piracy  
37 or terrorism or a threat to airline or passenger safety;

38           (3) in consultation with other appropriate Federal agencies and air  
39 carriers, establish policies and procedures requiring air carriers—

1 (A) to use information from government agencies to identify in-  
2 dividuals on passenger lists who may be a threat to civil aviation  
3 or national security; and

4 (B) if such an individual is identified, notify appropriate law en-  
5 forcement agencies, prevent the individual from boarding an air-  
6 craft, or take other appropriate action with respect to that individ-  
7 ual; and

8 (4) consider requiring passenger air carriers to share passenger lists  
9 with appropriate Federal agencies for the purpose of identifying indi-  
10 viduals who may pose a threat to aviation safety or national security.

#### 11 **§ 11304 View of National Transportation Safety Board**

12 In taking an action under this section that could affect safety, the Sec-  
13 retary, acting through the Administrator, shall give great weight to the  
14 timely views of the National Transportation Safety Board.

#### 15 **§ 11305. Acquisitions**

16 (a) IN GENERAL.—The Secretary, acting through the Administrator,  
17 may—

18 (1) acquire (by purchase, lease, condemnation, or otherwise) real  
19 property, or an interest therein, within and outside the continental  
20 United States, the Secretary considers necessary;

21 (2) acquire (by purchase, lease, condemnation, or otherwise) and to  
22 construct, repair, operate, and maintain personal property (including  
23 office space and patents), or an interest therein, within and outside the  
24 continental United States, the Secretary considers necessary;

25 (3) lease to others the real and personal property and to provide by  
26 contract or otherwise for necessary facilities for the welfare of its em-  
27 ployees and to acquire, maintain, and operate equipment for these fa-  
28 cilities;

29 (4) acquire services, including personal services the Secretary deter-  
30 mines necessary, and to acquire (by purchase, lease, condemnation, or  
31 otherwise) and to construct, repair, operate, and maintain research and  
32 testing sites and facilities; and

33 (5) in cooperation with the Administrator of the Federal Aviation  
34 Administration, utilize the research and development facilities of the  
35 Federal Aviation Administration.

36 (b) TITLE.—Title to property or an interest in property acquired under  
37 this subsection shall be held by the Government of the United States.

38 (c) CHARGE FOR LEASE OF REAL AND PERSONAL PROPERTY.—Notwith-  
39 standing section 3302 of title 31, the Secretary may impose a reasonable  
40 charge for the lease of real and personal property to Transportation Secu-  
41 rity Administration employees and for use by Transportation Security Ad-

1     ministration employees and may credit amounts received to the appropria-  
2     tion or fund initially charged for operating and maintaining the property.  
3     The amounts are available, without fiscal year limitation, for expenditure for  
4     property management, operation, protection, construction, repair, alteration,  
5     and related activities.

6     **§ 11306 Transfers of funds**

7     The Secretary, acting through the Administrator, may accept transfers of  
8     unobligated balances and unexpended balances of funds appropriated to  
9     other Federal agencies (as the term is defined in section 551(1) of title 5)  
10    to carry out functions transferred, on or after November 19, 2001, by law  
11    to the Secretary.

12    **§ 11307. Regulations**

13    (a) IN GENERAL.—The Secretary, acting through the Administrator, may  
14    issue, rescind, and revise regulations as necessary to carry out the functions  
15    of the Administration.

16    (b) EMERGENCY PROCEDURES.—

17        (1) IN GENERAL.—Notwithstanding any other provision of law or ex-  
18        ecutive order (including an executive order requiring a cost-benefit  
19        analysis), if the Secretary determines that a regulation or security di-  
20        rective must be issued immediately in order to protect transportation  
21        security, the Secretary shall issue the regulation or security directive  
22        without providing notice or an opportunity for comment.

23        (2) Review by transportation security oversight board.—A regulation  
24        or security directive issued under this subsection shall be subject to re-  
25        view by the Transportation Security Oversight Board established under  
26        section 10321 of this title. A regulation or security directive issued  
27        under this subsection shall remain effective for a period not to exceed  
28        90 days unless ratified or disapproved by the Board or rescinded by  
29        the Secretary.

30    (c) FACTORS TO CONSIDER.—In determining whether to issue, rescind,  
31    or revise a regulation under this chapter, the Secretary shall consider, as  
32    a factor in the final determination, whether the costs of the regulation are  
33    excessive in relation to the enhancement of security the regulation will pro-  
34    vide. The Secretary may waive requirements for an analysis that estimates  
35    the number of lives that will be saved by the regulation and the monetary  
36    value of lives if the Secretary determines that it is not feasible to make an  
37    estimate.

38    (d) AIRWORTHINESS OBJECTIONS BY FEDERAL AVIATION ADMINISTRA-  
39    TION.—

40        (1) IN GENERAL.—The Secretary shall not take an aviation security  
41        action under this title if the Administrator of the Federal Aviation Ad-



1           ministration notifies the Secretary that the action could adversely af-  
2           fect the airworthiness of an aircraft.

3           (2) REVIEW BY SECRETARY.—Notwithstanding paragraph (1), the  
4           Secretary may take such an action, after receiving a notification con-  
5           cerning the action from the Administrator of the Federal Aviation Ad-  
6           ministration under paragraph (1), if the Secretary subsequently ap-  
7           proves the action.

#### 8           **§ 11308. Personnel and services**

9           (a) AUTHORITY OF SECRETARY.—In carrying out the functions of the  
10          Administration, the Secretary, acting through the Administrator, has the  
11          same authority as is provided to the Administrator of the Federal Aviation  
12          Administration under subsections (l) and (m) of section 106 of title 49.

13          (b) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall  
14          have the same authority to provide services, supplies, equipment, personnel,  
15          and facilities to the Secretary as the head has to provide services, supplies,  
16          equipment, personnel, and facilities to the Administrator of the Federal  
17          Aviation Administration under section 106(m) of title 49.

#### 18          **§ 11309. Personnel management system**

19          (a) IN GENERAL.THE PERSONNEL MANAGEMENT SYSTEM ESTABLISHED  
20          BY THE ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION  
21          UNDER SECTION 40122 OF TITLE 49 APPLIES TO EMPLOYEES OF THE  
22          TRANSPORTATION SECURITY ADMINISTRATION

23          (b) MODIFICATIONS.SUBJECT TO THE REQUIREMENTS OF SECTION 40122  
24          OF TITLE 49, THE SECRETARY, ACTING THROUGH THE ADMINISTRATOR,  
25          MAY MAKE MODIFICATIONS TO THE PERSONNEL MANAGEMENT SYSTEM  
26          WITH RESPECT TO SUCH EMPLOYEES AS THE SECRETARY CONSIDERS AP-  
27          PROPRIATE, SUCH AS ADOPTING ASPECTS OF OTHER PERSONNEL SYSTEMS  
28          OF THE DEPARTMENT OF TRANSPORTATION.

#### 29          **§ 11310. Authority of Inspector General**

30          The Transportation Security Administration is subject to the Inspector  
31          General Act of 1978 (5 U.S.C. App.) and other laws relating to the author-  
32          ity of the Inspector General of the Department.

#### 33          **§ 11311. Law enforcement powers**

34          (a) IN GENERAL.—The Secretary, acting through the Administrator, may  
35          designate an employee of the Transportation Security Administration or  
36          other Federal agency to serve as a law enforcement officer.

37          (b) POWERS.—While engaged in official duties of the Administration as  
38          required to fulfill the responsibilities under this section, a law enforcement  
39          officer designated under paragraph (1) may—

40                 (1) carry a firearm;

1           (2) make an arrest without a warrant for any offense against the  
2           United States committed in the presence of the officer, or for any fel-  
3           ony cognizable under the laws of the United States if the officer has  
4           probable cause to believe that the person to be arrested has committed  
5           or is committing the felony; and

6           (3) seek and execute warrants for arrest or seizure of evidence issued  
7           under the authority of the United States upon probable cause that a  
8           violation has been committed.

9           (e) **GUIDELINES ON EXERCISE OF AUTHORITY.**—The authority provided  
10          by this section shall be exercised in accordance with guidelines prescribed  
11          by the Secretary, in consultation with the Attorney General of the United  
12          States, and shall include adherence to the Attorney General’s policy on use  
13          of deadly force.

14          (d) **REVOCAION OR SUSPENSION OF AUTHORITY.**—The powers author-  
15          ized by this section may be rescinded or suspended should the Attorney  
16          General determine that the Secretary has not complied with the guidelines  
17          prescribed in paragraph (3) and conveys the determination in writing to the  
18          Secretary.

19          **§ 11312. Authority to exempt**

20          The Secretary, acting through the Administrator, may grant an exemp-  
21          tion from a regulation prescribed in carrying out this chapter if the Sec-  
22          retary determines that the exemption is in the public interest.

23          **§ 11313. Nondisclosure of security activities**

24          (a) **IN GENERAL.**—Notwithstanding section 552 of title 5, the Secretary,  
25          acting through the Administrator, shall prescribe regulations prohibiting the  
26          disclosure of information obtained or developed in carrying out security  
27          under authority of chapter 409 of this title or the Aviation and Transporta-  
28          tion Security Act (Public Law 107–71, 115 Stat. 597) if the Secretary  
29          decides that disclosing the information would—

30                  (1) be an unwarranted invasion of personal privacy;

31                  (2) reveal a trade secret or privileged or confidential commercial or  
32                  financial information; or

33                  (3) be detrimental to the security of transportation.

34          (b) **AVAILABILITY OF INFORMATION TO CONGRESS.**—Subsection (a) does  
35          not authorize information to be withheld from a committee of Congress au-  
36          thorized to have the information.

37          (c) **LIMITATION ON TRANSFERABILITY OF DUTIES.**—Except as otherwise  
38          provided by law, the Secretary may not transfer a duty or power under this  
39          section to another department, agency, or instrumentality of the United  
40          States.

1 (d) LIMITATIONS.—Nothing in this section, or any other provision of law,  
2 shall be construed to authorize the designation of information as sensitive  
3 security information (as defined in section 1520.5 of title 49, Code of Fed-  
4 eral Regulations)—

- 5 (1) to conceal a violation of law, inefficiency, or administrative error;
- 6 (2) to prevent embarrassment to a person, organization, or agency;
- 7 (3) to restrain competition; or
- 8 (4) to prevent or delay the release of information that does not re-  
9 quire protection in the interest of transportation security, including  
10 basic scientific research information not clearly related to transpor-  
11 tation security.

12 **§ 11314. Transportation security strategic planning**

13 (a) IN GENERAL.—The Secretary shall develop, prepare, implement, and  
14 update, as needed—

- 15 (1) a National Strategy for Transportation Security; and
- 16 (2) transportation modal security plans addressing security risks, in-  
17 cluding threats, vulnerabilities, and consequences, for aviation, railroad,  
18 ferry, highway, maritime, pipeline, public transportation, over-the-road  
19 bus, and other transportation infrastructure assets.

20 (b) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary shall  
21 work jointly with the Secretary of Transportation in developing, revising,  
22 and updating the documents required by paragraph (1).

23 (c) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECU-  
24 RITY.—The National Strategy for Transportation Security shall include the  
25 following:

26 (1) An identification and evaluation of the transportation assets in  
27 the United States that, in the interests of national security and com-  
28 merce, must be protected from attack or disruption by terrorist or  
29 other hostile forces, including modal security plans for aviation, bridge  
30 and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail,  
31 mass transit, over-the-road bus, and other public transportation infra-  
32 structure assets that could be at risk of attack or disruption.

33 (2) The development of risk-based priorities, based on risk assess-  
34 ments conducted or received by the Secretary (including assessments  
35 conducted under the Implementing Recommendations of the 9/11 Com-  
36 mission Act of 2007 (Public Law 110–53, 121 Stat. 266)), across all  
37 transportation modes and realistic deadlines for addressing security  
38 needs associated with those assets referred to in paragraph (1).

39 (3) The most appropriate, practical, and cost-effective means of de-  
40 fending those assets against threats to their security.

1 (4) A forward-looking strategic plan that sets forth the agreed upon  
2 roles and missions of Federal, State, regional, local, and tribal authori-  
3 ties and establishes mechanisms for encouraging cooperation and par-  
4 ticipation by private sector entities, including nonprofit employee labor  
5 organizations, in the implementation of the plan.

6 (5) A comprehensive delineation of prevention, response, and recov-  
7 ery responsibilities and issues regarding threatened and executed acts  
8 of terrorism within the United States and threatened and executed acts  
9 of terrorism outside the United States to the extent the acts affect  
10 United States transportation systems.

11 (6) A prioritization of research and development objectives that sup-  
12 port transportation security needs, giving a higher priority to research  
13 and development directed toward protecting vital transportation assets.  
14 Transportation security research and development projects shall be  
15 based, to the extent practicable, on the prioritization. Nothing in the  
16 preceding sentence shall be construed to require the termination of a  
17 research or development project initiated by the Secretary of Homeland  
18 Security or the Secretary of Transportation before August 3, 2007.

19 (7) A 3- and 10-year budget for Federal transportation security pro-  
20 grams that will achieve the priorities of the National Strategy for  
21 Transportation Security.

22 (8) Methods for linking the individual transportation modal security  
23 plans and the programs contained therein, and a plan for addressing  
24 the security needs of intermodal transportation.

25 (9) Transportation modal security plans described in subsection  
26 (a)(2), including operational recovery plans to expedite, to the maxi-  
27 mum extent practicable, the return to operation of an adversely af-  
28 fected transportation system following a major terrorist attack on that  
29 system or other incident. These plans shall be coordinated with the re-  
30 sumption of trade protocols required under section 30502 of this title  
31 and the National Maritime Transportation Security Plan required  
32 under section 70103(a) of title 46.

33 (d) SUBMISSIONS OF PLANS TO CONGRESS.—

34 (1) DEFINITION.—In this subsection, the term “appropriate congres-  
35 sional committees” means the Committee on Transportation and Infra-  
36 structure and the Committee on Homeland Security of the House of  
37 Representatives and the Committee on Commerce, Science, and Trans-  
38 portation, the Committee on Homeland Security and Governmental Af-  
39 fairs, and the Committee on Banking, Housing, and Urban Affairs of  
40 the Senate.

1           (2) BIENNIAL STRATEGY REPORT.—The Secretary shall submit the  
2 National Strategy for Transportation Security, including the transpor-  
3 tation modal security plans and any revisions to the National Strategy  
4 for Transportation Security and the transportation modal security  
5 plans, to appropriate congressional committees not less frequently than  
6 April 1 of each even-numbered year.

7           (3) PERIODIC PROGRESS REPORT.—

8           (A) REQUIREMENT FOR REPORT.—Each year, in conjunction  
9 with the submission of the budget to Congress under section  
10 1105(a) of title 31, the Secretary shall submit to the appropriate  
11 congressional committees an assessment of the progress made on  
12 implementing the National Strategy for Transportation Security,  
13 including the transportation modal security plans.

14           (B) CONTENT.—Each progress report submitted under this  
15 paragraph shall include, at a minimum, the following:

16           (i) Recommendations for improving and implementing the  
17 National Strategy for Transportation Security and the trans-  
18 portation modal and intermodal security plans that the Sec-  
19 retary of Homeland Security, in consultation with the Sec-  
20 retary of Transportation, considers appropriate.

21           (ii) An accounting of all grants for transportation security,  
22 including grants and contracts for research and development,  
23 awarded by the Secretary in the most recent fiscal year and  
24 a description of how the grants accomplished the goals of the  
25 National Strategy for Transportation Security.

26           (iii) An accounting of all—

27           (I) funds requested in the President's budget submit-  
28 ted pursuant to section 1105 of title 31 for the most re-  
29 cent fiscal year for transportation security, by mode;

30           (II) personnel working on transportation security by  
31 mode, including the number of contractors; and

32           (III) information on the turnover in the previous year  
33 among senior staff of the Department, including compo-  
34 nent agencies, working on transportation security issues.  
35 The information shall include the number of employees  
36 who have permanently left the office, agency, or area in  
37 which they worked, and the amount of time that they  
38 worked for the Department.

39           (C) WRITTEN EXPLANATION OF TRANSPORTATION SECURITY  
40 ACTIVITIES NOT DELINEATED IN THE NATIONAL STRATEGY FOR  
41 TRANSPORTATION SECURITY.—At the end of each fiscal year, the

1 Secretary shall submit to the appropriate congressional committees  
2 a written explanation of a Federal transportation security activity  
3 that is inconsistent with the National Strategy for Transportation  
4 Security, including the amount of funds to be expended for the ac-  
5 tivity and the number of personnel involved.

6 (4) CLASSIFIED MATERIAL.—Any part of the National Strategy for  
7 Transportation Security or the transportation modal security plans that  
8 involve information that is properly classified under criteria established  
9 by Executive order shall be submitted to the appropriate congressional  
10 committees separately in a classified format.

11 (e) PRIORITY STATUS.—

12 (1) IN GENERAL.—The National Strategy for Transportation Secu-  
13 rity shall be the governing document for Federal transportation secu-  
14 rity efforts.

15 (2) OTHER PLANS AND REPORTS.—The National Strategy for Trans-  
16 portation Security shall include, as an integral part or as an appendix

17 (A) the current National Maritime Transportation Security Plan  
18 under section 70103 of title 46;

19 (B) the report required by section 40956 of this title;

20 (C) transportation modal security plans required under this  
21 chapter;

22 (D) the transportation sector specific plan required under  
23 Homeland Security Presidential Directive 7; and

24 (E) another transportation security plan or report that the Sec-  
25 retary determines appropriate for inclusion.

26 (f) COORDINATION.—In carrying out the responsibilities under this sec-  
27 tion, the Secretary, in coordination with the Secretary of Transportation,  
28 shall consult, as appropriate, with Federal, State, and local agencies, tribal  
29 governments, private sector entities (including nonprofit employee labor or-  
30 ganizations), institutions of higher learning, and other entities.

31 (g) PLAN DISTRIBUTION.—The Secretary shall make available and appro-  
32 priately publicize an unclassified version of the National Strategy for Trans-  
33 portation Security, including its component transportation modal security  
34 plans, to Federal, State, regional, local and tribal authorities, transportation  
35 system owners or operators, private sector stakeholders, including nonprofit  
36 employee labor organizations representing transportation employees, institu-  
37 tions of higher learning, and other appropriate entities.

38 **§ 11315. Transportation Security Information Sharing Plan**

39 (a) DEFINITIONS.—In this section:

1 (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appro-  
2 priate congressional committees” has the meaning given that term in  
3 section 11314 of this title.

4 (2) PLAN.—The term “Plan” means the Transportation Security In-  
5 formation Sharing Plan established under subsection (b).

6 (3) PUBLIC AND PRIVATE STAKEHOLDERS.—The term “public and  
7 private stakeholders” means Federal, State, and local agencies, tribal  
8 governments, and appropriate private entities, including nonprofit em-  
9 ployee labor organizations representing transportation employees.

10 (4) TRANSPORTATION SECURITY INFORMATION.—The term “trans-  
11 portation security information” means information relating to the risks  
12 to transportation modes, including aviation, public transportation, rail-  
13 road, ferry, highway, maritime, pipeline, and over-the-road bus trans-  
14 portation, and may include specific and general intelligence products,  
15 as appropriate.

16 (b) ESTABLISHMENT OF PLAN.—The Secretary, acting through the Ad-  
17 ministrator and in consultation with the program manager of the informa-  
18 tion sharing environment established under section 11707 of this title, the  
19 Secretary of Transportation, and public and private stakeholders, shall es-  
20 tablish a Transportation Security Information Sharing Plan. In establishing  
21 the Plan, the Secretary shall gather input on the development of the Plan  
22 from private and public stakeholders and the program manager of the infor-  
23 mation sharing environment established under section 11707 of this title.

24 (c) PURPOSE OF PLAN.—The Plan shall promote sharing of transpor-  
25 tation security information between the Department of Homeland Security  
26 and public and private stakeholders.

27 (d) CONTENT OF PLAN.—The Plan shall include—

28 (1) a description of how intelligence analysts within the Department  
29 will coordinate their activities and with other Federal, State, and local  
30 agencies, and tribal governments, including coordination with existing  
31 modal information sharing centers and the center described in section  
32 40507 of this title;

33 (2) the establishment of a point of contact, which may be a single  
34 point of contact within the Department, for each mode of transpor-  
35 tation for the sharing of transportation security information with public  
36 and private stakeholders, including an explanation and justification to  
37 the appropriate congressional committees if the point of contact estab-  
38 lished under this paragraph differs from the agency within the Depart-  
39 ment that has the primary authority, or has been delegated the author-  
40 ity by the Secretary, to regulate the security of that transportation  
41 mode;

1 (3) a reasonable deadline by which the Plan will be implemented; and

2 (4) a description of resource needs for fulfilling the Plan.

3 (e) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—

4 (1) implemented in coordination, as appropriate, with the program  
5 manager for the information sharing environment established under  
6 section 11707 of this title; and

7 (2) consistent with the establishment of the information sharing en-  
8 vironment and policies, guidelines, procedures, instructions, or stand-  
9 ards established by the President or the program manager for the im-  
10 plementation and management of the information sharing environment.

11 (f) REPORTS TO CONGRESS.—The Secretary shall, not later than Decem-  
12 ber 31 each year, submit to the appropriate congressional committees, a re-  
13 port containing the Plan.

14 (g) COMPTROLLER GENERAL SURVEY AND REPORT.—

15 (1) BIENNIAL SURVEY.—

16 (A) IN GENERAL.—The Comptroller General shall conduct a bi-  
17 ennial survey of the satisfaction of recipients of transportation in-  
18 telligence reports disseminated under the Plan.

19 (B) INFORMATION SOUGHT.—The survey conducted under sub-  
20 paragraph (A) shall seek information about the quality, speed, reg-  
21 ularity, and classification of the transportation security informa-  
22 tion products disseminated by the Department of Homeland Secu-  
23 rity to public and private stakeholders.

24 (2) REPORT.—The Comptroller General shall, each even-numbered  
25 year, submit to the appropriate congressional committees, a report on  
26 the results of the survey conducted under paragraph (1). The Comp-  
27 troller General shall also provide a copy of the report to the Secretary.

28 (h) SECURITY CLEARANCES.—The Secretary shall, to the greatest extent  
29 practicable, take steps to expedite the security clearances needed for des-  
30 ignated public and private stakeholders to receive and obtain access to clas-  
31 sified information distributed under this section, as appropriate.

32 (i) CLASSIFICATION OF MATERIAL.—The Secretary, to the greatest extent  
33 practicable, shall provide designated public and private stakeholders with  
34 transportation security information in an unclassified format.

35 (j) STAKEHOLDER SEMIANNUAL REPORT.—

36 (1) IN GENERAL.—Except as provided in paragraph (2), the Sec-  
37 retary shall provide a semiannual report to the appropriate congres-  
38 sional committees that includes—

39 (A) the number of public and private stakeholders who were  
40 provided with each report on the Plan;



1 (B) a description of the measures the Secretary has taken,  
2 under subsection (g) or otherwise, to ensure proper treatment and  
3 security for classified information to be shared with the public and  
4 private stakeholders under the Plan; and

5 (C) an explanation of the reason for the denial of transportation  
6 security information to a stakeholder who had previously received  
7 the information.

8 (2) WHEN REPORT NOT REQUIRED.—The Secretary is not required  
9 to provide a semiannual report under paragraph (1) if no stakeholders  
10 have been added to or removed from the group of persons with whom  
11 transportation security information is shared under the plan since the  
12 end of the period covered by the last preceding semiannual report.

13 **§ 11316. Enforcement of certain regulations and orders of**  
14 **the Secretary**

15 (a) DEFINITIONS.—In this section:

16 (1) PERSON. THE TERM “PERSON” DOES NOT INCLUDE—

17 (A) the United States Postal Service; or

18 (B) the Department of Defense.

19 (2) SMALL BUSINESS CONCERN.—The term “small business concern”  
20 has the meaning given that term in section 3 of the Small Business  
21 Act (15 U.S.C. 632).

22 (b) APPLICABILITY OF SECTION.—

23 (1) IN GENERAL.—This section applies to the enforcement of regula-  
24 tions prescribed, and orders issued, by the Secretary, acting through  
25 the Administrator, under a provision of chapter 701 of title 46 or  
26 under a provision of title 49 other than a provision of former chapter  
27 449 (in this section referred to as an “applicable provision of title 49”).

28 (2) VIOLATIONS OF FORMER CHAPTER 449 OF TITLE 49.—The pen-  
29 alties under subchapter V of chapter 409 of this title apply to viola-  
30 tions of regulations prescribed and orders issued by the Secretary  
31 under former chapter 449 of title 49.

32 (3) NON-APPLICABILITY TO CERTAIN VIOLATIONS.—

33 (A) IN GENERAL.—Subsections (c) through (f) do not apply to  
34 violations of regulations prescribed, and orders issued, by the Sec-  
35 retary under a provision of title 49—

36 (i) involving the transportation of personnel or shipments  
37 of materials by contractors where the Department of Defense  
38 has assumed control and responsibility;

39 (ii) by a member of the armed forces of the United States  
40 when performing official duties; or

1 (iii) by a civilian employee of the Department of Defense  
2 when performing official duties.

3 (B) ALTERNATIVE PENALTIES.—Violations described in clause  
4 (i), (ii), or (iii) of subparagraph (A) shall be subject to penalties  
5 as determined by the Secretary of Defense or the Secretary's des-  
6 ignee.

7 (e) CIVIL PENALTY.—

8 (1) IN GENERAL.—A person is liable to the United States Govern-  
9 ment for a civil penalty of not more than \$10,000 for a violation of  
10 a regulation prescribed, or order issued, by the Secretary under an ap-  
11 plicable provision of title 49.

12 (2) REPEAT VIOLATIONS.—A separate violation occurs under this  
13 subsection for each day the violation continues.

14 (d) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

15 (1) IN GENERAL.—The Secretary may impose a civil penalty for a  
16 violation of a regulation prescribed, or order issued, under an applica-  
17 ble provision of title 49. The Secretary shall give written notice of the  
18 finding of a violation and the penalty.

19 (2) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil pen-  
20 alty imposed by the Secretary under this section, a court may not re-  
21 examine issues of liability or the amount of the penalty.

22 (3) JURISDICTION.—The district courts of the United States shall  
23 have exclusive jurisdiction of civil actions to collect a civil penalty im-  
24 posed by the Secretary under this section if—

25 (A) the amount in controversy is more than—

26 (i) \$400,000, if the violation was committed by a person  
27 other than an individual or small business concern; or

28 (ii) \$50,000 if the violation was committed by an individual  
29 or small business concern;

30 (B) the action is in rem or another action in rem based on the  
31 same violation has been brought; or

32 (C) another action has been brought for an injunction based on  
33 the same violation.

34 (4) MAXIMUM PENALTY.—The maximum civil penalty the Secretary  
35 administratively may impose under this subsection is—

36 (A) \$400,000, if the violation was committed by a person other  
37 than an individual or small business concern; or

38 (B) \$50,000, if the violation was committed by an individual or  
39 small business concern.

1 (5) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before im-  
2 posing a penalty under this chapter the Secretary shall provide to the  
3 person against whom the penalty is to be imposed

4 (A) written notice of the proposed penalty; and

5 (B) the opportunity to request a hearing on the proposed pen-  
6 alty, if the Secretary receives the request not later than 30 days  
7 after the date on which the person receives notice.

8 (e) COMPROMISE AND SETOFF.—

9 (1) COMPROMISE.—The Secretary may compromise the amount of a  
10 civil penalty imposed under this section.

11 (2) SETOFF.—The United States Government may deduct the  
12 amount of a civil penalty imposed or compromised under this section  
13 from amounts it owes the person liable for the penalty.

14 (f) INVESTIGATIONS AND PROCEEDINGS.SUBCHAPTER IV OF CHAPTER  
15 409 OF THIS TITLE APPLIES TO INVESTIGATIONS AND PROCEEDINGS  
16 BROUGHT UNDER THIS SECTION TO THE SAME EXTENT THAT CHAPTER 461  
17 OF TITLE 49 APPLIES TO INVESTIGATIONS AND PROCEEDINGS BROUGHT  
18 WITH RESPECT TO AVIATION SECURITY DUTIES DESIGNATED TO BE CAR-  
19 RIED OUT BY THE SECRETARY.

20 (g) ENFORCEMENT TRANSPARENCY.—

21 (1) IN GENERAL.—The Secretary shall, not later than December 31  
22 each year—

23 (A) provide an annual summary to the public of all enforcement  
24 actions taken by the Secretary under this section; and

25 (B) include in each summary the docket number of each en-  
26 forcement action, the type of alleged violation, the penalty or pen-  
27 alties proposed, and the final assessment amount of each penalty.

28 (2) ELECTRONIC AVAILABILITY.—Each summary under this sub-  
29 section shall be made available to the public by electronic means.

30 (3) RELATIONSHIP TO FREEDOM OF INFORMATION ACT AND PRIVACY  
31 ACT.—Nothing in this subsection shall be construed to require disclo-  
32 sure of information or records that are exempt from disclosure under  
33 section 552 or 552a of title 5.

34 **§ 11317. Administrative; indemnification; registered traveler**  
35 **fee**

36 (a) GENERAL AUTHORITY.—The Secretary, acting through the Adminis-  
37 trator, may take action the Secretary considers necessary to carry out this  
38 chapter and chapter 409 of this title, including conducting investigations,  
39 prescribing regulations, standards, and procedures, and issuing orders.

40 (b) INDEMNIFICATION.—The Secretary may indemnify an officer or em-  
41 ployee of the Transportation Security Administration against a claim or

1 judgment arising out of an act under this chapter or chapter 409 of this  
2 title that the Secretary decides was committed within the scope of the offi-  
3 cial duties of the officer or employee.

4 (e) REGISTERED TRAVELER FEE.—Notwithstanding section 553 of title  
5 5, the Secretary shall impose a fee for a registered traveler program under-  
6 taken by the Department by notice in the Federal Register, and may modify  
7 the fee from time to time by notice in the Federal Register. Fees shall not  
8 exceed the aggregate costs associated with the program, shall be credited  
9 to the Transportation Security Administration registered traveler fee ac-  
10 count, and are available until expended.

11 **§ 11318. Withholding information**

12 (a) OBJECTIONS TO DISCLOSURE.—

13 (1) IN GENERAL.—A person may object to the public disclosure of  
14 information—

15 (A) in a record filed under this chapter or chapter 409 of this  
16 title; or

17 (B) obtained under this chapter or chapter 409 of this title by  
18 the Secretary, acting through the Administrator.

19 (2) FORM OF OBJECTION; ACTION BY SECRETARY.—An objection  
20 must be in writing and must state the reasons for the objection. The  
21 Secretary shall order the information withheld from public disclosure  
22 when the Secretary decides that disclosure of the information would—

23 (A) prejudice the United States Government in preparing and  
24 presenting its position in international negotiations; or

25 (B) have an adverse effect on the competitive position of an air  
26 carrier in foreign air transportation.

27 (b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does  
28 not authorize information to be withheld from a committee of Congress au-  
29 thorized to have the information.

30 **§ 11319. Enhanced security measures**

31 (a) IN GENERAL.—The Secretary, acting through the Administrator, may  
32 take the following actions:

33 (1) Require effective 911 emergency call capability for telephones  
34 serving passenger aircraft and passenger trains.

35 (2) Establish a uniform system of identification for all State and  
36 local law enforcement personnel for use in obtaining permission to  
37 carry weapons in aircraft cabins and in obtaining access to a secured  
38 area of an airport, if otherwise authorized to carry the weapons.

39 (3) Establish requirements to implement trusted passenger programs  
40 and use available technologies to expedite the security screening of pas-  
41 sengers who participate in the programs, thereby allowing security

1 screening personnel to focus on those passengers who should be subject  
2 to more extensive screening.

3 (4) In consultation with the Commissioner of the Food and Drug  
4 Administration, develop alternative security procedures under which a  
5 medical product to be transported on a flight of an air carrier would  
6 not be subject to an inspection that would irreversibly damage the  
7 product.

8 (5) Provide for the use of technologies, including wireless and wire  
9 line data technologies, to enable the private and secure communication  
10 of threats to aid in the screening of passengers and other individuals  
11 on airport property who are identified on any State or Federal security-  
12 related data base for the purpose of having an integrated response co-  
13 ordination of various authorized airport security forces.

14 (6) In consultation with the Administrator of the Federal Aviation  
15 Administration, consider whether to require all pilot licenses to incor-  
16 porate a photograph of the license holder and appropriate biometric im-  
17 prints.

18 (7) Provide for the use of voice stress analysis, biometric, or other  
19 technologies to prevent a person who might pose a danger to air safety  
20 or security from boarding the aircraft of an air carrier or foreign air  
21 carrier in air transportation or intrastate air transportation.

22 (8) Provide for the use of technology that will permit enhanced in-  
23 stant communications and information between airborne passenger air-  
24 craft and appropriate individuals or facilities on the ground.

25 (9) Require that air carriers provide flight attendants with a dis-  
26 creet, hands-free, wireless method of communicating with the pilots.

27 (b) ANNUAL REPORT.—Until the Secretary has implemented or decided  
28 not to take each of the actions specified in subsection (a), the Secretary  
29 shall transmit to Congress by May 19 each year a report on the progress  
30 of the Secretary in evaluating and taking the actions, including legislative  
31 recommendations that the Secretary may have for enhancing transportation  
32 security.

### 33 **Chapter 115—Management**

Sec.

11501. Under Secretary for Management.

11502. Chief Financial Officer.

11503. Chief Information Officer.

11504. Chief Human Capital Officer.

11505. Officer for Civil Rights and Civil Liberties.

11506. Quadrennial homeland security review.

#### 34 **§ 11501. Under Secretary for Management**

35 (a) IN GENERAL.—The Under Secretary for Management serves as the  
36 Chief Management Officer and principal advisor to the Secretary on matters

1 relating to the management of the Department, including management inte-  
2 gration and transformation in support of homeland security operations and  
3 programs. The Secretary, acting through the Under Secretary for Manage-  
4 ment, is responsible for the management and administration of the Depart-  
5 ment, including the following:

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

8 (2) Procurement.

9 (3) Human resources and personnel.

10 (4) Information technology and communications systems.

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

12 (6) Security for personnel, information technology and communica-  
13 tions systems, facilities, property, equipment, and other material re-  
14 sources.

15 (7) Strategic management planning and annual performance plan-  
16 ning and identification and tracking of performance measures relating  
17 to the responsibilities of the Department.

18 (8) Grants and other assistance management programs.

19 (9) The management integration and transformation process, as well  
20 as the transition process, to ensure an efficient and orderly consolida-  
21 tion of functions and personnel in the Department and transition, in-  
22 cluding

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

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

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

32 (11) Any other management duties that the Secretary may des-  
33 ignate.

34 (b) IMMIGRATION.—

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

38 (A) Maintenance of all immigration statistical information of  
39 the Bureau of Immigration and Customs Enforcement and the  
40 Bureau of Citizenship and Immigration Services. Statistical infor-  
41 mation shall include information and statistics of the type con-

1           tained in the publication entitled “Statistical Yearbook of the Im-  
2           migration and Naturalization Service” prepared by the Immigra-  
3           tion and Naturalization Service (as in effect immediately before  
4           March 1, 2003, including region-by-region statistics on the aggre-  
5           gate number of applications and petitions filed by an alien (or  
6           filed on behalf of an alien) and denied by the Bureau of Immigra-  
7           tion and Customs Enforcement, and the reasons for the denials,  
8           disaggregated by category of denial and application or petition  
9           type.

10           (B) Establishment of standards of reliability and validity for im-  
11           migration statistics collected by the Bureaus.

12           (2) TRANSFER OF FUNCTIONS.—The Under Secretary for Manage-  
13           ment succeeds to all functions performed immediately before the trans-  
14           fer occurred by the Statistics Branch of the Office of Policy and Plan-  
15           ning of the Immigration and Naturalization Service with respect to the  
16           following programs:

17           (A) The Border Patrol program.

18           (B) The detention and removal program.

19           (C) The intelligence program.

20           (D) The investigations program.

21           (E) The inspections program.

22           (F) Adjudication of immigrant visa petitions.

23           (G) Adjudication of naturalization petitions.

24           (H) Adjudication of asylum and refugee applications.

25           (I) Adjudications performed at service centers.

26           (J) All other adjudications performed by the Immigration and  
27           Naturalization Service.

28           (e) APPOINTMENT AND EVALUATION.—The Under Secretary for Manage-  
29           ment—

30           (1) is appointed by the President, by and with the advice and con-  
31           sent of the Senate, from among individuals who have—

32           (A) extensive executive level leadership and management experi-  
33           ence in the public or private sector;

34           (B) strong leadership skills;

35           (C) a demonstrated ability to manage large and complex organi-  
36           zations; and

37           (D) a proven record in achieving positive operational results;

38           (2) shall enter into an annual performance agreement with the Sec-  
39           retary that shall set forth measurable individual and organizational  
40           goals; and

1 (3) is subject to an annual performance evaluation by the Secretary,  
2 who shall determine as part of each evaluation whether the Under Sec-  
3 retary for Management has made satisfactory progress toward achiev-  
4 ing the goals set out in the performance agreement required under  
5 paragraph (2).

6 **§ 11502. Financial Officer**

7 (a) IN GENERAL.—The Chief Financial Officer shall—

- 8 (1) perform functions as specified in chapter 9 of title 31; and  
9 (2) report to the Under Secretary for Management with respect to  
10 those functions described in paragraph (1) and other responsibilities  
11 that may be assigned.

12 (b) PROGRAM ANALYSIS AND EVALUATION FUNCTION.—

13 (1) ESTABLISHMENT OF OFFICE OF PROGRAM ANALYSIS AND EVAL-  
14 UATION.—The Secretary shall establish an Office of Program Analysis  
15 and Evaluation within the Department (in this section referred to as  
16 the “Office”).

17 (2) Responsibilities.—The Office performs the following functions:

18 (A) Analyze and evaluate plans, programs, and budgets of the  
19 Department in relation to United States homeland security objec-  
20 tives, projected threats, vulnerability assessments, estimated costs,  
21 resource constraints, and the most recent homeland security strat-  
22 egy developed under section 10376(b)(2) of this title.

23 (B) Develop and perform analyses and evaluations of alternative  
24 plans, programs, personnel levels, and budget submissions for the  
25 Department in relation to United States homeland security objec-  
26 tives, projected threats, vulnerability assessments, estimated costs,  
27 resource constraints, and the most recent homeland security strat-  
28 egy developed under section 10376(b)(2) of this title.

29 (C) Establish policies for, and oversee the integration of, the  
30 planning, programming, and budgeting system of the Department.

31 (D) Review and ensure that the Department meets perform-  
32 ance-based budget requirements established by the Office of Man-  
33 agement and Budget.

34 (E) Provide guidance for, and oversee the development of, the  
35 Future Years Homeland Security Program of the Department, as  
36 specified under section 10376(b)(2) of this title.

37 (F) Ensure that the costs of Department programs, including  
38 classified programs, are presented accurately and completely.

39 (G) Oversee the preparation of the annual performance plan for  
40 the Department and the program and performance section of the



1 annual report on program performance for the Department, con-  
2 sistent with sections 1115 and 1116, respectively, of title 31.

3 (H) Provide leadership in developing and promoting improved  
4 analytical tools and methods for analyzing homeland security plan-  
5 ning and the allocation of resources.

6 (I) Other responsibilities delegated by the Secretary consistent  
7 with an effective program analysis and evaluation function.

8 (3) DIRECTOR OF PROGRAM ANALYSIS AND EVALUATION.—There is  
9 a Director of Program Analysis and Evaluation. The Director—

10 (A) is a principal staff assistant to the Chief Financial Officer  
11 of the Department for program analysis and evaluation; and

12 (B) shall report to an official no lower than the Chief Financial  
13 Officer.

14 (4) REORGANIZATION.—

15 (A) IN GENERAL.—The Secretary may allocate or reallocate the  
16 functions of the Office, or discontinue the Office, under section  
17 10331(b)(1) of this title.

18 (B) EXEMPTION FROM LIMITATIONS.—Section 10331(b)(2) of  
19 this title does not apply to an action by the Secretary under this  
20 paragraph.

21 (c) NOTIFICATION REGARDING TRANSFER OR REPROGRAMMING OF  
22 FUNDS.—In a case in which appropriations available to the Department or  
23 an officer of the Department are transferred or reprogrammed and notice  
24 of the transfer or reprogramming is submitted to Congress (including an  
25 officer, office, or Committee of Congress), the Chief Financial Officer shall  
26 simultaneously submit the notice to the Committee on Homeland Security  
27 and the Committee on Oversight and Government Reform of the House of  
28 Representatives, and to the Committee on Homeland Security and Govern-  
29 mental Affairs of the Senate.

### 30 **§ 11503. Chief Information Officer**

31 (a) IN GENERAL.—The Chief Information Officer shall report to the Sec-  
32 retary, or to another official of the Department, as the Secretary may di-  
33 rect.

34 (b) GEOSPATIAL INFORMATION FUNCTIONS.—

35 (1) DEFINITIONS.—In this subsection:

36 (A) GEOSPATIAL INFORMATION.—The term “geospatial infor-  
37 mation” means graphical or digital data depicting natural or man-  
38 made physical features, phenomena, or boundaries of the earth  
39 and information related thereto, including surveys, maps, charts,  
40 remote sensing data, and images.

1 (B) GEOSPATIAL TECHNOLOGY.—The term “geospatial tech-  
2 nology” means technology utilized by analysts, specialists, survey-  
3 ors, photogrammetrists, hydrographers, geodesists, cartographers,  
4 architects, or engineers for the collection, storage, retrieval, or dis-  
5 semination of geospatial information, including

- 6 (i) global satellite surveillance systems;  
7 (ii) global position systems;  
8 (iii) geographic information systems;  
9 (iv) mapping equipment;  
10 (v) geocoding technology; and  
11 (vi) remote sensing devices.

12 (2) OFFICE OF GEOSPATIAL MANAGEMENT.—

13 (A) ESTABLISHMENT.—There is in the Office of the Chief In-  
14 formation Officer the Office of Geospatial Management.

15 (B) GEOSPATIAL INFORMATION OFFICER.—

16 (i) The Geospatial Information Officer administers the Of-  
17 fice of Geospatial Management. The Geospatial Information  
18 Officer is appointed by the Secretary. The Geospatial Infor-  
19 mation Officer serves under the direction of the Chief Infor-  
20 mation Officer.

21 (ii) The Geospatial Information Officer assists the Chief  
22 Information Officer in carrying out all functions under this  
23 section and in coordinating the geospatial information needs  
24 of the Department.

25 (C) COORDINATION OF GEOSPATIAL INFORMATION.—The Chief  
26 Information Officer shall establish and carry out a program to  
27 provide for the efficient use of geospatial information, which shall  
28 include—

29 (i) providing necessary geospatial information to implement  
30 the critical infrastructure protection programs;

31 (ii) providing leadership and coordination in meeting the  
32 geospatial information requirements of those responsible for  
33 planning, prevention, mitigation, assessment and response to  
34 emergencies, critical infrastructure protection, and other  
35 functions of the Department; and

36 (iii) coordinating with users of geospatial information with-  
37 in the Department to ensure interoperability and prevent un-  
38 necessary duplication.

39 (D) RESPONSIBILITIES.—In carrying out this subsection, the  
40 responsibilities of the Chief Information Officer include—

1 (i) coordinating the geospatial information needs and ac-  
2 tivities of the Department;

3 (ii) implementing standards, as adopted by the Director of  
4 the Office of Management and Budget under the processes  
5 established under section 216 of the E-Government Act of  
6 2002 (Public Law 107-347, 44 U.S.C. 3501 note), to facili-  
7 tate the interoperability of geospatial information pertaining  
8 to homeland security among all users of the information with-  
9 in—

10 (I) the Department;

11 (II) State and local government; and

12 (III) the private sector;

13 (iii) coordinating with the Federal Geographic Data Com-  
14 mittee and carrying out the responsibilities of the Department  
15 pursuant to Office of Management and Budget Circular A-16  
16 and Executive Order 12906 (59 Fed. Reg. 17671, 43 U.S.C.  
17 1457 note); and

18 (iv) making recommendations to the Secretary and the Ex-  
19 ecutive Director of the Office for State and Local Government  
20 Coordination and Preparedness on awarding grants to—

21 (I) fund the creation of geospatial data; and

22 (II) execute information sharing agreements regarding  
23 geospatial data with State, local, and tribal governments.

24 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
25 be appropriated such sums as may be necessary to carry out this sub-  
26 section for each fiscal year.

27 **§ 11504. Chief Human Capital Officer**

28 The Chief Human Capital Officer shall report to the Secretary, or to an-  
29 other official of the Department, as the Secretary may direct, and shall en-  
30 sure that all employees of the Department are informed of their rights and  
31 remedies under chapters 12 and 23 of title 5, by—

32 (1) participating in the 2302(e) Certification Program of the Office  
33 of Special Counsel;

34 (2) achieving certification from the Office of Special Counsel of the  
35 Department's compliance with section 2302(e) of title 5; and

36 (3) informing Congress of the certification.

37 **§ 11505. Officer for Civil Rights and Civil Liberties**

38 (a) In General.—The Officer for Civil Rights and Civil Liberties, who  
39 shall report directly to the Secretary, shall—

1 (1) review and assess information concerning abuses of civil rights,  
2 civil liberties, and profiling on the basis of race, ethnicity, or religion,  
3 by employees and officials of the Department;

4 (2) make public through the Internet, radio, television, or newspaper  
5 advertisements information on the responsibilities and functions of, and  
6 how to contact, the Officer;

7 (3) assist the Secretary, directorates, and offices of the Department  
8 to develop, implement, and periodically review Department policies and  
9 procedures to ensure that the protection of civil rights and civil liberties  
10 is appropriately incorporated into Department programs and activities;

11 (4) oversee compliance with constitutional, statutory, regulatory, pol-  
12 icy, and other requirements relating to the civil rights and civil liberties  
13 of individuals affected by the programs and activities of the Depart-  
14 ment;

15 (5) coordinate with the Privacy Officer to ensure that—

16 (A) programs, policies, and procedures involving civil rights,  
17 civil liberties, and privacy considerations are addressed in an inte-  
18 grated and comprehensive manner; and

19 (B) Congress receives appropriate reports regarding the pro-  
20 grams, policies, and procedures; and

21 (6) investigate complaints and information indicating possible abuses  
22 of civil rights or civil liberties, unless the Inspector General of the De-  
23 partment determines that the complaint or information should be inves-  
24 tigated by the Inspector General.

25 (b) REPORT.—The Secretary shall submit to the President of the Senate,  
26 the Speaker of the House of Representatives, and the appropriate commit-  
27 tees and subcommittees of Congress on an annual basis a report—

28 (1) on the implementation of this section, including the use of funds  
29 appropriated to carry out this section; and

30 (2) detailing allegations of abuses described under subsection (a)(1)  
31 and actions taken by the Department in response to the allegations.

## 32 **§ 11506. Quadrennial homeland security review**

33 (a) REQUIREMENT.—

34 (1) QUADRENNIAL REVIEWS REQUIRED.—In fiscal year 2013, and  
35 every 4 years thereafter, the Secretary shall conduct a review of the  
36 homeland security of the Nation (in this section referred to as a “quad-  
37 rennial homeland security review”).

38 (2) SCOPE OF REVIEW.—Each quadrennial homeland security review  
39 shall be a comprehensive examination of the homeland security strategy  
40 of the Nation, including recommendations regarding the long-term  
41 strategy and priorities of the Nation for homeland security and guid-

1           ance on the programs, assets, capabilities, budget, policies, and authori-  
2           ties of the Department.

3           (3) CONSULTATION.—The Secretary shall conduct each quadrennial  
4           homeland security review under this subsection in consultation with—

5                 (A) the heads of other Federal agencies, including the Attorney  
6                 General, the Secretary of State, the Secretary of Defense, the Sec-  
7                 retary of Health and Human Services, the Secretary of the Treas-  
8                 ury, the Secretary of Agriculture, and the Director of National In-  
9                 telligence;

10                (B) key officials of the Department; and

11                (C) other relevant governmental and nongovernmental entities,  
12                including State, local, and tribal government officials, members of  
13                Congress, private-sector representatives, academics, and other pol-  
14                icy experts.

15           (4) RELATIONSHIP WITH FUTURE YEARS HOMELAND SECURITY PRO-  
16           GRAM.—The Secretary shall ensure that each review conducted under  
17           this section is coordinated with the Future Years Homeland Security  
18           Program required under section 10376 of this title.

19           (b) CONTENTS OF REVIEW.—In each quadrennial homeland security re-  
20           view, the Secretary shall—

21                (1) delineate and update, as appropriate, the national homeland se-  
22                curity strategy, consistent with appropriate national and Department  
23                strategies, strategic plans, and Homeland Security Presidential Direc-  
24                tives, including the National Strategy for Homeland Security, the Na-  
25                tional Response Plan, and the Department Security Strategic Plan;

26                (2) outline and prioritize the full range of the critical homeland secu-  
27                rity mission areas of the Nation;

28                (3) describe the interagency cooperation, preparedness of Federal re-  
29                sponse assets, infrastructure, budget plan, and other elements of the  
30                homeland security program and policies of the Nation associated with  
31                the national homeland security strategy, required to execute success-  
32                fully the full range of missions called for in the national homeland se-  
33                curity strategy described in paragraph (1) and the homeland security  
34                mission areas outlined under paragraph (2);

35                (4) identify the budget plan required to provide sufficient resources  
36                to successfully execute the full range of missions called for in the na-  
37                tional homeland security strategy described in paragraph (1) and the  
38                homeland security mission areas outlined under paragraph (2);

39                (5) include an assessment of the organizational alignment of the De-  
40                partment with the national homeland security strategy referred to in

1 paragraph (1) and the homeland security mission areas outlined under  
2 paragraph (2); and

3 (6) review and assess the effectiveness of the mechanisms of the De-  
4 partment for executing the process of turning the requirements devel-  
5 oped in the quadrennial homeland security review into an acquisition  
6 strategy and expenditure plan within the Department.

7 (c) REPORTING.—

8 (1) IN GENERAL.—Not later than December 31 of the year in which  
9 a quadrennial homeland security review is conducted, the Secretary  
10 shall submit to Congress a report regarding that quadrennial homeland  
11 security review.

12 (2) CONTENTS OF REPORT.—Each report submitted under para-  
13 graph (1) shall include—

14 (A) the results of the quadrennial homeland security review;

15 (B) a description of the threats to the assumed or defined na-  
16 tional homeland security interests of the Nation that were exam-  
17 ined for the purposes of that review;

18 (C) the national homeland security strategy, including a prior-  
19 itized list of the critical homeland security missions of the Nation;

20 (D) a description of the interagency cooperation, preparedness  
21 of Federal response assets, infrastructure, budget plan, and other  
22 elements of the homeland security program and policies of the Na-  
23 tion associated with the national homeland security strategy, re-  
24 quired to execute successfully the full range of missions called for  
25 in the applicable national homeland security strategy referred to  
26 in subsection (b)(1) and the homeland security mission areas out-  
27 lined under subsection (b)(2);

28 (E) an assessment of the organizational alignment of the De-  
29 partment with the applicable national homeland security strategy  
30 referred to in subsection (b)(1) and the homeland security mission  
31 areas outlined under subsection (b)(2), including the Department's  
32 organizational structure, management systems, budget and ac-  
33 counting systems, human resources systems, procurement systems,  
34 and physical and technical infrastructure;

35 (F) a discussion of the status of cooperation among Federal  
36 agencies in the effort to promote national homeland security;

37 (G) a discussion of the status of cooperation between the Fed-  
38 eral Government and State, local, and tribal governments in pre-  
39 venting terrorist attacks and preparing for emergency response to  
40 threats to national homeland security;

1 (H) an explanation of underlying assumptions used in conduct-  
2 ing the review; and

3 (I) any other matter the Secretary considers appropriate.

4 (3) PUBLIC AVAILABILITY.—The Secretary shall, consistent with the  
5 protection of national security and other sensitive matters, make each  
6 report submitted under paragraph (1) publicly available on the Internet  
7 website of the Department.

8 (d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
9 propriated such sums as may be necessary to carry out this section.

## 10 **Chapter 117 Coordination With Other Entities**

Sec.

11701. Responsibilities of Office for State and Local Government Coordination.

11702. Responsibilities of Office for National Capital Region Coordination.

11703. Joint Interagency Task Force.

11704. Coordination with the Department of Health and Human Services under the Public  
Health Service Act.

11705. Aviation security.

11706. Investigation of violent acts, shootings, and mass killings.

11707. Facilitating homeland security information sharing procedures.

11708. Information sharing.

11709. Limitation of liability.

### 11 **§ 11701. Responsibilities of Office for State and Local Gov-** 12 **ernment Coordination**

13 The Office for State and Local Government Coordination oversees and co-  
14 ordinates departmental programs for and relationships with State and local  
15 governments. The Office shall—

16 (1) coordinate the activities of the Department relating to State and  
17 local government;

18 (2) assess, and advocate for, the resources needed by State and local  
19 government to implement the national strategy for combating terror-  
20 ism;

21 (3) provide State and local government with regular information, re-  
22 search, and technical support to assist local efforts at securing the  
23 homeland; and

24 (4) develop a process for receiving meaningful input from State and  
25 local government to assist the development of the national strategy for  
26 combating terrorism and other homeland security activities.

### 27 **§ 11702. Responsibilities of Office for National Capital Re-** 28 **gion Coordination**

29 (a) IN GENERAL.—The Office for National Capital Region Coordination  
30 oversees and coordinates Federal programs for and relationships with State,  
31 local, and regional authorities in the National Capital Region, as defined  
32 under section 2674(f)(2) of title 10.

1 (b) COOPERATION WITH NATIONAL CAPITAL REGION OFFICIALS.—The  
2 Secretary shall cooperate with the Mayor of the District of Columbia, the  
3 Governors of Maryland and Virginia, and other State, local, and regional  
4 officers in the National Capital Region to integrate the District of Colum-  
5 bia, Maryland, and Virginia into the planning, coordination, and execution  
6 of the activities of the Federal Government for the enhancement of domestic  
7 preparedness against the consequences of terrorist attacks.

8 (c) RESPONSIBILITIES.—The Office for National Capital Region Coordi-  
9 nation shall—

10 (1) coordinate the activities of the Department relating to the Na-  
11 tional Capital Region, including cooperation with the Office for State  
12 and Local Government Coordination;

13 (2) assess, and advocate for, the resources needed by State, local,  
14 and regional authorities in the National Capital Region to implement  
15 efforts to secure the homeland;

16 (3) provide State, local, and regional authorities in the National Cap-  
17 ital Region with regular information, research, and technical support  
18 to assist the efforts of State, local, and regional authorities in the Na-  
19 tional Capital Region in securing the homeland;

20 (4) develop a process for receiving meaningful input from State,  
21 local, and regional authorities and the private sector in the National  
22 Capital Region to assist in the development of the homeland security  
23 plans and activities of the Federal Government;

24 (5) coordinate with Federal agencies in the National Capital Region  
25 on terrorism preparedness, to ensure adequate planning, information  
26 sharing, training, and execution of the Federal role in domestic pre-  
27 paredness activities;

28 (6) coordinate with Federal, State, local, and regional agencies, and  
29 the private sector in the National Capital Region on terrorism pre-  
30 paredness to ensure adequate planning, information sharing, training,  
31 and execution of domestic preparedness activities among these agencies  
32 and entities; and

33 (7) serve as a liaison between the Federal Government and State,  
34 local, and regional authorities, and private-sector entities in the Na-  
35 tional Capital Region to facilitate access to Federal grants and other  
36 programs.

37 (d) ANNUAL REPORT.—The Office for National Capital Region Coordina-  
38 tion shall submit an annual report to Congress that includes—

39 (1) the identification of the resources required to fully implement  
40 homeland security efforts in the National Capital Region;



1 (2) an assessment of the progress made by the National Capital Re-  
2 gion in implementing homeland security efforts; and

3 (3) recommendations to Congress regarding the additional resources  
4 needed to fully implement homeland security efforts in the National  
5 Capital Region.

6 (e) LIMITATION.—Nothing contained in this section shall be construed as  
7 limiting the power of State and local governments.

### 8 **§ 11703. Joint Interagency Task Force**

9 The Secretary may establish and operate a permanent Joint Interagency  
10 Homeland Security Task Force composed of representatives from military  
11 and civilian agencies of the United States Government for the purposes of  
12 anticipating terrorist threats against the United States and taking appropri-  
13 ate actions to prevent harm to the United States.

### 14 **§ 11704. Coordination with the Department of Health and** 15 **Human Services under the Public Health Service** 16 **Act**

17 (a) IN GENERAL.—The annual Federal response plan developed by the  
18 Department shall be consistent with section 319 of the Public Health Ser-  
19 vice Act (42 U.S.C. 247d).

20 (b) DISCLOSURES AMONG RELEVANT AGENCIES.—

21 (1) IN GENERAL.—Full disclosure among relevant agencies shall be  
22 made under this subsection.

23 (2) PUBLIC HEALTH EMERGENCY.—During the period in which the  
24 Secretary of Health and Human Services has declared the existence of  
25 a public health emergency under section 319(a) of the Public Health  
26 Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human  
27 Services shall keep relevant agencies, including the Department of  
28 Homeland Security, the Department of Justice, and the Federal Bu-  
29 reau of Investigation, fully and currently informed.

30 (3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving,  
31 or potentially involving, a public health emergency, but in which no de-  
32 termination of an emergency by the Secretary of Health and Human  
33 Services under section 319(a) of the Public Health Service Act (42  
34 U.S.C. 247d(a)) has been made, all relevant agencies, including the De-  
35 partment of Homeland Security, the Department of Justice, and the  
36 Federal Bureau of Investigation, shall keep the Secretary of Health  
37 and Human Services and the Director of the Centers for Disease Con-  
38 trol and Prevention fully and currently informed.

### 39 **§ 11705. Aviation security**

40 (a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The  
41 Secretary and other officials in the Department shall consult with the Ad-

1 administrator of the Federal Aviation Administration before taking an action  
2 that might affect aviation safety, air carrier operations, aircraft airworthi-  
3 ness, or the use of airspace. The Secretary shall establish a liaison office  
4 in the Department to consult with the Administrator of the Federal Avia-  
5 tion Administration.

6 (b) LIMITATIONS ON STATUTORY CONSTRUCTION.—

7 (1) GRANT OF AUTHORITY.—Nothing in this subtitle may be con-  
8 strued to vest in the Secretary or another official in the Department  
9 authority over transportation security that is not vested in the Under  
10 Secretary of Transportation for Security, or in the Secretary of Trans-  
11 portation under chapter 449 of title 49, on November 24, 2002.

12 (2) OBLIGATION OF AIP FUNDS.—Nothing in this subtitle may be  
13 construed to authorize the Secretary or any other official in the De-  
14 partment to obligate amounts made available under section 48103 of  
15 title 49.

16 **§ 11706. Investigation of violent acts, shootings, and mass**  
17 **killings**

18 (a) DEFINITIONS.—In this section:

19 (1) MASS KILLINGS.—The term “mass killings” means 3 or more  
20 killings in a single incident.

21 (2) PLACE OF PUBLIC USE~~K~~.—THE TERM “PLACE OF PUBLIC USE”  
22 HAS THE MEANING GIVEN THAT TERM UNDER SECTION 2332F(E)(6) OF  
23 TITLE 18.

24 (b) PROVIDING ASSISTANCE~~K~~.—AT THE REQUEST OF AN APPROPRIATE  
25 LAW ENFORCEMENT OFFICIAL OF A STATE OR POLITICAL SUBDIVISION, THE  
26 SECRETARY, THROUGH DEPLOYMENT OF THE SECRET SERVICE OR UNITED  
27 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, MAY ASSIST IN THE  
28 INVESTIGATION OF VIOLENT ACTS AND SHOOTINGS OCCURRING IN A PLACE  
29 OF PUBLIC USE, AND IN THE INVESTIGATION OF MASS KILLINGS AND AT-  
30 TEMPTED MASS KILLINGS. ANY ASSISTANCE PROVIDED BY THE SECRETARY  
31 UNDER THIS SUBSECTION SHALL BE PRESUMED TO BE WITHIN THE SCOPE  
32 OF FEDERAL OFFICE OR EMPLOYMENT.

33 **§ 11707. Facilitating homeland security information sharing**  
34 **procedures**

35 (a) DEFINITIONS.—In this section:

36 (1) HOMELAND SECURITY INFORMATION.—The term “homeland se-  
37 curity information” means information possessed by a Federal, State,  
38 or local agency that—

39 (A) relates to the threat of terrorist activity;

40 (B) relates to the ability to prevent, interdict, or disrupt terror-  
41 ist activity;

1 (C) would improve the identification or investigation of a sus-  
2 pected terrorist or terrorist organization; or

3 (D) would improve the response to a terrorist act.

4 (2) INTELLIGENCE COMMUNITY.—The term “intelligence commu-  
5 nity” has the meaning given the term in section 3(4) of the National  
6 Security Act of 1947 (50 U.S.C. 3003(4)).

7 (3) STATE AND LOCAL PERSONNEL.—The term “State and local per-  
8 sonnel” means any of the following persons involved in prevention,  
9 preparation, or response for terrorist attack:

10 (A) State Governors, mayors, and other locally elected officials.

11 (B) State and local law enforcement personnel and firefighters.

12 (C) Public health and medical professionals.

13 (D) Regional, State, and local emergency management agency  
14 personnel, including State adjutant generals.

15 (E) Other appropriate emergency response agency personnel.

16 (F) Employees of private-sector entities that affect critical in-  
17 frastructure, cyber, economic, or public health security, as des-  
18 ignated by the Federal Government in procedures developed under  
19 this section.

20 (b) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOME-  
21 LAND SECURITY INFORMATION.—

22 (1) ESTABLISHMENT OF PROCEDURES.—The President shall pre-  
23 scribe and implement procedures under which relevant Federal agen-  
24 cies—

25 (A) share relevant and appropriate homeland security informa-  
26 tion with other Federal agencies, including the Department, and  
27 appropriate State and local personnel;

28 (B) identify and safeguard homeland security information that  
29 is sensitive but unclassified; and

30 (C) to the extent the information is in classified form, determine  
31 whether, how, and to what extent to remove classified information,  
32 as appropriate, and with which personnel it may be shared after  
33 the information is removed.

34 (2) APPLICABILITY.—The President shall ensure that the procedures  
35 apply to all agencies of the Federal Government.

36 (3) NO CHANGE IN SUBSTANTIVE REQUIREMENTS.—The procedures  
37 shall not change the substantive requirements for the classification and  
38 safeguarding of classified information.

39 (4) NO CHANGE IN PROTECTIVE AUTHORITIES.—The procedures  
40 shall not change the requirements and authorities to protect sources  
41 and methods.

1 (c) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMA-  
2 TION.—

3 (1) IN GENERAL.—Under procedures prescribed by the President, all  
4 appropriate agencies, including the intelligence community, shall,  
5 through information sharing systems, share homeland security informa-  
6 tion with Federal agencies and appropriate State and local personnel  
7 to the extent the information may be shared, as determined under sub-  
8 section (b), together with assessments of the credibility of the informa-  
9 tion.

10 (2) SYSTEM CAPABILITIES.—Each information sharing system  
11 through which information is shared under paragraph (1) shall—

12 (A) have the capability to transmit unclassified or classified in-  
13 formation, though the procedures and recipients for each capabil-  
14 ity may differ;

15 (B) have the capability to restrict delivery of information to  
16 specified subgroups by geographic location, type of organization,  
17 position of a recipient within an organization, or a recipient's need  
18 to know the information;

19 (C) be configured to allow the efficient and effective sharing of  
20 information; and

21 (D) be accessible to appropriate State and local personnel.

22 (3) USE CONDITIONS.—The procedures prescribed under paragraph  
23 (1) shall establish conditions on the use of information shared under  
24 paragraph (1)—

25 (A) to limit the re-dissemination of the information to ensure  
26 that the information is not used for an unauthorized purpose;

27 (B) to ensure the security and confidentiality of the informa-  
28 tion;

29 (C) to protect the constitutional and statutory rights of individ-  
30 uals who are subjects of the information; and

31 (D) to provide data integrity through the timely removal and  
32 destruction of obsolete or erroneous names and information.

33 (4) INCLUSION OF EXISTING SYSTEMS.—The procedures prescribed  
34 under paragraph (1) shall ensure, to the greatest extent practicable,  
35 that the information sharing system through which information is  
36 shared under that paragraph include existing information sharing sys-  
37 tems, including the National Law Enforcement Telecommunications  
38 System, the Regional Information Sharing System, and the Terrorist  
39 Threat Warning System of the Federal Bureau of Investigation.

40 (5) AGENCY ACCESS.—Each appropriate Federal agency, as deter-  
41 mined by the President, shall have access to each information sharing

1 system through which information is shared under paragraph (1), and  
2 shall therefore have access to all information, as appropriate, shared  
3 under that paragraph.

4 (6) SHARING INFORMATION.—The procedures prescribed under para-  
5 graph (1) shall ensure that appropriate State and local personnel are  
6 authorized to use the information sharing systems—

7 (A) to access information shared with the personnel; and

8 (B) to share, with others who have access to the information  
9 sharing systems, the homeland security information of their own  
10 jurisdictions, which shall be marked appropriately as pertaining to  
11 potential terrorist activity.

12 (7) ASSESSMENT AND INTEGRATION OF INFORMATION.—Under pro-  
13 cedures prescribed jointly by the Director of Central Intelligence and  
14 the Attorney General, each appropriate Federal agency, as determined  
15 by the President, shall review and assess the information shared under  
16 paragraph (6) and integrate the information with existing intelligence.

17 (d) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UN-  
18 CLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

19 (1) IN GENERAL.—The President shall prescribe procedures under  
20 which Federal agencies may, to the extent the President considers nec-  
21 essary, share with appropriate State and local personnel homeland se-  
22 curity information that remains classified or otherwise protected after  
23 the determinations prescribed under the procedures set forth in sub-  
24 section (b).

25 (2) Training program.—

26 (A) Establishment.—The Secretary shall establish a program to  
27 provide appropriate training to officials described in subparagraph

28 (B) in order to assist the officials in—

29 (i) identifying sources of potential terrorist threats through  
30 the methods the Secretary determines are appropriate;

31 (ii) reporting information relating to the potential terrorist  
32 threats to the appropriate Federal agencies in the appropriate  
33 form and manner;

34 (iii) assuring that all reported information is systematically  
35 submitted to and passed on by the Department for use by ap-  
36 propriate Federal agencies; and

37 (iv) understanding the mission and roles of the intelligence  
38 community to promote more effective information sharing  
39 among Federal, State, and local officials and representatives  
40 of the private sector to prevent terrorist attacks against the  
41 United States.

1 (B) TRAINING COVERAGE.—The officials referred to in subpara-  
2 graph (A) are officials of State and local government agencies and  
3 representatives of private-sector entities with responsibilities relat-  
4 ing to the oversight and management of first responders, counter-  
5 terrorism activities, or critical infrastructure.

6 (C) CONSULTATION WITH ATTORNEY GENERAL.—The Secretary  
7 shall consult with the Attorney General to ensure that the training  
8 program established in subparagraph (A) does not duplicate the  
9 training program established in section 908 of the USA PA-  
10 TRIOT Act (Public Law 107–56, 28 U.S.C. 509 note).

11 (D) OTHER CONSULTATION.—The Secretary shall carry out this  
12 paragraph in consultation with the Director of Central Intelligence  
13 and the Attorney General.

14 (e) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the  
15 head of the agency shall designate an official to administer this subtitle with  
16 respect to the agency.

17 (f) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed  
18 under this section, information obtained by a State or local government  
19 from a Federal agency under this section shall remain under the control of  
20 the Federal agency, and a State or local law authorizing or requiring a gov-  
21 ernment to disclose information shall not apply to the information.

22 (g) CONSTRUCTION.—Nothing in this subtitle shall be construed as au-  
23 thORIZING a department, bureau, agency, officer, or employee of the Federal  
24 Government to request, receive, or transmit to another Government entity  
25 or personnel, or transmit to a State or local entity or personnel otherwise  
26 authorized by the Homeland Security Act of 2002 (Public Law 107–296,  
27 116 Stat. 2135) to receive homeland security information, information col-  
28 lected by the Federal Government solely for statistical purposes in violation  
29 of any other provision of law relating to the confidentiality of the informa-  
30 tion.

31 **§ 11708. Information sharing**

32 (a) DEFINITIONS.—In this section:

33 (1) HOMELAND SECURITY INFORMATION.—The term “homeland se-  
34 curity information” has the meaning given that term in section  
35 11706(a) of this title.

36 (2) INFORMATION SHARING COUNCIL.—The term “Information Shar-  
37 ing Council” means the Information Sharing Council established by  
38 Executive Order 13388, or any successor body designated by the Presi-  
39 dent, and referred to under subsection (e).

40 (3) INFORMATION SHARING ENVIRONMENT; ISE.—The terms “infor-  
41 mation sharing environment” and “ISE” mean an approach that facili-

1 tates the sharing of terrorism and homeland security information,  
2 which may include any method determined necessary and appropriate  
3 for carrying out this section.

4 (4) PROGRAM MANAGER.—The term “program manager” means the  
5 program manager designated under subsection (d).

6 (5) TERRORISM INFORMATION.—The term “terrorism informa-  
7 tion”—

8 (A) means all information, whether collected, produced, or dis-  
9 tributed by intelligence, law enforcement, military, homeland secu-  
10 rity, or other activities relating to—

11 (i) the existence, organization, capabilities, plans, inten-  
12 tions, vulnerabilities, means of finance or material support, or  
13 activities of foreign or international terrorist groups or indi-  
14 viduals, or of domestic groups or individuals involved in  
15 transnational terrorism;

16 (ii) threats posed by the groups or individuals to the  
17 United States, United States persons, or United States inter-  
18 ests, or to those of other nations;

19 (iii) communications of or by the groups or individuals; or

20 (iv) other groups or individuals reasonably believed to be  
21 assisting or associated with the groups or individuals; and

22 (B) includes weapons of mass destruction information.

23 (6) WEAPONS OF MASS DESTRUCTION INFORMATION.—The term  
24 “weapons of mass destruction information” means information that  
25 could reasonably be expected to assist in the development, proliferation,  
26 or use of a weapon of mass destruction (including a chemical, biologi-  
27 cal, radiological, or nuclear weapon) that could be used by a terrorist  
28 or a terrorist organization against the United States, including infor-  
29 mation about the location of a stockpile of nuclear materials that could  
30 be exploited for use in a weapon that could be used by a terrorist or  
31 a terrorist organization against the United States.

32 (b) Information Sharing Environment.—

33 (1) ESTABLISHMENT.—The President shall—

34 (A) create an information sharing environment for the sharing  
35 of terrorism information in a manner consistent with national se-  
36 curity and with applicable legal standards relating to privacy and  
37 civil liberties;

38 (B) designate the organizational and management structures  
39 that will be used to operate and manage the ISE; and

40 (C) determine and enforce the policies, directives, and rules that  
41 will govern the content and usage of the ISE.

1           (2) ATTRIBUTES.—The President shall, through the structures de-  
2           scribed in subparagraphs (B) and (C) of paragraph (1), ensure that  
3           the ISE provides and facilitates the means for sharing terrorism infor-  
4           mation among all appropriate Federal, State, local, and tribal entities,  
5           and the private sector through the use of policy guidelines and tech-  
6           nologies. The President shall, to the greatest extent practicable, ensure  
7           that the ISE provides the functional equivalent of, or otherwise sup-  
8           ports, a decentralized, distributed, and coordinated environment that—

9           (A) connects existing systems, where appropriate, provides no  
10          single points of failure, and allows users to share information  
11          among agencies, between levels of government, and, as appro-  
12          priate, with the private sector;

13          (B) ensures direct and continuous online electronic access to in-  
14          formation;

15          (C) facilitates the availability of information in a form and man-  
16          ner that facilitates its use in analysis, investigations and oper-  
17          ations;

18          (D) builds upon existing systems capabilities currently in use  
19          across the Government;

20          (E) employs an information access management approach that  
21          controls access to data rather than just systems and networks,  
22          without sacrificing security;

23          (F) facilitates the sharing of information at and across all levels  
24          of security;

25          (G) provides directory services, or the functional equivalent, for  
26          locating people and information;

27          (H) incorporates protections for individuals' privacy and civil  
28          liberties;

29          (I) incorporates strong mechanisms to enhance accountability  
30          and facilitate oversight, including audits, authentication, and ac-  
31          cess controls;

32          (J) integrates the information within the scope of the informa-  
33          tion sharing environment, including information in legacy tech-  
34          nologies;

35          (K) integrates technologies, including all legacy technologies,  
36          through Internet-based services, consistent with appropriate secu-  
37          rity protocols and safeguards, to enable connectivity among re-  
38          quired users at the Federal, State, and local levels;

39          (L) allows the full range of analytic and operational activities  
40          without the need to centralize information within the scope of the  
41          information sharing environment;



1 (M) permits analysts to collaborate both independently and in  
2 a group (commonly known as “collective and noncollective collabo-  
3 ration”), and across multiple levels of national security informa-  
4 tion and controlled unclassified information;

5 (N) provides a resolution process that enables changes by au-  
6 thorized officials regarding rules and policies for the access, use,  
7 and retention of information within the scope of the information  
8 sharing environment; and

9 (O) incorporates continuous, real-time, and immutable audit ca-  
10 pabilities, to the maximum extent practicable.

11 (c) GUIDELINES AND REQUIREMENTS.—The President shall—

12 (1) leverage all ongoing efforts consistent with establishing the ISE  
13 and issue guidelines for acquiring, accessing, sharing, and using infor-  
14 mation, including guidelines to ensure that information is provided in  
15 its most shareable form, such as by using tearlines to separate out data  
16 from the sources and methods by which the data are obtained;

17 (2) in consultation with the Privacy and Civil Liberties Oversight  
18 Board established under section 1061 of the Act of December 17, 2004  
19 (Public Law 108–458, 5 U.S.C. 601 note), issue guidelines that—

20 (A) protect privacy and civil liberties in the development and  
21 use of the ISE; and

22 (B) shall be made public, unless nondisclosure is clearly nec-  
23 essary to protect national security; and

24 (3) require the heads of Federal departments and agencies to pro-  
25 mote a culture of information sharing by—

26 (A) reducing disincentives to information sharing, including  
27 over-classification of information and unnecessary requirements  
28 for originator approval, consistent with applicable laws and regula-  
29 tions; and

30 (B) providing affirmative incentives for information sharing.

31 (d) PROGRAM MANAGER.—

32 (1) DESIGNATION.—The President shall designate an individual as  
33 the program manager responsible for information sharing across the  
34 Federal Government. The individual designated as the program man-  
35 ager shall serve as program manager until removed from service or re-  
36 placed by the President (at the President’s sole discretion). The pro-  
37 gram manager, in consultation with the head of an affected department  
38 or agency, shall have and exercise government-wide authority over the  
39 sharing of information within the scope of the information sharing en-  
40 vironment, including homeland security information, terrorism informa-  
41 tion, and weapons of mass destruction information, by all Federal de-

1           partments, agencies, and components, irrespective of the Federal de-  
2           partment, agency, or component in which the program manager may  
3           be administratively located, except as otherwise expressly provided by  
4           law.

5           (2) DUTIES AND RESPONSIBILITIES.—

6           (A) IN GENERAL.—The program manager shall, in consultation  
7           with the Information Sharing Council—

8                   (i) plan for and oversee the implementation of, and man-  
9                   age, the ISE;

10                   (ii) assist in the development of policies, as appropriate, to  
11                   foster the development and proper operation of the ISE;

12                   (iii) consistent with the direction and policies issued by the  
13                   President, the Director of National Intelligence, and the Di-  
14                   rector of the Office of Management and Budget, issue govern-  
15                   ment-wide procedures, guidelines, instructions, and functional  
16                   standards, as appropriate, for the management, development,  
17                   and proper operation of the ISE;

18                   (iv) identify and resolve information sharing disputes be-  
19                   tween Federal departments, agencies, and components; and

20                   (v) assist, monitor, and assess the implementation of the  
21                   ISE by Federal departments and agencies to ensure adequate  
22                   progress, technological consistency and policy compliance; and  
23                   regularly report the findings to Congress.

24           (B) CONTENT OF POLICIES, PROCEDURES, GUIDELINES, RULES,  
25           AND STANDARDS.—The policies, procedures, guidelines, rules, and  
26           standards under clauses (ii) and (iii) of subparagraph (A) shall—

27                   (i) take into account the varying missions and security re-  
28                   quirements of agencies participating in the ISE;

29                   (ii) address development, implementation, and oversight of  
30                   technical standards and requirements;

31                   (iii) take into account ongoing and planned efforts that  
32                   support development, implementation and management of the  
33                   ISE;

34                   (iv) address and facilitate information sharing between and  
35                   among departments and agencies of the intelligence commu-  
36                   nity, the Department of Defense, the homeland security com-  
37                   munity and the law enforcement community;

38                   (v) address and facilitate information sharing between Fed-  
39                   eral departments and agencies and State, tribal, and local  
40                   governments;

1 (vi) address and facilitate, as appropriate, information  
2 sharing between Federal departments and agencies and the  
3 private sector;

4 (vii) address and facilitate, as appropriate, information  
5 sharing between Federal departments and agencies with for-  
6 eign partners and allies; and

7 (viii) ensure the protection of privacy and civil liberties.

8 (e) INFORMATION SHARING COUNCIL.—

9 (1) ESTABLISHMENT.—There is in the Department the Information  
10 Sharing Council that assists the President and the program manager  
11 in their duties under this section. The Information Sharing Council  
12 serves until removed from service or replaced by the President (at the  
13 sole discretion of the President) with a successor body.

14 (2) SPECIFIC DUTIES.—In assisting the President and the program  
15 manager in their duties under this section, the Information Sharing  
16 Council shall—

17 (A) advise the President and the program manager in develop-  
18 ing policies, procedures, guidelines, roles, and standards necessary  
19 to establish, implement, and maintain the ISE;

20 (B) work to ensure coordination among the Federal depart-  
21 ments and agencies participating in the ISE in the establishment,  
22 implementation, and maintenance of the ISE;

23 (C) identify and, as appropriate, recommend the consolidation  
24 and elimination of current programs, systems, and processes used  
25 by Federal departments and agencies to share information, and  
26 recommend, as appropriate, the redirection of existing resources to  
27 support the ISE;

28 (D) identify gaps, if any, between existing technologies, pro-  
29 grams and systems used by Federal departments and agencies to  
30 share information and the parameters of the proposed information  
31 sharing environment;

32 (E) recommend solutions to address gaps identified under sub-  
33 paragraph (D);

34 (F) recommend means by which the ISE can be extended to  
35 allow interchange of information between Federal departments and  
36 agencies and appropriate authorities of State and local govern-  
37 ments;

38 (G) assist the program manager in identifying and resolving in-  
39 formation sharing disputes between Federal departments, agen-  
40 cies, and components;

1 (H) identify appropriate personnel for assignment to the pro-  
2 gram manager to support staffing needs identified by the program  
3 manager; and

4 (I) recommend whether or not, and by which means, the ISE  
5 should be expanded so as to allow future expansion encompassing  
6 other relevant categories of information.

7 (3) CONSULTATION.—In performing its duties, the Information  
8 Sharing Council shall consider input from persons and entities outside  
9 the Federal Government having significant experience and expertise in  
10 policy, technical matters, and operational matters relating to the ISE.

11 (4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The  
12 Information Sharing Council (including a subsidiary group of the  
13 Council) is not subject to the requirements of the Federal Advisory  
14 Committee Act (5 U.S.C. App.).

15 (5) DETAILEES.—On a request by the Director of National Intel-  
16 ligence, the departments and agencies represented on the Information  
17 Sharing Council shall detail to the program manager, on a reimburs-  
18 able basis, appropriate personnel identified under paragraph (2)(H).

19 (f) PERFORMANCE MANAGEMENT REPORTS.—

20 (1) IN GENERAL.—Not later than June 30 each year, the President  
21 shall submit to Congress a report on the state of the ISE and of infor-  
22 mation sharing across the Federal Government.

23 (2) CONTENT.—Each report under this subsection shall include—

24 (A) a progress report on the extent to which the ISE has been  
25 implemented, including how the ISE has fared on the performance  
26 measures and whether the performance goals set in the preceding  
27 year have been met;

28 (B) objective system-wide performance goals for the following  
29 year;

30 (C) an accounting of how much was spent on the ISE in the  
31 preceding year;

32 (D) actions taken to ensure that procurement of and invest-  
33 ments in systems and technology are consistent with the imple-  
34 mentation plan for the ISE;

35 (E) the extent to which all terrorism watch lists are available  
36 for combined searching in real time through the ISE and whether  
37 there are consistent standards for placing individuals on, and re-  
38 moving individuals from, the watch lists, including the availability  
39 of processes for correcting errors;

40 (F) the extent to which State, tribal, and local officials are par-  
41 ticipating in the ISE;

1 (G) the extent to which private-sector data, including informa-  
2 tion from owners and operators of critical infrastructure, is incor-  
3 porated in the ISE, and the extent to which individuals and enti-  
4 ties outside the government are receiving information through the  
5 ISE;

6 (H) the measures taken by the Federal government to ensure  
7 the accuracy of information in the ISE, in particular the accuracy  
8 of information about individuals;

9 (I) an assessment of the privacy and civil liberties protections  
10 of the ISE, including actions taken in the preceding year to imple-  
11 ment or enforce privacy and civil liberties protections; and

12 (J) an assessment of the security protections used in the ISE.

13 (g) AGENCY RESPONSIBILITIES.—The head of each department or agency  
14 that possesses or uses intelligence or terrorism information, operates a sys-  
15 tem in the ISE, or otherwise participates (or expects to participate) in the  
16 ISE shall—

17 (1) ensure full department or agency compliance with information  
18 sharing policies, procedures, guidelines, rules, and standards estab-  
19 lished under subsections (b) and (f);

20 (2) ensure the provision of adequate resources for systems and ac-  
21 tivities supporting operation of and participation in the ISE;

22 (3) ensure full department or agency cooperation in the development  
23 of the ISE to implement government-wide information sharing; and

24 (4) submit, at the request of the President or the program manager,  
25 reports on the implementation of the requirements of the ISE within  
26 the department or agency.

27 (h) ADDITIONAL POSITIONS.—The program manager is authorized to hire  
28 not more than 40 full-time employees to assist the program manager in—

29 (1) activities associated with the implementation of the information  
30 sharing environment, including

31 (A) implementing the requirements under subsection (b)(2); and

32 (B) any additional implementation initiatives to enhance and ex-  
33 pedite the creation of the information sharing environment; and

34 (2) identifying and resolving information sharing disputes between  
35 Federal departments, agencies, and components under subsection  
36 (d)(2)(A)(iv).

37 **§ 11709. Limitation of liability**

38 A person who has completed a security awareness training course ap-  
39 proved by or operated under a cooperative agreement with the Department  
40 using funds made available in fiscal year 2006 and thereafter or in any  
41 prior appropriations Acts, who is enrolled in a program recognized or ac-

1     knowledge by an Information Sharing and Analysis Center, and who re-  
2     ports a situation, activity or incident pursuant to that program to an appro-  
3     priate authority, shall not be liable for damages in an action brought in a  
4     Federal or State court which result from an act or omission unless the per-  
5     son is guilty of gross negligence or willful misconduct.

6                   **Chapter 119—Homeland Security Council**

Sec.

11901. Establishment.

11902. Membership.

11903. Functions and activities.

11904. Staff.

11905. Relation to the National Security Council.

7     **§ 11901. Establishment**

8             There is in the Executive Office of the President the Homeland Security  
9     Council to advise the President on homeland security matters.

10    **§ 11902. Membership**

11           (a) Members.—The members of the Homeland Security Council are the  
12    following:

13           (1) The President.

14           (2) The Vice President.

15           (3) The Secretary of Homeland Security.

16           (4) The Attorney General.

17           (5) The Secretary of Defense.

18           (6) Other individuals who may be designated by the President.

19           (b) ATTENDANCE OF CHAIRMAN OF JOINT CHIEFS OF STAFF AT MEET-  
20    INGS.—The Chairman of the Joint Chiefs of Staff (or, in the absence of  
21    the Chairman, the Vice Chairman of the Joint Chiefs of Staff) may, in the  
22    role of the Chairman of the Joint Chiefs of Staff as principal military ad-  
23    viser to the Homeland Security Council and subject to the direction of the  
24    President, attend and participate in meetings of the Council.

25    **§ 11903. Functions and activities**

26           To effectively coordinate the policies and functions of the United States  
27    Government relating to homeland security, the Homeland Security Council  
28    shall—

29           (1) assess the objectives, commitments, and risks of the United  
30    States in the interest of homeland security and to make resulting rec-  
31    ommendations to the President;

32           (2) oversee and review homeland security policies of the Federal Gov-  
33    ernment and to make resulting recommendations to the President; and

34           (3) perform other functions the President may direct.

1     **§ 11904. Staff**

2       (a) HEADED BY EXECUTIVE SECRETARY.—The Homeland Security  
3 Council has a staff, the head of which is a civilian Executive Secretary ap-  
4 pointed by the President.

5       (b) PAY OF EXECUTIVE SECRETARY.—The President shall fix the pay of  
6 the Executive Secretary at a rate not to exceed the rate of pay payable to  
7 the Executive Secretary of the National Security Council.

8     **§ 11905. Relation to the National Security Council**

9       The President may convene joint meetings of the Homeland Security  
10 Council and the National Security Council with participation by members  
11 of either Council or as the President may otherwise direct.

12                     **Chapter 121—Emergency Communications**

Sec.

12101. Definition; rule of construction.

12102. Responsibilities of Director for Emergency Communications.

12103. National Emergency Communications Plan.

12104. Assessments and reports.

12105. Coordination of Department emergency communications grant programs.

12106. Regional Emergency Communications Coordination.

12107. Emergency Communications Preparedness Center.

12108. Urban and other high risk area communications capabilities.

12109. Interoperable Emergency Communications Grant Program.

13     **§ 12101. Definition; rule of construction**

14       (a) DEFINITION.—In this chapter, the terms “interoperable communica-  
15 tions” and “interoperable emergency communications” have the meaning  
16 given the term “interoperable communications” under section 10713(a) of  
17 this title.

18       (b) RULE OF CONSTRUCTION.— Nothing in this chapter or in sections  
19 10714 or 10715 of this title shall be construed to transfer to the Office of  
20 Emergency Communications any function, personnel, asset, component, au-  
21 thority, grant program, or liability of the Federal Emergency Management  
22 Agency as constituted on June 1, 2006.

23     **§ 12102. Responsibilities of Director for Emergency Commu-**  
24                     **nications**

25       (a) In General.—The Director for Emergency Communications shall—

26           (1) assist the Secretary in developing and implementing the program  
27 described in section 10713(b)(1) of this title, except as provided in sec-  
28 tion 10714 of this title;

29           (2) administer the Department’s responsibilities and authorities re-  
30 lating to the SAFECOM Program, excluding elements related to re-  
31 search, development, testing, and evaluation and standards;

32           (3) administer the Department’s responsibilities and authorities re-  
33 lating to the Integrated Wireless Network program;

1 (4) conduct extensive, nationwide outreach to support and promote  
2 the ability of emergency response providers and relevant government  
3 officials to continue to communicate in the event of natural disasters,  
4 acts of terrorism, and other man-made disasters;

5 (5) conduct extensive, nationwide outreach and foster the develop-  
6 ment of interoperable emergency communications capabilities by State,  
7 regional, local, and tribal governments and public safety agencies, and  
8 by regional consortia thereof;

9 (6) provide technical assistance to State, regional, local, and tribal  
10 government officials with respect to use of interoperable emergency  
11 communications capabilities;

12 (7) coordinate with the Regional Administrators regarding the activi-  
13 ties of Regional Emergency Communications Coordination Working  
14 Groups under section 12106 of this title;

15 (8) promote the development of standard operating procedures and  
16 best practices with respect to use of interoperable emergency commu-  
17 nications capabilities for incident response, and facilitate the sharing  
18 of information on best practices for achieving, maintaining, and en-  
19 hancing interoperable emergency communications capabilities for re-  
20 sponse;

21 (9) coordinate, in cooperation with the National Communications  
22 System, the establishment of a national response capability with initial  
23 and ongoing planning, implementation, and training for the deployment  
24 of communications equipment for relevant State, local, and tribal gov-  
25 ernments and emergency response providers in the event of a cata-  
26 strophic loss of local and regional emergency communications services;

27 (10) assist the President, the National Security Council, the Home-  
28 land Security Council, and the Director of the Office of Management  
29 and Budget in ensuring the continued operation of the telecommunica-  
30 tions functions and responsibilities of the Federal Government, exclud-  
31 ing spectrum management;

32 (11) establish, in coordination with the Director of the Office for  
33 Interoperability and Compatibility, requirements for interoperable  
34 emergency communications capabilities, which shall be nonproprietary  
35 where standards for the capabilities exist, for all public safety radio  
36 and data communications systems and equipment purchased using  
37 homeland security assistance administered by the Department, exclud-  
38 ing any alert and warning device, technology, or system;

39 (12) review, in consultation with the Assistant Secretary for Grants  
40 and Training, all interoperable emergency communications plans of  
41 Federal, State, local, and tribal governments, including Statewide and



1 tactical interoperability plans, developed pursuant to homeland security  
2 assistance administered by the Department, but excluding spectrum al-  
3 location and management related to the plans;

4 (13) develop and update periodically, as appropriate, a National  
5 Emergency Communications Plan under section 12103 of this title;

6 (14) perform other duties of the Department necessary to support  
7 and promote the ability of emergency response providers and relevant  
8 government officials to continue to communicate in the event of natural  
9 disasters, acts of terrorism, and other man-made disasters; and

10 (15) perform other duties of the Department necessary to achieve  
11 the goal of and maintain and enhance interoperable emergency commu-  
12 nications capabilities.

13 (b) PERFORMANCE OF PREVIOUSLY TRANSFERRED FUNCTIONS.—The  
14 Secretary shall administer through the Director for Emergency Communica-  
15 tions the following programs and responsibilities:

16 (1) The SAFECOM Program, excluding elements related to re-  
17 search, development, testing, and evaluation and standards.

18 (2) The responsibilities of the Chief Information Officer related to  
19 the implementation of the Integrated Wireless Network.

20 (3) The Interoperable Communications Technical Assistance Pro-  
21 gram.

22 (c) COORDINATION.—The Director for Emergency Communications shall  
23 coordinate—

24 (1) as appropriate, with the Director of the Office for Interoper-  
25 ability and Compatibility with respect to the responsibilities described  
26 in section 10714 of this title; and

27 (2) with the Administrator of the Federal Emergency Management  
28 Agency with respect to the responsibilities described in this chapter.

### 29 **§ 12103. National Emergency Communications Plan**

30 (a) IN GENERAL.—The Secretary, acting through the Director for Emer-  
31 gency Communications, and in cooperation with the National Communica-  
32 tions System Office of the Department (as appropriate), shall, in coopera-  
33 tion with State, local, and tribal governments, Federal departments and  
34 agencies, emergency response providers, and the private sector, develop, and  
35 periodically update, a National Emergency Communications Plan to provide  
36 recommendations regarding how the United States should—

37 (1) support and promote the ability of emergency response providers  
38 and relevant government officials to continue to communicate in the  
39 event of natural disasters, acts of terrorism, and other man-made dis-  
40 asters; and

1           (2) ensure, accelerate, and attain interoperable emergency commu-  
2           nications nationwide.

3           (b) COORDINATION.—The Emergency Communications Preparedness  
4           Center under section 12107 of this title shall coordinate the development  
5           of the Federal aspects of the National Emergency Communications Plan.

6           (c) CONTENTS.—The National Emergency Communications Plan shall—

7           (1) include recommendations developed in consultation with the Fed-  
8           eral Communications Commission and the National Institute of Stand-  
9           ards and Technology for a process for expediting national voluntary  
10          consensus standards for emergency communications equipment for the  
11          purchase and use by public safety agencies of interoperable emergency  
12          communications equipment and technologies;

13          (2) identify the appropriate capabilities necessary for emergency re-  
14          sponse providers and relevant government officials to continue to com-  
15          municate in the event of natural disasters, acts of terrorism, and other  
16          man-made disasters;

17          (3) identify the appropriate interoperable emergency communications  
18          capabilities necessary for Federal, State, local, and tribal governments  
19          in the event of natural disasters, acts of terrorism, and other man-  
20          made disasters;

21          (4) recommend both short-term and long-term solutions for ensuring  
22          that emergency response providers and relevant government officials  
23          can continue to communicate in the event of natural disasters, acts of  
24          terrorism, and other man-made disasters;

25          (5) recommend both short-term and long-term solutions for deploy-  
26          ing interoperable emergency communications systems for Federal,  
27          State, local, and tribal governments throughout the Nation, including  
28          through the provision of existing and emerging technologies;

29          (6) identify how Federal departments and agencies that respond to  
30          natural disasters, acts of terrorism, and other man-made disasters can  
31          work effectively with State, local, and tribal governments, in all States,  
32          and with other entities;

33          (7) identify obstacles to deploying interoperable emergency commu-  
34          nications capabilities nationwide and recommend short-term and long-  
35          term measures to overcome those obstacles, including recommendations  
36          for multijurisdictional coordination among Federal, State, local, and  
37          tribal governments;

38          (8) recommend goals and timeframes for the deployment of emer-  
39          gency, command-level communications systems based on new and exist-  
40          ing equipment across the United States and develop a timetable for the

1 deployment of interoperable emergency communications systems nation-  
2 wide;

3 (9) recommend appropriate measures that emergency response pro-  
4 viders should employ to ensure the continued operation of relevant gov-  
5 ernmental communications infrastructure in the event of natural disas-  
6 ters, acts of terrorism, or other man-made disasters; and

7 (10) set a date, including interim benchmarks, as appropriate, by  
8 which State, local, and tribal governments, Federal departments and  
9 agencies, and emergency response providers expect to achieve a baseline  
10 level of national interoperable communications, as that term is defined  
11 under section 10713(a) of this title.

12 **§ 12104. Assessments and reports**

13 (a) BASELINE ASSESSMENT.—The Secretary, acting through the Director  
14 for Emergency Communications, shall conduct an assessment of Federal,  
15 State, local, and tribal governments every 5 years, that—

16 (1) defines the range of capabilities needed by emergency response  
17 providers and relevant government officials to continue to communicate  
18 in the event of natural disasters, acts of terrorism, and other man-  
19 made disasters;

20 (2) defines the range of interoperable emergency communications ca-  
21 pabilities needed for specific events;

22 (3) assesses the current available capabilities to meet the commu-  
23 nications needs;

24 (4) identifies the gap between current capabilities and defined re-  
25 quirements; and

26 (5) includes a national interoperable emergency communications in-  
27 ventory to be completed by the Secretary, the Secretary of Commerce,  
28 and the Chairman of the Federal Communications Commission that—

29 (A) identifies for each Federal department and agency

30 (i) the channels and frequencies used;

31 (ii) the nomenclature used to refer to each channel or fre-  
32 quency used; and

33 (iii) the types of communications systems and equipment  
34 used; and

35 (B) identifies the interoperable emergency communications sys-  
36 tems in use by public safety agencies in the United States.

37 (b) CLASSIFIED ANNEX.—The baseline assessment under this section  
38 may include a classified annex, including information provided under sub-  
39 section (a)(5)(A).

1 (c) SAVINGS CLAUSE.—In conducting the baseline assessment under this  
2 section, the Secretary may incorporate findings from assessments conducted  
3 before, or ongoing on, October 4, 2006.

4 (d) PROGRESS REPORTS.—The Secretary, acting through the Director for  
5 Emergency Communications, shall submit to Congress every 2 years a re-  
6 port on the progress of the Department in achieving the goals of, and carry-  
7 ing out its responsibilities under, this chapter, including

8 (1) a description of the findings of the most recent baseline assess-  
9 ment conducted under subsection (a);

10 (2) a determination of the degree to which interoperable emergency  
11 communications capabilities have been attained to date and the gaps  
12 that remain for interoperability to be achieved;

13 (3) an evaluation of the ability to continue to communicate and to  
14 provide and maintain interoperable emergency communications by  
15 emergency managers, emergency response providers, and relevant gov-  
16 ernment officials in the event of—

17 (A) natural disasters, acts of terrorism, or other man-made dis-  
18 asters, including Incidents of National Significance declared by the  
19 Secretary under the National Response Plan; and

20 (B) a catastrophic loss of local and regional communications  
21 services;

22 (4) a list of best practices relating to the ability to continue to com-  
23 municate and to provide and maintain interoperable emergency commu-  
24 nications in the event of natural disasters, acts of terrorism, or other  
25 man-made disasters; and

26 (5) an evaluation of the feasibility and desirability of the Department  
27 developing, on its own or in conjunction with the Department of De-  
28 fense, a mobile communications capability, modeled on the Army Signal  
29 Corps, that could be deployed to support emergency communications at  
30 the site of natural disasters, acts of terrorism, or other man-made dis-  
31 asters.

32 **§ 12105. Coordination of Department emergency commu-**  
33 **nications grant programs**

34 (a) COORDINATION OF GRANTS AND STANDARDS PROGRAMS.—The Sec-  
35 retary, acting through the Director for Emergency Communications, shall  
36 ensure that grant guidelines for the use of homeland security assistance ad-  
37 ministered by the Department relating to interoperable emergency commu-  
38 nications are coordinated and consistent with the goals and recommenda-  
39 tions in the National Emergency Communications Plan under section 12103  
40 of this title.

41 (b) DENIAL OF ELIGIBILITY FOR GRANTS.—

1 (1) IN GENERAL.—The Secretary, acting through the Assistant Sec-  
2 retary for Grants and Planning, and in consultation with the Director  
3 for Emergency Communications, may prohibit any State, local, or trib-  
4 al government from using homeland security assistance administered by  
5 the Department to achieve, maintain, or enhance emergency commu-  
6 nications capabilities, if—

7 (A) the government has not complied with the requirement to  
8 submit a Statewide Interoperable Communications Plan as re-  
9 quired by section 10713(e) of this title;

10 (B) the government has proposed to upgrade or purchase new  
11 equipment or systems that do not meet or exceed any applicable  
12 national voluntary consensus standards and has not provided a  
13 reasonable explanation of why the equipment or systems will serve  
14 the needs of the applicant better than equipment or systems that  
15 meet or exceed the standards; and

16 (C) as of the date that is 3 years after the date of the comple-  
17 tion of the initial National Emergency Communications Plan  
18 under section 12103 of this title, national voluntary consensus  
19 standards for interoperable emergency communications capabilities  
20 have not been developed and promulgated.

21 (2) STANDARDS.—The Secretary, in coordination with the Federal  
22 Communications Commission, the National Institute of Standards and  
23 Technology, and other Federal departments and agencies responsible  
24 for standards, shall support the development, promulgation, and updat-  
25 ing as necessary of national voluntary consensus standards for inter-  
26 operable emergency communications.

27 **§ 12106. Regional Emergency Communications Coordination**

28 (a) IN GENERAL.—There is in each Regional Office a Regional Emer-  
29 gency Communications Coordination Working Group (in this section re-  
30 ferred to as an “RECC Working Group”). Each RECC Working Group  
31 shall report to the relevant Regional Administrator and coordinate its activi-  
32 ties with the relevant Regional Advisory Council.

33 (b) MEMBERSHIP.—Each RECC Working Group consists of the following:

34 (1) Organizations representing the interests of the following:

35 (A) State officials.

36 (B) Local government officials, including sheriffs.

37 (C) State police departments.

38 (D) Local police departments.

39 (E) Local fire departments.

40 (F) Public safety answering points (9-1-1 services).

1 (G) State emergency managers, homeland security directors, or  
2 representatives of State Administrative Agencies.

3 (H) Local emergency managers or homeland security directors.

4 (I) Other emergency response providers as appropriate.

5 (2) Representatives from the Department, the Federal Communica-  
6 tions Commission, and other Federal departments and agencies with  
7 responsibility for coordinating interoperable emergency communications  
8 with or providing emergency support services to State, local, and tribal  
9 governments.

10 (e) COORDINATION.—Each RECC Working Group shall coordinate its ac-  
11 tivities with the following:

12 (1) Communications equipment manufacturers and vendors (includ-  
13 ing broadband data service providers).

14 (2) Local exchange carriers.

15 (3) Local broadcast media.

16 (4) Wireless carriers.

17 (5) Satellite communications services.

18 (6) Cable operators.

19 (7) Hospitals.

20 (8) Public utility services.

21 (9) Emergency evacuation transit services.

22 (10) Ambulance services.

23 (11) HAM and amateur radio operators.

24 (12) Representatives from other private-sector entities and non-  
25 governmental organizations as the Regional Administrator determines  
26 appropriate.

27 (d) DUTIES.—The duties of each RECC Working Group include—

28 (1) assessing the survivability, sustainability, and interoperability of  
29 local emergency communications systems to meet the goals of the Na-  
30 tional Emergency Communications Plan;

31 (2) reporting annually to the relevant Regional Administrator, the  
32 Director for Emergency Communications, the Chairman of the Federal  
33 Communications Commission, and the Assistant Secretary for Commu-  
34 nications and Information of the Department of Commerce on the  
35 status of its region in building robust and sustainable interoperable  
36 voice and data emergency communications networks and, not later than  
37 60 days after the completion of the initial National Emergency Com-  
38 munications Plan under section 12103 of this title, on the progress of  
39 the region in meeting the goals of the plan;

40 (3) ensuring a process for the coordination of effective multijuris-  
41 dictional, multi-agency emergency communications networks for use

1 during natural disasters, acts of terrorism, and other man-made disas-  
2 ters through the expanded use of emergency management and public  
3 safety communications mutual aid agreements; and

4 (4) coordinating the establishment of Federal, State, local, and tribal  
5 support services and networks designed to address the immediate and  
6 critical human needs in responding to natural disasters, acts of terror-  
7 ism, and other man-made disasters.

8 **§ 12107. Emergency Communications Preparedness Center**

9 (a) ESTABLISHMENT.—There is the Emergency Communications Pre-  
10 paredness Center.

11 (b) OPERATION.—The Secretary, the Chairman of the Federal Commu-  
12 nications Commission, the Secretary of Defense, the Secretary of Commerce,  
13 the Attorney General, and the heads of other Federal departments and  
14 agencies or their designees shall jointly operate the Emergency Communica-  
15 tions Preparedness Center in accordance with the Memorandum of Under-  
16 standing entitled, “Emergency Communications Preparedness Center  
17 (ECPC) Charter”.

18 (c) FUNCTIONS.—The Emergency Communications Preparedness Center  
19 shall—

20 (1) serve as the focal point for interagency efforts and as a clearing-  
21 house with respect to all relevant intergovernmental information to sup-  
22 port and promote (including specifically by working to avoid duplica-  
23 tion, hindrances, and counteractive efforts among the participating  
24 Federal departments and agencies)—

25 (A) the ability of emergency response providers and relevant  
26 government officials to continue to communicate in the event of  
27 natural disasters, acts of terrorism, and other man-made disasters;  
28 and

29 (B) interoperable emergency communications;

30 (2) prepare and submit to Congress annually a strategic assessment  
31 regarding the coordination efforts of Federal departments and agencies  
32 to advance

33 (A) the ability of emergency response providers and relevant  
34 government officials to continue to communicate in the event of  
35 natural disasters, acts of terrorism, and other man-made disasters;  
36 and

37 (B) interoperable emergency communications;

38 (3) consider, in preparing the strategic assessment under paragraph  
39 (2), the goals stated in the National Emergency Communications Plan  
40 under section 12103 of this title; and

1 (4) perform other functions provided in the ECPC Charter described  
2 in subsection (b).

3 **§ 12108. Urban and other high risk area communications ca-**  
4 **pabilities**

5 (a) IN GENERAL.—The Secretary, in consultation with the Chairman of  
6 the Federal Communications Commission and the Secretary of Defense, and  
7 with appropriate State, local, and tribal government officials, shall provide  
8 technical guidance, training, and other assistance, as appropriate, to sup-  
9 port the rapid establishment of consistent, secure, and effective interoper-  
10 able emergency communications capabilities in the event of an emergency  
11 in urban and other areas determined by the Secretary to be at consistently  
12 high levels of risk from natural disasters, acts of terrorism, and other man-  
13 made disasters.

14 (b) MINIMUM CAPABILITIES.—The interoperable emergency communica-  
15 tions capabilities established under subsection (a) shall ensure the ability of  
16 all levels of government, emergency response providers, the private sector,  
17 and other organizations with emergency response capabilities—

18 (1) to communicate with each other in the event of an emergency;

19 (2) to have appropriate and timely access to the Information Sharing  
20 Environment described in section 11111 of this title; and

21 (3) to be consistent with any applicable State or Urban Area home-  
22 land strategy or plan.

23 **§ 12109. Interoperable Emergency Communications Grant**  
24 **Program**

25 (a) ESTABLISHMENT.—The Secretary shall establish the Interoperable  
26 Emergency Communications Grant Program to make grants to States to  
27 carry out initiatives to improve local, tribal, statewide, regional, national  
28 and, where appropriate, international interoperable emergency communica-  
29 tions, including communications in collective response to natural disasters,  
30 acts of terrorism, and other man-made disasters.

31 (b) POLICY.—The Director for Emergency Communications shall ensure  
32 that a grant awarded to a State under this section is consistent with the  
33 policies established pursuant to the responsibilities and authorities of the  
34 Office of Emergency Communications under this chapter, including ensuring  
35 that activities funded by the grant—

36 (1) comply with the statewide plan for that State required by section  
37 10713(e) of this title; and

38 (2) comply with the National Emergency Communications Plan  
39 under section 12103 of this title, when completed.

40 (c) ADMINISTRATION.—



1 (1) IN GENERAL.—The Administrator of the Federal Emergency  
2 Management Agency shall administer the Interoperable Emergency  
3 Communications Grant Program pursuant to the responsibilities and  
4 authorities of the Administrator under chapter 111 of this title.

5 (2) Guidance.—In administering the grant program, the Adminis-  
6 trator shall ensure that the use of grants is consistent with guidance  
7 established by the Director of Emergency Communications under sec-  
8 tion 10713(b)(1)(H) of this title.

9 (d) USE OF FUNDS.—A State that receives a grant under this section  
10 shall use the grant to implement that State’s Statewide Interoperability  
11 Plan required under section 10713(e) of this title and approved under sub-  
12 section (e), and to assist with activities determined by the Secretary to be  
13 integral to interoperable emergency communications.

14 (e) APPROVAL OF PLANS.—

15 (1) APPROVAL AS CONDITION OF GRANT.—Before a State may re-  
16 ceive a grant under this section, the Director of Emergency Commu-  
17 nications shall approve the State’s Statewide Interoperable Communica-  
18 tions Plan required under section 10713(e) of this title.

19 (2) PLAN REQUIREMENTS.—In approving a plan under this sub-  
20 section, the Director of Emergency Communications shall ensure that  
21 the plan—

22 (A) is designed to improve interoperability at the city, county,  
23 regional, State and interstate level;

24 (B) considers any applicable local or regional plan; and

25 (C) complies, to the maximum extent practicable, with the Na-  
26 tional Emergency Communications Plan under section 12103 of  
27 this title.

28 (3) APPROVAL OF REVISIONS.—The Director of Emergency Commu-  
29 nications may approve revisions to a State’s plan if the Director deter-  
30 mines that doing so is likely to further interoperability.

31 (f) LIMITATIONS ON USES OF FUNDS.—

32 (1) IN GENERAL.—The recipient of a grant under this section may  
33 not use the grant—

34 (A) to supplant State or local funds;

35 (B) for any State or local government cost-sharing contribution;

36 or

37 (C) for recreational or social purposes.

38 (2) PENALTIES.—In addition to other remedies currently available,  
39 the Secretary may take necessary actions to ensure that recipients of  
40 grant funds are using the funds for the purpose for which they were  
41 intended.

1 (g) LIMITATIONS ON AWARD OF GRANTS.—

2 (1) NATIONAL EMERGENCY COMMUNICATIONS PLAN REQUIRED.—

3 The Secretary may not award a grant under this section before the  
4 date on which the Secretary completes and submits to Congress the  
5 National Emergency Communications Plan required under section  
6 12103 of this title.

7 (2) VOLUNTARY CONSENSUS STANDARDS.—The Secretary may not

8 award a grant to a State under this section for the purchase of equip-  
9 ment that does not meet applicable voluntary consensus standards, un-  
10 less the State demonstrates that there are compelling reasons for the  
11 purchase.

12 (h) AWARD OF GRANTS.—In approving applications and awarding grants  
13 under this section, the Secretary shall consider—

14 (1) the risk posed to each State by natural disasters, acts of terror-  
15 ism, or other manmade disasters, including

16 (A) the likely need of a jurisdiction within the State to respond  
17 to the risk in nearby jurisdictions;

18 (B) the degree of threat, vulnerability, and consequences related  
19 to critical infrastructure (from all critical infrastructure sectors)  
20 or key resources identified by the Administrator or the State  
21 homeland security and emergency management plans, including  
22 threats to, vulnerabilities of, and consequences from damage to  
23 critical infrastructure and key resources in nearby jurisdictions;

24 (C) the size of the population and density of the population of  
25 the State, including appropriate consideration of military, tourist,  
26 and commuter populations;

27 (D) whether the State is on or near an international border;

28 (E) whether the State encompasses an economically significant  
29 border crossing; and

30 (F) whether the State has a coastline bordering an ocean, a  
31 major waterway used for interstate commerce, or international wa-  
32 ters; and

33 (2) the anticipated effectiveness of the State's proposed use of grant  
34 funds to improve interoperability.

35 (i) OPPORTUNITY TO AMEND APPLICATIONS.—In considering applications  
36 for grants under this section, the Administrator shall provide applicants  
37 with a reasonable opportunity to correct defects in the application, if any,  
38 before making final awards.

39 (j) MINIMUM GRANT AMOUNTS.—

40 (1) STATES.—In awarding grants under this section, the Secretary  
41 shall ensure that for each fiscal year, except as provided in paragraph

1 (2), no State receives a grant in an amount that is less than 0.35 per-  
2 cent of the total amount appropriated for grants under this section for  
3 that fiscal year.

4 (2) TERRITORIES.—In awarding grants under this section, the Sec-  
5 retary shall ensure that for each fiscal year, American Samoa, the  
6 Northern Mariana Islands, Guam, and the Virgin Islands each receive  
7 grants in amounts that are not less than 0.08 percent of the total  
8 amount appropriated for grants under this section for that fiscal year.

9 (k) CERTIFICATION.—Each State that receives a grant under this section  
10 shall certify that the grant is used for the purpose for which the funds were  
11 intended and in compliance with the State’s approved Statewide Interoper-  
12 able Communications Plan.

13 (l) STATE RESPONSIBILITIES.—

14 (1) AVAILABILITY OF FUNDS TO LOCAL AND TRIBAL GOVERN-  
15 MENTS.—Not later than 45 days after receiving grant funds, a State  
16 that receives a grant under this section shall obligate or otherwise  
17 make available to local and tribal governments—

18 (A) not less than 80 percent of the grant funds;

19 (B) with the consent of local and tribal governments, eligible ex-  
20 penditures having a value of not less than 80 percent of the  
21 amount of the grant; or

22 (C) grant funds combined with other eligible expenditures hav-  
23 ing a total value of not less than 80 percent of the amount of the  
24 grant.

25 (2) ALLOCATION OF FUNDS.—A State that receives a grant under  
26 this section shall allocate grant funds to tribal governments in the  
27 State to assist tribal communities in improving interoperable commu-  
28 nications, in a manner consistent with the Statewide Interoperable  
29 Communications Plan. A State may not impose unreasonable or unduly  
30 burdensome requirements on a tribal government as a condition of pro-  
31 viding grant funds or resources to the tribal government.

32 (3) PENALTIES.—If a State violates the requirements of this sub-  
33 section, in addition to other remedies available to the Secretary, the  
34 Secretary may terminate or reduce the amount of the grant awarded  
35 to that State or transfer grant funds previously awarded to the State  
36 directly to the appropriate local or tribal government.

37 (m) REPORTS.—

38 (1) ANNUAL REPORTS BY STATE GRANT RECIPIENTS.—A State that  
39 receives a grant under this section shall annually submit to the Direc-  
40 tor of Emergency Communications a report on the progress of the  
41 State in implementing that State’s Statewide Interoperable Commu-

1            communications Plans required under section 10714(e) of this title and  
 2            achieving interoperability at the city, county, regional, State, and inter-  
 3            state levels. The Director shall make the reports publicly available, in-  
 4            cluding by making them available on the Internet website of the Office  
 5            of Emergency Communications, subject to any redactions that the Di-  
 6            rector determines are necessary to protect classified or other sensitive  
 7            information.

8            (2) ANNUAL REPORTS TO CONGRESS.—At least once each year, the  
 9            Director of Emergency Communications shall submit to Congress a re-  
 10           report on the use of grants awarded under this section and any progress  
 11           in implementing Statewide Interoperable Communications Plans and  
 12           improving interoperability at the city, county, regional, State, and  
 13           interstate level, as a result of the award of the grants.

14           (n) RULE OF CONSTRUCTION.—Nothing in this section shall be construed  
 15           or interpreted to preclude a State from using a grant awarded under this  
 16           section for interim or long-term Internet Protocol-based interoperable solu-  
 17           tions.

18           (o) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
 19           propriated for grants under this section such sums as may be necessary.

## 20            **Chapter 123—Domestic Nuclear Detection Office**

Sec.

12301. Mission.

12302. Technology research and development investment strategy for nuclear and radiological  
 detection.

12303. Testing authority.

12304. Personnel.

12305. Relationship to other department entities and Federal agencies.

12306. Contracting and grant making authorities.

12307. Joint annual interagency review of global nuclear detection architecture.

### 21            **§ 12301. Mission**

22            (a) DEFINITIONS.—In this section:

23            (1) ALASKA NATIVE-SERVING INSTITUTION.—The term “Alaska Na-  
 24            tive-serving institution” has the meaning given the term in section 317  
 25            of the Higher Education Act of 1965 (20 U.S.C. 1059d).

26            (2) ASIAN AMERICAN AND NATIVE AMERICAN PACIFIC ISLANDER-  
 27            SERVING INSTITUTION.—The term “Asian American and Native Amer-  
 28            ican Pacific Islander-serving institution” has the meaning given the  
 29            term in section 320 of the Higher Education Act of 1965 (20 U.S.C.  
 30            1059g).

31            (3) HAWAIIAN NATIVE-SERVING INSTITUTION.—The term “Hawaiian  
 32            native-serving institution” has the meaning given the term in section  
 33            317 of the Higher Education Act of 1965 (20 U.S.C. 1059d).

1 (4) HISPANIC-SERVING INSTITUTION.—The term “Hispanic-serving  
2 institution” has the meaning given that term in section 502 of the  
3 Higher Education Act of 1965 (20 U.S.C. 1101a).

4 (5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term  
5 “historically Black college or university” has the meaning given the  
6 term “part B institution” in section 322(2) of the Higher Education  
7 Act of 1965 (20 U.S.C. 1061(2)).

8 (6) TRIBAL COLLEGE OR UNIVERSITY.—The term “Tribal College or  
9 University” has the meaning given that term in section 316(b) of the  
10 Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

11 (b) MISSION.—The Domestic Nuclear Detection Office is responsible for  
12 coordinating Federal efforts to detect and protect against the unauthorized  
13 importation, possession, storage, transportation, development, or use of a  
14 nuclear explosive device, fissile material, or radiological material in the  
15 United States, and to protect against attack using such devices or materials  
16 against the people, territory, or interests of the United States and, to this  
17 end, shall—

18 (1) serve as the primary entity of the United States Government to  
19 further develop, acquire, and support the deployment of an enhanced  
20 domestic system to detect and report on attempts to import, possess,  
21 store, transport, develop, or use an unauthorized nuclear explosive de-  
22 vice, fissile material, or radiological material in the United States, and  
23 improve that system over time;

24 (2) enhance and coordinate the nuclear detection efforts of Federal,  
25 State, local, and tribal governments and the private sector to ensure  
26 a managed, coordinated response;

27 (3) establish, with the approval of the Secretary and in coordination  
28 with the Attorney General, the Secretary of Defense, and the Secretary  
29 of Energy, additional protocols and procedures for use within the  
30 United States to ensure that the detection of unauthorized nuclear ex-  
31 plosive devices, fissile material, or radiological material is promptly re-  
32 ported to the Attorney General, the Secretary, the Secretary of De-  
33 fense, the Secretary of Energy, and other appropriate officials or their  
34 respective designees for appropriate action by law enforcement, mili-  
35 tary, emergency response, or other authorities;

36 (4) develop, with the approval of the Secretary and in coordination  
37 with the Attorney General, the Secretary of State, the Secretary of De-  
38 fense, and the Secretary of Energy, an enhanced global nuclear detec-  
39 tion architecture with implementation under which—

1 (A) the Domestic Nuclear Detection Office will be responsible  
2 for the implementation of the domestic portion of the global archi-  
3 tecture;

4 (B) the Secretary of Defense will retain responsibility for imple-  
5 mentation of Department of Defense requirements within and out-  
6 side the United States; and

7 (C) the Secretary of State, the Secretary of Defense, and the  
8 Secretary of Energy will maintain their respective responsibilities  
9 for policy guidance and implementation of the portion of the global  
10 architecture outside the United States, which will be implemented  
11 consistent with applicable law and relevant international arrange-  
12 ments;

13 (5) ensure that the expertise necessary to accurately interpret detec-  
14 tion data is made available in a timely manner for all technology de-  
15 ployed by the Domestic Nuclear Detection Office to implement the  
16 global nuclear detection architecture;

17 (6) conduct, support, coordinate, and encourage an aggressive, expe-  
18 dited, evolutionary, and transformational program of research and de-  
19 velopment to generate and improve technologies to detect and prevent  
20 the illicit entry, transport, assembly, or potential use within the United  
21 States of a nuclear explosive device or fissile or radiological material,  
22 and coordinate with the Under Secretary for Science and Technology  
23 on basic and advanced or transformational research and development  
24 efforts relevant to the mission of both organizations;

25 (7) carry out a program to test and evaluate technology for detecting  
26 a nuclear explosive device and fissile or radiological material, in coordi-  
27 nation with the Secretary of Defense and the Secretary of Energy, as  
28 appropriate, and establish performance metrics for evaluating the effec-  
29 tiveness of individual detectors and detection systems in detecting such  
30 devices or material—

31 (A) under realistic operational and environmental conditions;  
32 and

33 (B) against realistic adversary tactics and countermeasures;

34 (8) support and enhance the effective sharing and use of appropriate  
35 information generated by the intelligence community, law enforcement  
36 agencies, counterterrorism community, other government agencies, and  
37 foreign governments, as well as provide appropriate information to the  
38 entities;

39 (9) further enhance and maintain continuous awareness by analyzing  
40 information from all Domestic Nuclear Detection Office mission-related  
41 detection systems;

1 (10) lead the development and implementation of the national strate-  
2 gic five-year plan for improving the nuclear forensic and attribution ca-  
3 pabilities of the United States required under section 1036 of the Na-  
4 tional Defense Authorization Act for Fiscal Year 2010 (Public Law  
5 111–84, 123 Stat. 2450);

6 (11) establish in the Domestic Nuclear Detection Office the National  
7 Technical Nuclear Forensics Center to provide centralized stewardship,  
8 planning, assessment, gap analysis, exercises, improvement, and inte-  
9 gration for all Federal nuclear forensics and attribution activities—

10 (A) to ensure an enduring national technical nuclear forensics  
11 capability to strengthen the collective response of the United  
12 States to nuclear terrorism or other nuclear attacks; and

13 (B) to coordinate and implement the national strategic five-year  
14 plan referred to in paragraph (10);

15 (12) establish a National Nuclear Forensics Expertise Development  
16 Program, which—

17 (A) is devoted to developing and maintaining a vibrant and en-  
18 doring academic pathway from undergraduate to post-doctorate  
19 study in nuclear and geochemical science specialties directly rel-  
20 evant to technical nuclear forensics, including radiochemistry, geo-  
21 chemistry, nuclear physics, nuclear engineering, materials science,  
22 and analytical chemistry;

23 (B) shall—

24 (i) make available for undergraduate study student scholar-  
25 ships, with a duration of up to 4 years per student, which  
26 shall include, if possible, at least one summer internship at  
27 a national laboratory or appropriate Federal agency in the  
28 field of technical nuclear forensics during the course of the  
29 student’s undergraduate career;

30 (ii) make available for doctoral study student fellowships,  
31 with a duration of up to 5 years per student, which shall—

32 (I) include, if possible, at least two summer intern-  
33 ships at a national laboratory or appropriate Federal  
34 agency in the field of technical nuclear forensics during  
35 the course of the student’s graduate career; and

36 (II) require each recipient to commit to serve for 2  
37 years in a post-doctoral position in a technical nuclear  
38 forensics-related specialty at a national laboratory or ap-  
39 propriate Federal agency after graduation;

1 (iii) make available to faculty awards, with a duration of  
2 3 to 5 years each, to ensure faculty and their graduate stu-  
3 dents have a sustained funding stream; and

4 (iv) place a particular emphasis on reinvigorating technical  
5 nuclear forensics programs while encouraging the participa-  
6 tion of undergraduate students, graduate students, and uni-  
7 versity faculty from historically Black colleges and univer-  
8 sities, Hispanic-serving institutions, Tribal Colleges and Uni-  
9 versities, Asian American and Native American Pacific Is-  
10 lander-serving institutions, Alaska Native-serving institutions,  
11 and Hawaiian Native-serving institutions; and

12 (C) shall—

13 (i) provide for the selection of individuals to receive schol-  
14 arships or fellowships under this section through a competi-  
15 tive process primarily on the basis of academic merit and the  
16 nuclear forensics and attribution needs of the United States  
17 Government;

18 (ii) provide for the setting aside of up to 10 percent of the  
19 scholarships or fellowships awarded under this section for in-  
20 dividuals who are Federal employees to enhance the education  
21 of the employees in areas of critical nuclear forensics and at-  
22 tribution needs of the United States Government, for doctoral  
23 education under the scholarship on a full-time or part-time  
24 basis;

25 (iii) provide that the Secretary may enter into a contrac-  
26 tual agreement with an institution of higher education under  
27 which the amounts provided for a scholarship under this sec-  
28 tion for tuition, fees, and other authorized expenses are paid  
29 directly to the institution with respect to which the scholar-  
30 ship is awarded;

31 (iv) require scholarship recipients to maintain satisfactory  
32 academic progress; and

33 (v) require that—

34 (I) a scholarship recipient who fails to maintain a high  
35 level of academic standing, as defined by the Secretary,  
36 who is dismissed for disciplinary reasons from the edu-  
37 cational institution the recipient is attending, or who vol-  
38 untarily terminates academic training before graduation  
39 from the educational program for which the scholarship  
40 was awarded is liable to the United States for repayment  
41 within 1 year after the date of default of all scholarship



1 funds paid to the recipient and to the institution of high-  
2 er education on the behalf of the recipient, provided that  
3 the repayment period may be extended by the Secretary  
4 if the Secretary determines it necessary, as established  
5 by regulation; and

6 (II) a scholarship recipient who, for any reason except  
7 death or disability, fails to begin or complete the post-  
8 doctoral service requirements in a technical nuclear  
9 forensics-related specialty at a national laboratory or ap-  
10 propriate Federal agency after completion of academic  
11 training is liable to the United States for an amount  
12 equal to—

13 (aa) the total amount of the scholarship received  
14 by the recipient under this section; and

15 (bb) the interest on the amounts which would be  
16 payable if at the time the scholarship was received  
17 the scholarship was a loan bearing interest at the  
18 maximum legally prevailing rate;

19 (13) provide an annual report to Congress on the activities carried  
20 out under paragraphs (10), (11), and (12); and

21 (14) perform other duties assigned by the Secretary.

22 **§ 12302. Technology research and development investment**  
23 **strategy for nuclear and radiological detection**

24 (a) IN GENERAL.—The Secretary, the Secretary of Energy, the Secretary  
25 of Defense, and the Director of National Intelligence shall submit to Con-  
26 gress a research and development investment strategy for nuclear and radio-  
27 logical detection.

28 (b) CONTENTS.—The strategy under subsection (a) shall include—

29 (1) a long term technology roadmap for nuclear and radiological de-  
30 tection applicable to the mission needs of the Department, the Depart-  
31 ment of Energy, the Department of Defense, and the Office of the Di-  
32 rector of National Intelligence;

33 (2) budget requirements necessary to meet the roadmap; and

34 (3) documentation of how the Department, the Department of En-  
35 ergy, the Department of Defense, and the Office of the Director of Na-  
36 tional Intelligence will execute this strategy.

37 (c) ANNUAL REPORT.—The Director for Domestic Nuclear Detection and  
38 the Under Secretary for Science and Technology jointly and annually shall  
39 notify Congress that the strategy and technology road map for nuclear and  
40 radiological detection developed under subsections (a) and (b) is consistent  
41 with the national policy and strategic plan for identifying priorities, goals,

1 objectives, and policies for coordinating the Federal Government's civilian  
2 efforts to identify and develop countermeasures to terrorist threats from  
3 weapons of mass destruction that are required under section 10701(2) of  
4 this title.

5 **§ 12303. Testing authority**

6 (a) IN GENERAL.—The Secretary, acting through the Director for Do-  
7 mestic Nuclear Detection, shall coordinate with the responsible Federal  
8 agency or other entity to facilitate the use by the Domestic Nuclear Detec-  
9 tion Office, by its contractors, or by other persons or entities, of existing  
10 Government laboratories, centers, ranges, or other testing facilities for the  
11 testing of materials, equipment, models, computer software, and other items  
12 as may be related to the missions identified in section 12301 of this title.  
13 Use of Government facilities shall be carried out in accordance with all ap-  
14 plicable laws, regulations, and contractual provisions, including those gov-  
15 erning security, safety, and environmental protection, including, when appli-  
16 cable, the provisions of section 10708 of this title. The Domestic Nuclear  
17 Detection Office may direct that private-sector entities utilizing Government  
18 facilities under this section pay an appropriate fee to the agency that owns  
19 or operates those facilities to defray additional costs to the Government re-  
20 sulting from private-sector use.

21 (b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests per-  
22 formed with services made available shall be confidential and shall not be  
23 disclosed outside the Federal Government without the consent of the per-  
24 sons for whom the tests are performed.

25 (c) FEES.—Fees for services made available under this section shall not  
26 exceed the amount necessary to recoup the direct and indirect costs in-  
27 volved, such as direct costs of utilities, contractor support, and salaries of  
28 personnel that are incurred by the United States to provide for the testing.

29 (d) USE OF FEES.—Fees received for services made available under this  
30 section may be credited to the appropriation from which funds were ex-  
31 pended to provide the services.

32 **§ 12304. Personnel**

33 (a) HIRING.—In hiring personnel for the Domestic Nuclear Detection Of-  
34 fice, the Secretary has the hiring and management authorities provided in  
35 section 1101 of the Strom Thurmond National Defense Authorization Act  
36 for Fiscal Year 1999 (Public Law 105–261, 5 U.S.C. 3104 note). The term  
37 of appointments for employees under subsection (c)(1) of that section may  
38 not exceed 5 years before granting any extension under subsection (c)(2)  
39 of that section.

40 (b) DETAIL.—The Secretary may request that the Secretary of Defense,  
41 the Secretary of Energy, the Secretary of State, the Attorney General, the

1 Nuclear Regulatory Commission, and the directors of other Federal agen-  
2 cies, including elements of the Intelligence Community, provide for the reim-  
3 bursable detail of personnel with relevant expertise to the Domestic Nuclear  
4 Detection Office.

5 **§ 12305. Relationship to other department entities and Fed-**  
6 **eral agencies**

7 The authority of the Secretary exercised by the Director for Domestic  
8 Nuclear Detection under this chapter shall not affect the authorities or re-  
9 sponsibilities of any officer of the Department or of any officer of any other  
10 department or agency of the United States with respect to the command,  
11 control, or direction of the functions, personnel, funds, assets, and liabilities  
12 of any entity within the Department or any Federal department or agency.

13 **§ 12306. Contracting and grant making authorities**

14 The Secretary, acting through the Director for Domestic Nuclear Detec-  
15 tion, in carrying out the responsibilities under paragraphs (6) and (7) of  
16 subsection (a) of section 12301 of this title shall—

17 (1) operate extramural and intramural programs and distribute  
18 funds through grants, cooperative agreements, and other transactions  
19 and contracts;

20 (2) ensure that activities under paragraphs (6) and (7) of paragraph  
21 (a) include investigations of radiation detection equipment in configura-  
22 tions suitable for deployment at seaports, which may include under-  
23 water or water surface detection equipment and detection equipment  
24 that can be mounted on cranes and straddle cars used to move shipping  
25 containers; and

26 (3) have the authority to establish or contract with one or more fed-  
27 erally funded research and development centers to provide independent  
28 analysis of homeland security issues and carry out other responsibilities  
29 under this chapter.

30 **§ 12307. Joint annual interagency review of global nuclear**  
31 **detection architecture**

32 (a) DEFINITION.—In this section, the term “global nuclear detection ar-  
33 chitecture” means the global nuclear detection architecture developed under  
34 section 12301 of this title.

35 (b) Annual review.—

36 (1) IN GENERAL.—The Secretary, the Attorney General, the Sec-  
37 retary of State, the Secretary of Defense, the Secretary of Energy, and  
38 the Director of National Intelligence shall jointly ensure interagency co-  
39 ordination on the development and implementation of the global nu-  
40 clear detection architecture by ensuring that, not less frequently than  
41 once each year—

- 1 (A) each relevant agency, office, or entity—
- 2 (i) assesses its involvement, support, and participation in
- 3 the development, revision, and implementation of the global
- 4 nuclear detection architecture; and
- 5 (ii) examines and evaluates components of the global nu-
- 6 clear detection architecture (including associated strategies
- 7 and acquisition plans) relating to the operations of that agen-
- 8 cy, office, or entity, to determine whether the components in-
- 9 corporate and address current threat assessments, scenarios,
- 10 or intelligence analyses developed by the Director of National
- 11 Intelligence or other agencies regarding threats relating to
- 12 nuclear or radiological weapons of mass destruction;
- 13 (B) each agency, office, or entity deploying or operating any nu-
- 14 clear or radiological detection technology under the global nuclear
- 15 detection architecture—
- 16 (i) evaluates the deployment and operation of nuclear or
- 17 radiological detection technologies under the global nuclear
- 18 detection architecture by that agency, office, or entity;
- 19 (ii) identifies performance deficiencies and operational or
- 20 technical deficiencies in nuclear or radiological detection tech-
- 21 nologies deployed under the global nuclear detection architec-
- 22 ture; and
- 23 (iii) assesses the capacity of that agency, office, or entity
- 24 to implement the responsibilities of that agency, office, or en-
- 25 tity under the global nuclear detection architecture; and
- 26 (C) the Director of the Domestic Nuclear Detection Office and
- 27 each of the relevant departments that are partners in the National
- 28 Technical Forensics Center—
- 29 (i) include, as part of the assessments, evaluations, and re-
- 30 views required under this paragraph, each office's or depart-
- 31 ment's activities and investments in support of nuclear
- 32 forensics and attribution activities and specific goals and ob-
- 33 jectives accomplished during the previous year pursuant to
- 34 the national strategic five-year plan for improving the nuclear
- 35 forensic and attribution capabilities of the United States re-
- 36 quired under section 1036 of the National Defense Authoriza-
- 37 tion Act for Fiscal Year 2010;
- 38 (ii) attach, as an appendix to the Joint Interagency Annual
- 39 Review, the most current version of the strategy and plan;
- 40 and

1 (iii) include a description of new or amended bilateral and  
 2 multilateral agreements and efforts in support of nuclear  
 3 forensics and attribution activities accomplished during the  
 4 previous year.

5 (2) TECHNOLOGY.—Not less frequently than once each year, the  
 6 Secretary shall examine and evaluate the development, assessment, and  
 7 acquisition of radiation detection technologies deployed or implemented  
 8 in support of the domestic portion of the global nuclear detection archi-  
 9 tecture.

10 (c) ANNUAL REPORT ON JOINT INTERAGENCY REVIEW.—

11 (1) IN GENERAL.—Not later than March 31 each year, the Sec-  
 12 retary, the Attorney General, the Secretary of State, the Secretary of  
 13 Defense, the Secretary of Energy, and the Director of National Intel-  
 14 ligence, shall jointly submit a report regarding the implementation of  
 15 this section and the results of the reviews required under subsection

16 (a) to—

17 (A) the President;

18 (B) the Committee on Appropriations, the Committee on Armed  
 19 Services, the Select Committee on Intelligence, and the Committee  
 20 on Homeland Security and Governmental Affairs of the Senate;  
 21 and

22 (C) the Committee on Appropriations, the Committee on Armed  
 23 Services, the Permanent Select Committee on Intelligence, the  
 24 Committee on Homeland Security, and the Committee on Science  
 25 and Technology of the House of Representatives.

26 (2) FORM.—The annual report submitted under paragraph (1) shall  
 27 be submitted in unclassified form to the maximum extent practicable,  
 28 but may include a classified annex.

## 29 **Chapter 125—Homeland Security Grants**

### SEC.

- 12501. Definitions.
- 12502. Homeland security grant programs.
- 12503. Urban Area Security Initiative.
- 12504. State Homeland Security Grant Program.
- 12505. Grants to directly eligible tribes.
- 12506. Terrorism prevention.
- 12507. Prioritization.
- 12508. Use of funds.
- 12509. Administration and coordination.
- 12510. Accountability.
- 12511. Identification of reporting redundancies and development of performance metrics.

### 30 **§ 12501. Definitions**

31 In this chapter:

32 (1) ADMINISTRATOR.—The term “Administrator” means the Admin-  
 33 istrator of the Federal Emergency Management Agency.

1 (2) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appro-  
2 priate committees of Congress” means—

3 (A) the Committee on Homeland Security and Governmental  
4 Affairs of the Senate; and

5 (B) those committees of the House of Representatives that the  
6 Speaker of the House of Representatives determines appropriate.

7 (3) CRITICAL INFRASTRUCTURE SECTORS.—The term “critical infra-  
8 structure sectors” means the following sectors, in both urban and rural  
9 areas:

10 (A) Agriculture and food.

11 (B) Banking and finance.

12 (C) Chemical industries.

13 (D) Commercial facilities.

14 (E) Commercial nuclear reactors, materials, and waste.

15 (F) Dams.

16 (G) The defense industrial base.

17 (H) Emergency services.

18 (I) Energy.

19 (J) Government facilities.

20 (K) Information technology.

21 (L) National monuments and icons.

22 (M) Postal and shipping.

23 (N) Public health and health care.

24 (O) Telecommunications.

25 (P) Transportation systems.

26 (Q) Water.

27 (4) DIRECTLY ELIGIBLE TRIBE.—The term “directly eligible tribe”  
28 means—

29 (A) an Indian tribe—

30 (i) that is located in the continental United States;

31 (ii) that operates a law enforcement or emergency response  
32 agency with the capacity to respond to calls for law enforce-  
33 ment or emergency services;

34 (iii) that—

35 (I) is located on or near an international border or a  
36 coastline bordering an ocean (including the Gulf of Mex-  
37 ico) or international waters;

38 (II) is located within 10 miles of a system or asset in-  
39 cluded on the prioritized critical infrastructure list estab-  
40 lished under section 10516(a)(2) of this title or has such  
41 a system or asset within its territory;

1 (III) is located within or contiguous to one of the 50  
2 most populous metropolitan statistical areas in the  
3 United States; or

4 (IV) has jurisdiction over not less than 1,000 square  
5 miles of Indian country, as that term is defined in sec-  
6 tion 1151 of title 18; and

7 (iv) that certifies to the Secretary that a State has not pro-  
8 vided funds under section 12503 or 12504 of this title to the  
9 Indian tribe or consortium of Indian tribes for the purpose  
10 for which direct funding is sought; and

11 (B) a consortium of Indian tribes, if each tribe satisfies the re-  
12 quirements of subparagraph (A).

13 (5) ELIGIBLE METROPOLITAN AREA.—The term “eligible metropoli-  
14 tan area” means any of the 100 most populous metropolitan statistical  
15 areas in the United States.

16 (6) HIGH-RISK URBAN AREA.—The term “high-risk urban area”  
17 means a high-risk urban area designated under section 12503(b)(3)(A)  
18 of this title.

19 (7) INDIAN TRIBE.—The term “Indian tribe” has the meaning given  
20 that term in section 4(e) of the Indian Self-Determination Act (25  
21 U.S.C. 450b(e)).

22 (8) METROPOLITAN STATISTICAL AREA.—The term “metropolitan  
23 statistical area” means a metropolitan statistical area, as defined by  
24 the Office of Management and Budget.

25 (9) NATIONAL SPECIAL SECURITY EVENT.—The term “National Spe-  
26 cial Security Event” means a designated event that, by virtue of its po-  
27 litical, economic, social, or religious significance, may be the target of  
28 terrorism or other criminal activity.

29 (10) POPULATION.—The term “population” means population ac-  
30 cording to the most recent United States census population estimates  
31 available at the start of the relevant fiscal year.

32 (11) POPULATION DENSITY.—The term “population density” means  
33 population divided by land area in square miles.

34 (12) QUALIFIED INTELLIGENCE ANALYST.—The term “qualified in-  
35 telligence analyst” means an intelligence analyst (as that term is de-  
36 fined in section 10512(a) of this title), including law enforcement per-  
37 sonnel—

38 (A) who has successfully completed training to ensure base-  
39 line proficiency in intelligence analysis and production, as de-  
40 termined by the Secretary, which may include training using  
41 a curriculum developed under section 10510 of this title; or

1 (B) whose experience ensures baseline proficiency in intelligence  
2 analysis and production equivalent to the training required under  
3 subparagraph (A), as determined by the Secretary.

4 (13) TARGET CAPABILITIES.—The term “target capabilities” means  
5 the target capabilities for Federal, State, local, and tribal government  
6 preparedness for which guidelines are required to be established under  
7 section 20506 of this title.

8 (14) TRIBAL GOVERNMENT.—The term “tribal government” means  
9 the government of an Indian tribe.

10 **§ 12502. Homeland security grant programs**

11 (a) GRANTS AUTHORIZED.—The Secretary, acting through the Adminis-  
12 trator, may award grants under sections 12503 and 12504 of this title to  
13 State, local, and tribal governments.

14 (b) PROGRAMS NOT AFFECTED.—This chapter shall not be construed to  
15 affect any of the following Federal programs:

16 (1) Firefighter and other assistance programs authorized under the  
17 Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et  
18 seq.).

19 (2) Grants authorized under the Robert T. Stafford Disaster Relief  
20 and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

21 (3) Emergency Management Performance Grants under the amend-  
22 ments made by title II of the Implementing Recommendations of the  
23 9/11 Commission Act of 2007 (Public Law 110–53, 121 Stat. 294).

24 (4) Grants to protect critical infrastructure, including port security  
25 grants authorized under section 70107 of title 46, and grants author-  
26 ized under titles XIV and XV of the Implementing Recommendations  
27 of the 9/11 Commission Act of 2007 (Public Law 110–53, 121 Stat.  
28 400, 422) and the amendments made by those titles.

29 (5) The Metropolitan Medical Response System authorized under  
30 section 20304 of this title.

31 (6) The Interoperable Emergency Communications Grant Program  
32 authorized under title XVIII of the Implementing Recommendations of  
33 the 9/11 Commission Act of 2007 (Public Law 110–53, 121 Stat. 491).

34 (7) Grant programs other than those administered by the Depart-  
35 ment.

36 (c) RELATIONSHIP TO OTHER LAWS.—

37 (1) IN GENERAL.—The grant programs authorized under sections  
38 12503 and 12504 of this title supersede all grant programs authorized  
39 under section 1014 of the USA PATRIOT Act (42 U.S.C. 3714).



1           (2) ALLOCATION.—The allocation of grants authorized under sec-  
2           tions 12503 and 12504 of this title is governed by the terms of this  
3           chapter and not by any other provision of law.

4   **§ 12503. Urban Area Security Initiative**

5           (a) ESTABLISHMENT.—There is in the Department the Urban Area Secu-  
6           rity Initiative to provide grants to assist high-risk urban areas in prevent-  
7           ing, preparing for, protecting against, and responding to acts of terrorism.

8           (b) ASSESSMENT AND DESIGNATION OF HIGH-RISK URBAN AREAS.—

9           (1) IN GENERAL.—The Secretary shall designate high-risk urban  
10           areas to receive grants under this section based on procedures under  
11           this subsection.

12           (2) INITIAL ASSESSMENT.—

13           (A) IN GENERAL.—For each fiscal year, the Secretary shall con-  
14           duct an initial assessment of the relative threat, vulnerability, and  
15           consequences from acts of terrorism faced by each eligible metro-  
16           politan area, including consideration of—

17           (i) the factors set forth in subparagraphs (A) through (H)  
18           and (K) of section 12507(a)(1) of this title; and

19           (ii) information and materials submitted under subpara-  
20           graph (B).

21           (B) SUBMISSION OF INFORMATION BY ELIGIBLE METROPOLITAN  
22           AREAS.—Prior to conducting each initial assessment under sub-  
23           paragraph (A), the Secretary shall provide each eligible metropoli-  
24           tan area with, and shall notify each eligible metropolitan area of,  
25           the opportunity to—

26           (i) submit information that the eligible metropolitan area  
27           believes to be relevant to the determination of the threat, vul-  
28           nerability, and consequences it faces from acts of terrorism;  
29           and

30           (ii) review the risk assessment conducted by the Depart-  
31           ment of that eligible metropolitan area, including the bases  
32           for the assessment by the Department of the threat, vulner-  
33           ability, and consequences from acts of terrorism faced by that  
34           eligible metropolitan area, and remedy erroneous or incom-  
35           plete information.

36           (3) DESIGNATION OF HIGH-RISK URBAN AREAS.—

37           (A) DESIGNATION.—

38           (i) For each fiscal year, after conducting the initial assess-  
39           ment under paragraph (2), and based on that assessment, the  
40           Secretary shall designate high-risk urban areas that may sub-  
41           mit applications for grants under this section.

1 (ii) Notwithstanding paragraph (2), the Secretary may—

2 (I) in any case where an eligible metropolitan area  
3 consists of more than one metropolitan division (as that  
4 term is defined by the Office of Management and Budget)  
5 designate more than one high-risk urban area within  
6 a single eligible metropolitan area; and

7 (II) designate an area that is not an eligible metropoli-  
8 tan area as a high-risk urban area based on the assess-  
9 ment by the Secretary of the relative threat, vulner-  
10 ability, and consequences from acts of terrorism faced by  
11 the area.

12 (iii) Nothing in this subsection may be construed to require  
13 the Secretary to—

14 (I) designate all eligible metropolitan areas that sub-  
15 mit information to the Secretary under paragraph  
16 (2)(B)(i) as high-risk urban areas; or

17 (II) designate all areas within an eligible metropolitan  
18 area as part of the high-risk urban area.

19 (B) JURISDICTIONS INCLUDED IN HIGH-RISK URBAN AREAS.—

20 (i) In designating high-risk urban areas under subpara-  
21 graph (A), the Secretary shall determine which jurisdictions,  
22 at a minimum, shall be included in each high-risk urban area.

23 (ii) A high-risk urban area designated by the Secretary  
24 may, in consultation with the State or States in which the  
25 high-risk urban area is located, add additional jurisdictions to  
26 the high-risk urban area.

27 (c) APPLICATION.—

28 (1) IN GENERAL.—An area designated as a high-risk urban area  
29 under subsection (b) may apply for a grant under this section.

30 (2) MINIMUM CONTENTS OF APPLICATION.—In an application for a  
31 grant under this section, a high-risk urban area shall submit—

32 (A) a plan describing the proposed division of responsibilities  
33 and distribution of funding among the local and tribal govern-  
34 ments in the high-risk urban area;

35 (B) the name of an individual to serve as a high-risk urban area  
36 liaison with the Department and among the various jurisdictions  
37 in the high-risk urban area; and

38 (C) information in support of the application the Secretary may  
39 reasonably require.

40 (3) ANNUAL APPLICATIONS.—Applicants for grants under this sec-  
41 tion shall apply or reapply on an annual basis.

1 (4) STATE REVIEW AND TRANSMISSION.—

2 (A) IN GENERAL.—To ensure consistency with State homeland  
3 security plans, a high-risk urban area applying for a grant under  
4 this section shall submit its application to each State within which  
5 any part of that high-risk urban area is located for review before  
6 submission of the application to the Department.

7 (B) DEADLINE.—Not later than 30 days after receiving an ap-  
8 plication from a high-risk urban area under subparagraph (A), a  
9 State shall transmit the application to the Department.

10 (C) OPPORTUNITY FOR STATE COMMENT.—If the Governor of  
11 a State determines that an application of a high-risk urban area  
12 is inconsistent with the State homeland security plan of that  
13 State, or otherwise does not support the application, the Governor  
14 shall—

- 15 (i) notify the Secretary, in writing, of that fact; and  
16 (ii) provide an explanation of the reason for not supporting  
17 the application at the time of transmission of the application.

18 (5) OPPORTUNITY TO AMEND.—In considering applications for  
19 grants under this section, the Secretary shall provide applicants with  
20 a reasonable opportunity to correct defects in the application, if any,  
21 before making final awards.

22 (d) DISTRIBUTION OF AWARDS.—

23 (1) IN GENERAL.—If the Secretary approves the application of a  
24 high-risk urban area for a grant under this section, the Secretary shall  
25 distribute the grant funds to the State or States in which that high-  
26 risk urban area is located.

27 (2) STATE DISTRIBUTION OF FUNDS.—

28 (A) IN GENERAL.—Not later than 45 days after the date that  
29 a State receives grant funds under paragraph (1), that State shall  
30 provide the high-risk urban area awarded that grant not less than  
31 80 percent of the grant funds. Any funds retained by a State shall  
32 be expended on items, services, or activities that benefit the high-  
33 risk urban area.

34 (B) FUNDS RETAINED.—A State shall provide each relevant  
35 high-risk urban area with an accounting of the items, services, or  
36 activities on which any funds retained by the State under subpara-  
37 graph (A) were expended.

38 (3) INTERSTATE URBAN AREAS.—If parts of a high-risk urban area  
39 awarded a grant under this section are located in two or more States,  
40 the Secretary shall distribute to each State—

1 (A) a portion of the grant funds in accordance with the pro-  
2 posed distribution set forth in the application; or

3 (B) if no agreement on distribution has been reached, a portion  
4 of the grant funds determined by the Secretary to be appropriate.

5 (4) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS  
6 TO HIGH-RISK URBAN AREAS.—A State that receives grant funds under  
7 paragraph (1) shall certify to the Secretary that the State has made  
8 available to the applicable high-risk urban area the required funds  
9 under paragraph (2).

10 (e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
11 propriated for grants under this section such sums as may be necessary.

12 **§ 12504. State Homeland Security Grant Program**

13 (a) ESTABLISHMENT.—There is in the Department a State Homeland Se-  
14 curity Grant Program to assist State, local, and tribal governments in pre-  
15 venting, preparing for, protecting against, and responding to acts of terror-  
16 ism.

17 (b) APPLICATION.—

18 (1) IN GENERAL.—Each State may apply for a grant under this sec-  
19 tion, and shall submit information in support of the application the  
20 Secretary may reasonably require.

21 (2) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall re-  
22 quire that each State include in its application, at a minimum

23 (A) the purpose for which the State seeks grant funds and the  
24 reasons why the State needs the grant to meet the target capabili-  
25 ties of that State;

26 (B) a description of how the State plans to allocate the grant  
27 funds to local governments and Indian tribes; and

28 (C) a budget showing how the State intends to expend the grant  
29 funds.

30 (3) ANNUAL APPLICATIONS.—Applicants for grants under this sec-  
31 tion shall apply or reapply on an annual basis.

32 (c) DISTRIBUTION TO LOCAL AND TRIBAL GOVERNMENTS.—

33 (1) IN GENERAL.—Not later than 45 days after receiving grant  
34 funds, any State receiving a grant under this section shall make avail-  
35 able to local and tribal governments, consistent with the applicable  
36 State homeland security plan

37 (A) not less than 80 percent of the grant funds;

38 (B) with the consent of local and tribal governments, items,  
39 services, or activities having a value of not less than 80 percent  
40 of the amount of the grant; or

1 (C) with the consent of local and tribal governments, grant  
2 funds combined with other items, services, or activities having a  
3 total value of not less than 80 percent of the amount of the grant.

4 (2) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS  
5 TO LOCAL GOVERNMENTS.—A State shall certify to the Secretary that  
6 the State has made the distribution to local and tribal governments re-  
7 quired under paragraph (1).

8 (3) EXTENSION OF PERIOD.—The Governor of a State may request  
9 in writing that the Secretary extend the period under paragraph (1)  
10 for an additional period of time. The Secretary may approve a request  
11 if the Secretary determines that the resulting delay in providing grant  
12 funding to the local and tribal governments is necessary to promote ef-  
13 fective investments to prevent, prepare for, protect against, or respond  
14 to acts of terrorism.

15 (4) EXCEPTION.—Paragraph (1) does not apply to the District of  
16 Columbia, Puerto Rico, American Samoa, the Northern Mariana Is-  
17 lands, Guam, or the Virgin Islands.

18 (5) DIRECT FUNDING.—If a State fails to make the distribution to  
19 local or tribal governments required under paragraph (1) in a timely  
20 fashion, a local or tribal government entitled to receive the distribution  
21 may petition the Secretary to request that grant funds be provided di-  
22 rectly to the local or tribal government.

23 (d) MULTISTATE APPLICATIONS.—

24 (1) IN GENERAL.—Instead of, or in addition to, any application for  
25 a grant under subsection (b), two or more States may submit an appli-  
26 cation for a grant under this section in support of multistate efforts  
27 to prevent, prepare for, protect against, and respond to acts of terror-  
28 ism.

29 (2) ADMINISTRATION OF GRANT.—If a group of States applies for  
30 a grant under this section, the States shall submit to the Secretary at  
31 the time of application a plan describing

32 (A) the division of responsibilities for administering the grant;  
33 and

34 (B) the distribution of funding among the States that are par-  
35 ties to the application.

36 (e) MINIMUM ALLOCATION.—

37 (1) IN GENERAL.—In allocating funds under this section, the Sec-  
38 retary shall ensure that—

39 (A) except as provided in subparagraph (B), each State receives  
40 for each fiscal year, from the funds appropriated for the State  
41 Homeland Security Grant Program established under this section,

1 not less than 0.35 percent of the total funds appropriated for  
2 grants under this section and section 2003; and

3 (B) for each fiscal year, American Samoa, the Northern Mari-  
4 ana Islands, Guam, and the Virgin Islands each receive, from the  
5 funds appropriated for the State Homeland Security Grant Pro-  
6 gram established under this section, not less than an amount  
7 equal to 0.08 percent of the total funds appropriated for grants  
8 under this section and section 2003.

9 (2) EFFECT OF MULTISTATE AWARD ON STATE MINIMUM.—Any por-  
10 tion of a multistate award provided to a State under subsection (d)  
11 shall be considered in calculating the minimum State allocation under  
12 this subsection.

13 (f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
14 propriated for grants under this section such sums as may be necessary.

15 **§ 12505. Grants to directly eligible tribes**

16 (a) IN GENERAL.—Notwithstanding section 12504(b) of this title, the  
17 Secretary, acting through the Administrator, may award grants to directly  
18 eligible tribes under section 12504.

19 (b) TRIBAL APPLICATIONS.—A directly eligible tribe may apply for a  
20 grant under section 12504 of this title by submitting an application to the  
21 Secretary that includes, as appropriate, the information required for an ap-  
22 plication by a State under section 12504(b).

23 (c) CONSISTENCY WITH STATE PLANS.—

24 (1) IN GENERAL.—To ensure consistency with any applicable State  
25 homeland security plan, a directly eligible tribe applying for a grant  
26 under section 12504 of this title shall provide a copy of its application  
27 to each State within which any part of the tribe is located for review  
28 before the tribe submits the application to the Department.

29 (2) OPPORTUNITY FOR COMMENT.—If the Governor of a State deter-  
30 mines that the application of a directly eligible tribe is inconsistent  
31 with the State homeland security plan of that State, or otherwise does  
32 not support the application, not later than 30 days after the date of  
33 receipt of that application the Governor shall—

34 (A) notify the Secretary, in writing, of that fact; and

35 (B) provide an explanation of the reason for not supporting the  
36 application.

37 (d) FINAL AUTHORITY.—The Secretary shall have final authority to ap-  
38 prove any application of a directly eligible tribe. The Secretary shall notify  
39 each State within the boundaries of which any part of a directly eligible  
40 tribe is located of the approval of an application by the tribe.

1 (e) PRIORITIZATION.—The Secretary shall allocate funds to directly eligi-  
2 ble tribes in accordance with the factors applicable to allocating funds  
3 among States under section 12507 of this title.

4 (f) DISTRIBUTION OF AWARDS TO DIRECTLY ELIGIBLE TRIBES.—If the  
5 Secretary awards funds to a directly eligible tribe under this section, the  
6 Secretary shall distribute the grant funds directly to the tribe and not  
7 through any State.

8 (g) MINIMUM ALLOCATION.—

9 (1) IN GENERAL.—In allocating funds under this section, the Sec-  
10 retary shall ensure that, for each fiscal year, directly eligible tribes col-  
11 lectively receive, from the funds appropriated for the State Homeland  
12 Security Grant Program established under section 12503 of this title,  
13 not less than an amount equal to 0.1 percent of the total funds appro-  
14 priated for grants under sections 12503 and 12504 of this title.

15 (2) EXCEPTION.—This subsection shall not apply in any fiscal year  
16 in which the Secretary—

17 (A) receives fewer than five applications under this section; or

18 (B) does not approve at least two applications under this sec-  
19 tion.

20 (h) TRIBAL LIAISON.—A directly eligible tribe applying for a grant under  
21 section 12504 of this title shall designate an individual to serve as a tribal  
22 liaison with the Department and other Federal, State, local, and regional  
23 government officials concerning preventing, preparing for, protecting  
24 against, and responding to acts of terrorism.

25 (i) ELIGIBILITY FOR OTHER FUNDS.—A directly eligible tribe that re-  
26 ceives a grant under section 12504 of this title may receive funds for other  
27 purposes under a grant from the State or States within the boundaries of  
28 which any part of the tribe is located and from any high-risk urban area  
29 of which it is a part, consistent with the homeland security plan of the State  
30 or high-risk urban area.

31 (j) STATE OBLIGATIONS.—

32 (1) IN GENERAL.—States are responsible for allocating grant funds  
33 received under section 12504 of this title to tribal governments in order  
34 to help those tribal communities achieve target capabilities not achieved  
35 through grants to directly eligible tribes.

36 (2) DISTRIBUTION OF GRANT FUNDS.—With respect to a grant to  
37 a State under section 12504, an Indian tribe shall be eligible for fund-  
38 ing directly from that State, and shall not be required to seek funding  
39 from any local government.

40 (3) IMPOSITION OF REQUIREMENTS.—A State may not impose un-  
41 reasonable or unduly burdensome requirements on an Indian tribe as

1 a condition of providing the Indian tribe with grant funds or resources  
2 under section 12504.

3 (k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed  
4 to affect the authority of an Indian tribe that receives funds under this  
5 chapter.

6 **§ 12506. Terrorism prevention**

7 (a) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—

8 (1) IN GENERAL.—The Secretary, acting through the Administrator, shall  
9 ensure that not less than 25 percent of the total combined funds appro-  
10 priated for grants under sections 12503 and 12504 of this title is used for  
11 law enforcement terrorism prevention activities.

12 (2) LAW ENFORCEMENT TERRORISM PREVENTION ACTIVITIES.—Law  
13 enforcement terrorism prevention activities include—

14 (A) information sharing and analysis;

15 (B) target hardening;

16 (C) threat recognition;

17 (D) terrorist interdiction;

18 (E) overtime expenses consistent with a State homeland security  
19 plan, including for the provision of enhanced law enforcement op-  
20 erations in support of Federal agencies, including for increased  
21 border security and border crossing enforcement;

22 (F) establishing, enhancing, and staffing with appropriately  
23 qualified personnel State, local, and regional fusion centers that  
24 comply with the guidelines established under section 10512(a) of  
25 this title;

26 (G) paying salaries and benefits for personnel, including individ-  
27 uals employed by the grant recipient on the date of the relevant  
28 grant application, to serve as qualified intelligence analysts;

29 (H) any other activity permitted under the Fiscal Year 2007  
30 Program Guidance of the Department for the Law Enforcement  
31 Terrorism Prevention Program; and

32 (I) any other terrorism prevention activity authorized by the  
33 Secretary.

34 (3) PARTICIPATION OF UNDERREPRESENTED COMMUNITIES IN FU-  
35 SION CENTERS.—The Secretary shall ensure that grant funds described  
36 in paragraph (1) are used to support the participation, as appropriate,  
37 of law enforcement and other emergency response providers from rural  
38 and other underrepresented communities at risk from acts of terrorism  
39 in fusion centers.

40 (b) OFFICE FOR STATE AND LOCAL LAW ENFORCEMENT.—



1 (1) ESTABLISHMENT.—There is in the Policy Directorate of the De-  
2 partment the Office for State and Local Law Enforcement.

3 (2) ASSISTANT SECRETARY FOR STATE AND LOCAL LAW ENFORCE-  
4 MENT.— The Assistant Secretary for State and Local Law Enforce-  
5 ment—

6 (A) is the head of the Office for State and Local Law Enforce-  
7 ment; and

8 (B) shall have an appropriate background with experience in  
9 law enforcement, intelligence, and other counterterrorism func-  
10 tions.

11 (3) ASSIGNMENT OF PERSONNEL.—The Secretary shall assign to the  
12 Office for State and Local Law Enforcement permanent staff and, as  
13 appropriate and consistent with sections 10312, 10313(b)(2), and  
14 11106(c)(2) of this title, other appropriate personnel detailed from  
15 other components of the Department to carry out the responsibilities  
16 under this subsection.

17 (4) RESPONSIBILITIES.—The Assistant Secretary for State and  
18 Local Law Enforcement shall—

19 (A) lead the coordination of Department-wide policies relating  
20 to the role of State and local law enforcement in preventing, pre-  
21 paring for, protecting against, and responding to natural disasters,  
22 acts of terrorism, and other man-made disasters within the United  
23 States;

24 (B) serve as a liaison between State, local, and tribal law en-  
25 forcement agencies and the Department;

26 (C) coordinate with the Office of Intelligence and Analysis to  
27 ensure the intelligence and information sharing requirements of  
28 State, local, and tribal law enforcement agencies are being ad-  
29 dressed;

30 (D) work with the Secretary to ensure that law enforcement and  
31 terrorism-focused grants to State, local, and tribal government  
32 agencies, including grants under sections 12503 and 12504 of this  
33 title, the Commercial Equipment Direct Assistance Program, and  
34 other grants administered by the Department to support fusion  
35 centers and law enforcement-oriented programs, are appropriately  
36 focused on terrorism prevention activities;

37 (E) coordinate with the Science and Technology Directorate, the  
38 Federal Emergency Management Agency, the Department of Jus-  
39 tice, the National Institute of Justice, law enforcement organiza-  
40 tions, and other appropriate entities to support the development,  
41 promulgation, and updating, as necessary, of national voluntary

1 consensus standards for training and personal protective equip-  
2 ment to be used in a tactical environment by law enforcement offi-  
3 cers; and

4 (F) conduct, jointly with the Secretary, a study to determine the  
5 efficacy and feasibility of establishing specialized law enforcement  
6 deployment teams to assist State, local, and tribal governments in  
7 responding to natural disasters, acts of terrorism, or other man-  
8 made disasters and report on the results of that study to the ap-  
9 propriate committees of Congress.

10 (5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be  
11 construed to diminish, supercede, or replace the responsibilities, au-  
12 thorities, or role of the Secretary.

13 **§ 12507. Prioritization**

14 (a) IN GENERAL.—In allocating funds among States and high-risk urban  
15 areas applying for grants under section 12503 or 12504 of this title, the  
16 Secretary, acting through the Administrator, shall consider, for each State  
17 or high-risk urban area

18 (1) its relative threat, vulnerability, and consequences from acts of  
19 terrorism, including consideration of—

20 (A) its population, including appropriate consideration of mili-  
21 tary, tourist, and commuter populations;

22 (B) its population density;

23 (C) its history of threats, including whether it has been the tar-  
24 get of a prior act of terrorism;

25 (D) its degree of threat, vulnerability, and consequences related  
26 to critical infrastructure (for all critical infrastructure sectors) or  
27 key resources identified by the Secretary or the State homeland  
28 security plan, including threats, vulnerabilities, and consequences  
29 related to critical infrastructure or key resources in nearby juris-  
30 dictions;

31 (E) the most current threat assessments available to the De-  
32 partment;

33 (F) whether the State has, or the high-risk urban area is lo-  
34 cated at or near, an international border;

35 (G) whether it has a coastline bordering an ocean (including the  
36 Gulf of Mexico) or international waters;

37 (H) its likely need to respond to acts of terrorism occurring in  
38 nearby jurisdictions;

39 (I) the extent to which it has unmet target capabilities;

40 (J) in the case of a high-risk urban area, the extent to which  
41 that high-risk urban area includes—

1 (i) those incorporated municipalities, counties, parishes,  
2 and Indian tribes within the relevant eligible metropolitan  
3 area, the inclusion of which will enhance regional efforts to  
4 prevent, prepare for, protect against, and respond to acts of  
5 terrorism; and

6 (ii) other local and tribal governments in the surrounding  
7 area that are likely to be called upon to respond to acts of  
8 terrorism within the high-risk urban area; and

9 (K) such other factors as are specified in writing by the Sec-  
10 retary; and

11 (2) the anticipated effectiveness of the proposed use of the grant by  
12 the State or high-risk urban area in increasing the ability of that State  
13 or high-risk urban area to prevent, prepare for, protect against, and  
14 respond to acts of terrorism, to meet its target capabilities, and to  
15 otherwise reduce the overall risk to the high-risk urban area, the State,  
16 or the Nation.

17 (b) TYPES OF THREAT.—In assessing threat under this section, the Sec-  
18 retary shall consider the following types of threat to critical infrastructure  
19 sectors and to populations in all areas of the United States, urban and  
20 rural:

21 (1) Biological.

22 (2) Chemical.

23 (3) Cyber.

24 (4) Explosives.

25 (5) Incendiary.

26 (6) Nuclear.

27 (7) Radiological.

28 (8) Suicide bombers.

29 (9) Other types of threat determined relevant by the Secretary.

30 **§ 12508. Use of funds**

31 (a) PERMITTED USES.—The Secretary, acting through the Administrator,  
32 shall permit the recipient of a grant under section 12503 or 12504 of this  
33 title to use grant funds to achieve target capabilities related to preventing,  
34 preparing for, protecting against, and responding to acts of terrorism, con-  
35 sistent with a State homeland security plan and relevant local, tribal, and  
36 regional homeland security plans, through—

37 (1) developing and enhancing homeland security, emergency manage-  
38 ment, or other relevant plans, assessments, or mutual aid agreements;

39 (2) designing, conducting, and evaluating training and exercises, in-  
40 cluding training and exercises conducted under section 11112 and  
41 20508 of this title;

1 (3) protecting a system or asset included on the prioritized critical  
2 infrastructure list established under section 10516(a)(2) of this title;

3 (4) purchasing, upgrading, storing, or maintaining equipment, in-  
4 cluding computer hardware and software;

5 (5) ensuring operability and achieving interoperability of emergency  
6 communications;

7 (6) responding to an increase in the threat level under the Homeland  
8 Security Advisory System, or to the needs resulting from a National  
9 Special Security Event;

10 (7) establishing, enhancing, and staffing with appropriately qualified  
11 personnel State, local, and regional fusion centers that comply with the  
12 guidelines established under section 10512(j) of this title;

13 (8) enhancing school preparedness;

14 (9) supporting public safety answering points;

15 (10) paying salaries and benefits for personnel, including individuals  
16 employed by the grant recipient on the date of the relevant grant appli-  
17 cation, to serve as qualified intelligence analysts, regardless of whether  
18 the analysts are current or new full-time employees or contract employ-  
19 ees;

20 (11) paying expenses directly relating to administration of the grant,  
21 except that expenses may not exceed three percent of the amount of  
22 the grant;

23 (12) any activity permitted under the Fiscal Year 2007 Program  
24 Guidance of the Department for the State Homeland Security Grant  
25 Program, the Urban Area Security Initiative (including activities per-  
26 mitted under the full-time counterterrorism staffing pilot), or the Law  
27 Enforcement Terrorism Prevention Program; and

28 (13) any other appropriate activity, as determined by the Secretary.

29 (b) LIMITATIONS ON USE OF FUNDS.—

30 (1) IN GENERAL.—Funds provided under section 12503 or 12504 of  
31 this title may not be used—

32 (A) to supplant State or local funds, except that nothing in this  
33 paragraph shall prohibit the use of grant funds provided to a  
34 State or high-risk urban area for otherwise permissible uses under  
35 subsection (a) on the basis that a State or high-risk urban area  
36 has previously used State or local funds to support the same or  
37 similar uses; or

38 (B) for any State or local government cost-sharing contribution.

39 (2) PERSONNEL.—

40 (A) IN GENERAL.—Not more than 50 percent of the amount  
41 awarded to a grant recipient under section 12503 or 12504 of this

1 title in any fiscal year may be used to pay for personnel, including  
2 overtime and backfill costs, in support of the permitted uses under  
3 subsection (a).

4 (B) WAIVER.—At the request of the recipient of a grant under  
5 section 12503 or 12504, the Secretary may grant a waiver of the  
6 limitation under subparagraph (A).

7 (3) LIMITATIONS ON DISCRETION.—

8 (A) IN GENERAL.—With respect to the use of amounts awarded  
9 to a grant recipient under section 12503 or 12504 for personnel  
10 costs under paragraph (2) of this subsection, the Secretary may  
11 not—

12 (i) impose a limit on the amount of the award that may  
13 be used to pay for personnel, or personnel-related, costs that  
14 is higher or lower than the percent limit imposed in para-  
15 graph (2)(A); or

16 (ii) impose any additional limitation on the portion of the  
17 funds of a recipient that may be used for a specific type, pur-  
18 pose, or category of personnel, or personnel-related, costs.

19 (B) ANALYSTS.—If amounts awarded to a grant recipient under  
20 section 12503 or 12504 are used for paying salary or benefits of  
21 a qualified intelligence analyst under subsection (a)(10), the Sec-  
22 retary shall make the amounts available without time limitations  
23 placed on the period of time that the analyst can serve under the  
24 grant.

25 (4) CONSTRUCTION.—

26 (A) IN GENERAL.—A grant awarded under section 12503 or  
27 12504 may not be used to acquire land or to construct buildings  
28 or other physical facilities.

29 (B) EXCEPTIONS.—

30 (i) IN GENERAL.—Notwithstanding subparagraph (A),  
31 nothing in this paragraph shall prohibit the use of a grant  
32 awarded under section 12503 or 12504 to achieve target ca-  
33 pabilities related to preventing, preparing for, protecting  
34 against, or responding to acts of terrorism, including through  
35 the alteration or remodeling of existing buildings for the pur-  
36 pose of making the buildings secure against acts of terrorism.

37 (ii) REQUIREMENTS FOR EXCEPTION.—No grant awarded  
38 undersection 12503 or 12504 may be used for a purpose de-  
39 scribed in clause (i) unless—

40 (I) specifically approved by the Secretary;

1 (II) any construction work occurs under terms and  
2 conditions consistent with the requirements under section  
3 611(j)(9) of the Robert T. Stafford Disaster Relief and  
4 Emergency Assistance Act (42 U.S.C. 5196(j)(9)); and  
5 (III) the amount allocated for purposes under clause  
6 (i) does not exceed the greater of \$1,000,000 or 15 per-  
7 cent of the grant award.

8 (5) RECREATION.—Grants awarded under this chapter may not be  
9 used for recreational or social purposes.

10 (c) MULTIPLE-PURPOSE FUNDS.—Nothing in this chapter shall be con-  
11 strued to prohibit State, local, or tribal governments from using grant funds  
12 under section 12503 or 12504 of this title in a manner that enhances pre-  
13 paredness for disasters unrelated to acts of terrorism, if the use assists the  
14 governments in achieving target capabilities related to preventing, preparing  
15 for, protecting against, or responding to acts of terrorism.

16 (d) REIMBURSEMENT OF COSTS.—

17 (1) PAID-ON-CALL OR VOLUNTEER REIMBURSEMENT.—In addition to  
18 the activities described in subsection (a), a grant under section 12503  
19 or 12504 of this title may be used to provide a reasonable stipend to  
20 paid-on-call or volunteer emergency response providers who are not  
21 otherwise compensated for travel to or participation in training or exer-  
22 cises related to the purposes of this chapter. Any reimbursement shall  
23 not be considered compensation for purposes of rendering an emer-  
24 gency response provider an employee under the Fair Labor Standards  
25 Act of 1938 (29 U.S.C. 201 et seq.).

26 (2) PERFORMANCE OF FEDERAL DUTY.—An applicant for a grant  
27 under section 12503 or 12504 may petition the Secretary to use the  
28 funds from its grants under those sections for the reimbursement of  
29 the cost of any activity relating to preventing, preparing for, protecting  
30 against, or responding to acts of terrorism that is a Federal duty and  
31 usually performed by a Federal agency, and that is being performed  
32 by a State or local government under agreement with a Federal agency.

33 (e) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—  
34 Upon request by the recipient of a grant under section 12503 or 12504 of  
35 this title, the Secretary may authorize the grant recipient to transfer all or  
36 part of the grant funds from uses specified in the grant agreement to other  
37 uses authorized under this section, if the Secretary determines that the  
38 transfer is in the interests of homeland security.

39 (f) EQUIPMENT STANDARDS.—If an applicant for a grant under section  
40 12503 or 12504 of this title proposes to upgrade or purchase, with assist-  
41 ance provided under that grant, new equipment or systems that do not meet

1 or exceed any applicable national voluntary consensus standards developed  
2 under section 20507 of this title, the applicant shall include in its applica-  
3 tion an explanation of why the equipment or systems will serve the needs  
4 of the applicant better than equipment or systems that meet or exceed the  
5 standards.

6 **§ 12509. Administration and coordination**

7 (a) REGIONAL COORDINATION.—The Secretary, acting through the Ad-  
8 ministrator, shall ensure that—

9 (1) all recipients of grants administered by the Department to pre-  
10 vent, prepare for, protect against, or respond to natural disasters, acts  
11 of terrorism, or other man-made disasters (excluding assistance pro-  
12 vided under section 203, title IV, or title V of the Robert T. Stafford  
13 Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170  
14 et seq., 5191 et seq.)) coordinate, as appropriate, their prevention, pre-  
15 paredness, and protection efforts with neighboring State, local, and  
16 tribal governments; and

17 (2) all high-risk urban areas and other recipients of grants adminis-  
18 tered by the Department to prevent, prepare for, protect against, or  
19 respond to natural disasters, acts of terrorism, or other man-made dis-  
20 asters (excluding assistance provided under section 203, title IV, or  
21 title V of the Robert T. Stafford Disaster Relief and Emergency Assist-  
22 ance Act (42 U.S.C. 5133, 5170 et seq., 5191 et seq.)) that include  
23 or substantially affect parts or all of more than one State coordinate,  
24 as appropriate, across State boundaries, including, where appropriate,  
25 through the use of regional working groups and requirements for re-  
26 gional plans.

27 (b) PLANNING COMMITTEES.—

28 (1) IN GENERAL.—Any State or high-risk urban area receiving a  
29 grant under section 12503 or 12504 of this title shall establish a plan-  
30 ning committee to assist in preparation and revision of the State, re-  
31 gional, or local homeland security plan and to assist in determining ef-  
32 fective funding priorities for grants under sections 12503 and 12504.

33 (2) COMPOSITION.—

34 (A) IN GENERAL.—The planning committee shall include rep-  
35 resentatives of significant stakeholders, including

36 (i) local and tribal government officials; and

37 (ii) emergency response providers, which shall include rep-  
38 resentatives of the fire service, law enforcement, emergency  
39 medical response, and emergency managers.

40 (B) GEOGRAPHIC REPRESENTATION.—The members of the  
41 planning committee shall be a representative group of individuals

1 from the counties, cities, towns, and Indian tribes within the State  
2 or high-risk urban area, including, as appropriate, representatives  
3 of rural, high-population, and high-threat jurisdictions.

4 (3) EXISTING PLANNING COMMITTEES.—Nothing in this subsection  
5 may be construed to require that any State or high-risk urban area cre-  
6 ate a planning committee if that State or high-risk urban area has es-  
7 tablished and uses a multijurisdictional planning committee or commis-  
8 sion that meets the requirements of this subsection.

9 (c) INTERAGENCY COORDINATION.—

10 (1) IN GENERAL.—The Secretary, acting through the Administrator,  
11 the Attorney General, the Secretary of Health and Human Services,  
12 and the heads of other agencies providing assistance to State, local,  
13 and tribal governments for preventing, preparing for, protecting  
14 against, and responding to natural disasters, acts of terrorism, and  
15 other man-made disasters, shall jointly—

16 (A) compile a comprehensive list of Federal grant programs for  
17 State, local, and tribal governments for preventing, preparing for,  
18 protecting against, and responding to natural disasters, acts of  
19 terrorism, and other man-made disasters;

20 (B) compile the planning, reporting, application, and other re-  
21 quirements and guidance for the grant programs described in sub-  
22 paragraph (A);

23 (C) develop recommendations, as appropriate, to—

24 (i) eliminate redundant and duplicative requirements for  
25 State, local, and tribal governments, including onerous appli-  
26 cation and ongoing reporting requirements;

27 (ii) ensure accountability of the programs to the intended  
28 purposes of the programs;

29 (iii) coordinate allocation of grant funds to avoid duplica-  
30 tive or inconsistent purchases by the recipients;

31 (iv) make the programs more accessible and user friendly  
32 to applicants; and

33 (v) ensure the programs are coordinated to enhance the  
34 overall preparedness of the Nation;

35 (D) submit the information and recommendations under sub-  
36 paragraphs (A), (B), and (C) to the appropriate committees of  
37 Congress; and

38 (E) provide the appropriate committees of Congress, the Comp-  
39 troller General, and any officer or employee of the Government Ac-  
40 countability Office with full access to any information collected or  
41 reviewed in preparing the submission under subparagraph (D).



1 (2) SCOPE OF TASK.—Nothing in this subsection shall authorize the  
2 elimination, or the alteration of the purposes, as delineated by statute,  
3 regulation, or guidance, of a grant program that existed on August 3,  
4 2007, nor authorize the review or preparation of proposals on the elimi-  
5 nation, or the alteration of the purposes, of such a grant program.

6 **§ 12510. Accountability**

7 (a) AUDITS OF GRANT PROGRAMS.—

8 (1) COMPLIANCE REQUIREMENTS.—

9 (A) AUDIT REQUIREMENT.—Each recipient of a grant adminis-  
10 tered by the Department that expends not less than \$500,000 in  
11 Federal funds during its fiscal year shall submit to the Secretary,  
12 through the Administrator, a copy of the organization-wide finan-  
13 cial and compliance audit report required under chapter 75 of title  
14 31.

15 (B) ACCESS TO INFORMATION.—The Department and each re-  
16 cipient of a grant administered by the Department shall provide  
17 the Comptroller General and any officer or employee of the Gov-  
18 ernment Accountability Office with full access to information re-  
19 garding the activities carried out related to any grant administered  
20 by the Department.

21 (C) IMPROPER PAYMENTS.—Consistent with the Improper Pay-  
22 ments Information Act of 2002 (Public Law 107–300, 31 U.S.C.  
23 3321 note), for each of the grant programs under sections 12503,  
24 12504, and 20522 of this title, the Secretary shall specify policies  
25 and procedures for—

26 (i) identifying activities funded under a grant program that  
27 are susceptible to significant improper payments; and

28 (ii) reporting any improper payments to the Department.

29 (2) Agency program review.—

30 (A) In general.—The Secretary shall biennially conduct, for  
31 each State and high-risk urban area receiving a grant adminis-  
32 tered by the Department, a programmatic and financial review of  
33 all grants awarded by the Department to prevent, prepare for,  
34 protect against, or respond to natural disasters, acts of terrorism,  
35 or other man-made disasters, excluding assistance provided under  
36 section 203, title IV, or title V of the Robert T. Stafford Disaster  
37 Relief and Emergency Assistance Act (42 U.S.C. 5133, 5170 et  
38 seq., and 5191 et seq.).

39 (B) CONTENTS.—Each review under subparagraph (A) shall, at  
40 a minimum, examine

1 (i) whether the funds awarded were used in accordance  
2 with the law, program guidance, and State homeland security  
3 plans or other applicable plans; and

4 (ii) the extent to which funds awarded enhanced the ability  
5 of a grantee to prevent, prepare for, protect against, and re-  
6 spond to natural disasters, acts of terrorism, and other man-  
7 made disasters.

8 (C) AUTHORIZATION OF APPROPRIATIONS.—In addition to any  
9 other amounts authorized to be appropriated to the Secretary,  
10 there is authorized to be appropriated to the Secretary for reviews  
11 under this paragraph such sums as may be necessary.

12 (3) OFFICE OF INSPECTOR GENERAL PERFORMANCE AUDITS.—

13 (A) IN GENERAL.—To ensure the effective and appropriate use  
14 of grants administered by the Department, the Inspector General  
15 of the Department each year shall conduct audits of a sample of  
16 States and high-risk urban areas that receive grants administered  
17 by the Department to prevent, prepare for, protect against, or re-  
18 spond to natural disasters, acts of terrorism, or other man-made  
19 disasters, excluding assistance provided under section 203, title  
20 IV, or title V of the Robert T. Stafford Disaster Relief and Emer-  
21 gency Assistance Act (42 U.S.C. 5133, 5170 et seq., and 5191 et  
22 seq.).

23 (B) DETERMINING SAMPLES.—The sample selected for audits  
24 under subparagraph (A) shall be—

25 (i) of an appropriate size to—

26 (I) assess the overall integrity of the grant programs  
27 described in subparagraph (A); and

28 (II) act as a deterrent to financial mismanagement;  
29 and

30 (ii) selected based on—

31 (I) the size of the grants awarded to the recipient;

32 (II) the past grant management performance of the  
33 recipient;

34 (III) concerns identified by the Secretary, including  
35 referrals from the Secretary; and

36 (IV) other factors as determined by the Inspector Gen-  
37 eral of the Department.

38 (C) COMPREHENSIVE AUDITING.—During the 7-year period be-  
39 ginning on August 3, 2007, the Inspector General of the Depart-  
40 ment shall conduct not fewer than one audit of each State that

1 receives funds under a grant under section 12503 or 12504 of this  
2 title.

3 (D) REPORT BY INSPECTOR GENERAL.—

4 (i) The Inspector General of the Department shall submit  
5 to the appropriate committees of Congress an annual consoli-  
6 dated report regarding the audits completed during the fiscal  
7 year before the date of that report.

8 (ii) Each report submitted under clause (i) shall describe,  
9 for the fiscal year before the date of that report—

10 (I) the audits conducted under subparagraph (A);

11 (II) the findings of the Inspector General with respect  
12 to the audits conducted under subparagraph (A);

13 (III) whether the funds awarded were used in accord-  
14 ance with the law, program guidance, and State home-  
15 land security plans and other applicable plans; and

16 (IV) the extent to which funds awarded enhanced the  
17 ability of a grantee to prevent, prepare for, protect  
18 against, and respond to natural disasters, acts of terror-  
19 ism and other man-made disasters.

20 (iii) For each year, the report required under clause (i)  
21 shall be submitted not later than December 31.

22 (E) PUBLIC AVAILABILITY ON WEBSITE.—The Inspector Gen-  
23 eral of the Department shall make each audit conducted under  
24 subparagraph (A) available on the website of the Inspector Gen-  
25 eral, subject to redaction as the Inspector General determines nec-  
26 essary to protect classified and other sensitive information.

27 (F) PROVISION OF INFORMATION TO SECRETARY.—The Inspec-  
28 tor General of the Department shall provide to the Secretary any  
29 findings and recommendations from audits conducted under sub-  
30 paragraph (A).

31 (G) EVALUATION OF GRANTS MANAGEMENT AND OVERSIGHT.—  
32 The Inspector General of the Department shall review and evalu-  
33 ate the grants management and oversight practices of the Federal  
34 Emergency Management Agency, including assessment of and rec-  
35 ommendations relating to—

36 (i) the skills, resources, and capabilities of the workforce;  
37 and

38 (ii) any additional resources and staff necessary to carry  
39 out the management and oversight.

40 (H) AUTHORIZATION OF APPROPRIATIONS.—In addition to any  
41 other amounts authorized to be appropriated to the Inspector Gen-

1           eral of the Department, there is authorized to be appropriated to  
2           the Inspector General of the Department for audits under sub-  
3           paragraph (A) such sums as may be necessary.

4           (4) PERFORMANCE ASSESSMENT.—In order to ensure that States  
5           and high-risk urban areas are using grants administered by the De-  
6           partment appropriately to meet target capabilities and preparedness  
7           priorities, the Secretary shall—

8                 (A) ensure that each State or high-risk urban area conducts or  
9                 participates in exercises under section 20508(b) of this title;

10                (B) use performance metrics in accordance with the comprehen-  
11                sive assessment system under section 20509 of this title and en-  
12                sure that each State or high-risk urban area regularly tests its  
13                progress against the metrics through the exercises required under  
14                subparagraph (A);

15                (C) use the remedial action management program under section  
16                20510 of this title; and

17                (D) ensure that each State receiving a grant administered by  
18                the Department submits a report to the Secretary on its level of  
19                preparedness, as required by section 20512(e) of this title.

20           (5) CONSIDERATION OF ASSESSMENTS.—In conducting program re-  
21           views and performance audits under paragraphs (2) and (3), the Sec-  
22           retary and the Inspector General of the Department shall take into ac-  
23           count the performance assessment elements required under paragraph  
24           (4).

25           (6) RECOVERY AUDITS.—The Secretary shall conduct a recovery  
26           audit under section 2(h) of the Improper Payments Elimination and  
27           Recovery Act of 2010 (Public Law 111-204, 31 U.S.C. 3321 note) for  
28           any grant administered by the Department with a total value of not  
29           less than \$1,000,000, if the Secretary finds that—

30                (A) a financial audit has identified improper payments that can  
31                be recouped; and

32                (B) it is cost effective to conduct a recovery audit to recapture  
33                the targeted funds.

34           (7) REMEDIES FOR NONCOMPLIANCE.—

35                (A) IN GENERAL.—If, as a result of a review or audit under this  
36                subsection or otherwise, the Secretary finds that a recipient of a  
37                grant under this chapter has failed to substantially comply with  
38                any provision of law or with any regulations or guidelines of the  
39                Department regarding eligible expenditures, the Secretary shall—

1 (i) reduce the amount of payment of grant funds to the re-  
2 cipient by an amount equal to the amount of grants funds  
3 that were not properly expended by the recipient;

4 (ii) limit the use of grant funds to programs, projects, or  
5 activities not affected by the failure to comply;

6 (iii) refer the matter to the Inspector General of the De-  
7 partment for further investigation;

8 (iv) terminate any payment of grant funds to be made to  
9 the recipient; or

10 (v) take other actions the Secretary determines appro-  
11 priate.

12 (B) DURATION OF PENALTY.—The Secretary shall apply an ap-  
13 propriate penalty under subparagraph (A) until the Secretary de-  
14 termines that the grant recipient is in full compliance with the law  
15 and with applicable guidelines or regulations of the Department.

16 (b) REPORTS BY GRANT RECIPIENTS.—

17 (1) QUARTERLY REPORTS ON HOMELAND SECURITY SPENDING.—

18 (A) IN GENERAL.—As a condition of receiving a grant under  
19 section 12503 or 12504 of this title., a State, high-risk urban  
20 area, or directly eligible tribe shall, not later than 30 days after  
21 the end of each Federal fiscal quarter, submit to the Secretary a  
22 report on activities performed using grant funds during that fiscal  
23 quarter.

24 (B) CONTENTS.—Each report submitted under subparagraph  
25 (A) shall at a minimum include, for the applicable State, high-risk  
26 urban area, or directly eligible tribe, and each subgrantee there-  
27 of—

28 (i) the amount obligated to that recipient under section  
29 12503 or 12504 in that quarter;

30 (ii) the amount of funds received and expended under sec-  
31 tion 12503 or 12504 by that recipient in that quarter; and

32 (iii) a summary description of expenditures made by that  
33 recipient using the funds, and the purposes for which the ex-  
34 penditures were made.

35 (C) END-OF-YEAR REPORT.—The report submitted under sub-  
36 paragraph (A) by a State, high-risk urban area, or directly eligible  
37 tribe relating to the last quarter of any fiscal year shall include—

38 (i) the amount and date of receipt of all funds received  
39 under the grant during that fiscal year;

40 (ii) the identity of, and amount provided to, any subgrantee  
41 for that grant during that fiscal year;

1 (iii) the amount and the dates of disbursements of funds  
2 expended in compliance with section 12509(a)(1) of this title  
3 or under mutual aid agreements or other sharing arrange-  
4 ments that apply within the State, high-risk urban area, or  
5 directly eligible tribe, as applicable, during that fiscal year;  
6 and

7 (iv) how the funds were used by each recipient or sub-  
8 grantee during that fiscal year.

9 (2) ANNUAL STATE PREPAREDNESS REPORT.—Any State applying  
10 for a grant under section 12504 shall submit to the Secretary annually  
11 a State preparedness report, as required by section 20512(c) of this  
12 title.

13 (3) ANNUAL REPORT ON EXPENDITURES.—

14 (A) DEFINITION.—In this paragraph, the term “homeland secu-  
15 rity grant” means any grant made or administered by the Depart-  
16 ment, including

- 17 (i) the State Homeland Security Grant Program;  
18 (ii) the Urban Area Security Initiative Grant Program;  
19 (iii) the Law Enforcement Terrorism Prevention Program;  
20 (iv) the Citizen Corps; and  
21 (v) the Metropolitan Medical Response System.

22 (B) LIST OF EXPENDITURES.—Not later than 12 months after  
23 the date of receipt of the grant, and every 12 months after until  
24 all funds provided under the grant are expended, each State or  
25 local government that receives a homeland security grant shall  
26 submit a report to the Secretary that contains a list of all expendi-  
27 tures made by the State or local government using funds from the  
28 grant.

29 (c) REPORTS BY THE SECRETARY.—

30 (1) FEDERAL PREPAREDNESS REPORT.—The Secretary shall submit  
31 to the appropriate committees of Congress annually the Federal Pre-  
32 paredness Report required under section 20512(a) of this title.

33 (2) RISK ASSESSMENT.—

34 (A) IN GENERAL.—For each fiscal year, the Secretary shall pro-  
35 vide to the appropriate committees of Congress a detailed and  
36 comprehensive explanation of the methodologies used to calculate  
37 risk and compute the allocation of funds for grants administered  
38 by the Department, including

- 39 (i) all variables included in the risk assessment and the  
40 weights assigned to each variable;

1 (ii) an explanation of how each variable, as weighted, cor-  
2 relates to risk, and the basis for concluding there is a correla-  
3 tion; and

4 (iii) any change in the methodologies from the previous fis-  
5 cal year, including changes in variables considered, weighting  
6 of those variables, and computational methods.

7 (B) CLASSIFIED ANNEX.—The information required under sub-  
8 paragraph (A) shall be provided in unclassified form to the great-  
9 est extent possible, and may include a classified annex if nec-  
10 essary.

11 (C) DEADLINE.—For each fiscal year, the information required  
12 under subparagraph (A) shall be provided on the earlier of—

13 (i) October 31; or

14 (ii) 30 days before the issuance of any program guidance  
15 for grants administered by the Department.

16 (3) TRIBAL FUNDING REPORT.—At the end of each fiscal year, the  
17 Secretary shall submit to the appropriate committees of Congress a re-  
18 port setting forth the amount of funding provided during that fiscal  
19 year to Indian tribes under any grant program administered by the De-  
20 partment, whether provided directly or through a sub-grant from a  
21 State or high-risk urban area.

22 **§ 12511. Identification of reporting redundancies and devel-**  
23 **opment of performance metrics**

24 (a) DEFINITION.—In this section, the term “covered grants” means  
25 grants awarded under section 12503 of this title, grants awarded under sec-  
26 tion 12504 of this title, and any other grants specified by the Secretary,  
27 acting through the Administrator.

28 (b) INITIAL REPORT.—Not later than January 10, 2011, the Secretary  
29 shall submit to the appropriate committees of Congress a report that in-  
30 cludes—

31 (1) an assessment of redundant reporting requirements imposed by  
32 the Secretary on State, local, and tribal governments in connection with  
33 the awarding of grants, including—

34 (A) a list of each discrete item of data requested by the Sec-  
35 retary from grant recipients as part of the process of administer-  
36 ing covered grants;

37 (B) identification of the items of data from the list described  
38 in subparagraph (A) that are required to be submitted by grant  
39 recipients on multiple occasions or to multiple systems; and

40 (C) identification of the items of data from the list described  
41 in subparagraph (A) that are not necessary to be collected in order

1 for the Secretary to effectively and efficiently administer the pro-  
2 grams under which covered grants are awarded;

3 (2) a plan, including a specific timetable, for eliminating any redun-  
4 dant and unnecessary reporting requirements identified under para-  
5 graph (1); and

6 (3) a plan, including a specific timetable, for promptly developing a  
7 set of quantifiable performance measures and metrics to assess the ef-  
8 fectiveness of the programs under which covered grants are awarded.

9 (c) BIENNIAL REPORTS.—Not later than January 10, 2012, and once  
10 every 2 years thereafter, the Secretary shall submit to the appropriate com-  
11 mittees of Congress a grants management report that includes—

12 (1) the status of efforts to eliminate redundant and unnecessary re-  
13 porting requirements imposed on grant recipients, including

14 (A) progress made in implementing the plan required under  
15 subsection (b)(2);

16 (B) a reassessment of the reporting requirements to identify  
17 and eliminate redundant and unnecessary requirements;

18 (2) the status of efforts to develop quantifiable performance meas-  
19 ures and metrics to assess the effectiveness of the programs under  
20 which the covered grants are awarded, including

21 (A) progress made in implementing the plan required under  
22 subsection (b)(3); and

23 (B) progress made in developing and implementing additional  
24 performance metrics and measures for grants, including as part of  
25 the comprehensive assessment system required under section  
26 20509 of this title; and

27 (3) a performance assessment of each program under which the cov-  
28 ered grants are awarded, including

29 (A) a description of the objectives and goals of the program;

30 (B) an assessment of the extent to which the objectives and  
31 goals described in subparagraph (A) have been met, based on the  
32 quantifiable performance measures and metrics required under  
33 this section, and sections 12510(a)(4) and 20509 of this title;

34 (C) recommendations for any program modifications to improve  
35 the effectiveness of the program, to address changed or emerging  
36 conditions; and

37 (D) an assessment of the experience of recipients of covered  
38 grants, including the availability of clear and accurate information,  
39 the timeliness of reviews and awards, and the provision of tech-  
40 nical assistance, and recommendations for improving that experi-  
41 ence.



(d) GRANTS PROGRAM MEASUREMENT STUDY.—

(1) In general.—The Secretary shall implement—

(A) quantifiable performance measures and metrics to assess the effectiveness of grants administered by the Department, as required under this section and section 20509 of this title; and

(B) the plan required under subsection (b)(3).

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subsection.

**Subtitle II—National Emergency Management**  
**Chapter 201—General**

Sec.  
20101. Definitions.

**§ 20101. Definitions**

In this subtitle:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Agency.

(2) AGENCY.—The term “Agency” means the Federal Emergency Management Agency.

(3) Appropriate committees of congress.—The term “appropriate committees of Congress” means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) those committees of the House of Representatives that the Speaker of the House of Representatives determines appropriate.

(4) CATASTROPHIC INCIDENT.—The term “catastrophic incident” means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area.

(5) DEPARTMENT.—The term “Department” means the Department of Homeland Security.

(6) EMERGENCY; MAJOR DISASTER.—The terms “emergency” and “major disaster” have the meanings given the terms in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(7) EMERGENCY MANAGEMENT.—The term “emergency management” means the governmental function that coordinates and integrates all activities necessary to build, sustain, and improve the capa-

1           bility to prepare for, protect against, respond to, recover from, or miti-  
2           gate against threatened or actual natural disasters, acts of terrorism,  
3           or other man-made disasters.

4           (8) EMERGENCY RESPONSE PROVIDER.—The term “emergency re-  
5           sponse provider” has the meaning given the term in section 10101 of  
6           this title.

7           (9) FEDERAL COORDINATING OFFICER.—The term “Federal coordi-  
8           nating officer” means a Federal coordinating officer as described in  
9           section 302 of the Robert T. Stafford Disaster Relief and Emergency  
10          Assistance Act (42 U.S.C. 5143).

11          (10) INDIVIDUAL WITH A DISABILITY.—The term “individual with a  
12          disability” has the meaning given the term in section 3 of the Ameri-  
13          cans with Disabilities Act of 1990 (42 U.S.C. 12102).

14          (11) LOCAL GOVERNMENT; STATE.—The terms “local government”  
15          and “State” have the meaning given the terms in section 10101 of this  
16          title.

17          (12) NATIONAL INCIDENT MANAGEMENT SYSTEM.—The term “Na-  
18          tional Incident Management System” means a system to enable effec-  
19          tive, efficient, and collaborative incident management.

20          (13) NATIONAL RESPONSE PLAN.—The term “National Response  
21          Plan” means the National Response Plan or any successor plan pre-  
22          pared under section 11103(a)(6) of this title.

23          (14) SECRETARY.—The term “Secretary” means the Secretary of  
24          Homeland Security.

25          (15) SURGE CAPACITY.—The term “surge capacity” means the abil-  
26          ity to rapidly and substantially increase the provision of search and res-  
27          cue capabilities, food, water, medicine, shelter and housing, medical  
28          care, evacuation capacity, staffing (including disaster assistance em-  
29          ployees), and other resources necessary to save lives and protect prop-  
30          erty during a catastrophic incident.

31          (16) TRIBAL GOVERNMENT.—The term “tribal government” means  
32          the government of an Indian tribe or authorized tribal organization, or  
33          in Alaska a Native village or Alaska Regional Native Corporation.

### 34           **Chapter 203—Emergency Management Capabilities**

Sec.20301. Surge Capacity Force.20302. Evacuation preparedness technical assist-  
ance.20303. Urban Search and Rescue Response System.20304. Metropolitan  
Medical Response Program.20305. Logistics.20306. Prepositioned equipment  
program.20307. Basic life supporting first aid and education.20308. Improve-  
ments to information technology systems.20309. Disclosure of certain informa-  
tion to law enforcement agencies.

### 35           **§ 20301. Surge Capacity Force**

36           (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—The Secretary, acting through the Administrator,  
2 shall prepare and submit to the appropriate committees of Congress a  
3 plan to establish and implement a Surge Capacity Force for deploy-  
4 ment of individuals to respond to natural disasters, acts of terrorism,  
5 and other man-made disasters, including catastrophic incidents.

6 (2) AUTHORITY.—

7 (A) IN GENERAL.—Except as provided in subparagraph (B), the  
8 plan shall provide for individuals in the Surge Capacity Force to  
9 be trained and deployed under the authorities set forth in the Rob-  
10 ert T. Stafford Disaster Relief and Emergency Assistance Act  
11 (42U.S.C. 5121 et seq.).

12 (B) EXCEPTION.—If the Secretary determines that the existing  
13 authorities are inadequate for the training and deployment of indi-  
14 viduals in the Surge Capacity Force, the Secretary shall report to  
15 Congress as to the additional statutory authorities that the Sec-  
16 retary determines necessary.

17 (b) EMPLOYEES DESIGNATED TO SERVE.—The plan shall include proce-  
18 dures under which the Secretary shall designate employees of the Depart-  
19 ment who are not employees of the Agency and shall, in conjunction with  
20 the heads of other Executive agencies, designate employees of those other  
21 Executive agencies, as appropriate, to serve on the Surge Capacity Force.

22 (c) CAPABILITIES.—The plan shall ensure that the Surge Capacity  
23 Force—

24 (1) includes a sufficient number of individuals credentialed under  
25 section 11110 of this title that are capable of deploying rapidly and ef-  
26 ficiently after activation to prepare for, respond to, and recover from  
27 natural disasters, acts of terrorism, and other man-made disasters, in-  
28 cluding catastrophic incidents; and

29 (2) includes a sufficient number of full-time, highly trained individ-  
30 uals credentialed under section 11110 to lead and manage the Surge  
31 Capacity Force.

32 (d) TRAINING.—The plan shall ensure that the Secretary provides appro-  
33 priate and continuous training to members of the Surge Capacity Force to  
34 ensure the personnel are adequately trained on the Agency's programs and  
35 policies for natural disasters, acts of terrorism, and other man-made disas-  
36 ters.

37 (e) NO IMPACT ON AGENCY PERSONNEL CEILING.—Surge Capacity  
38 Force members shall not be counted against any personnel ceiling applicable  
39 to the Federal Emergency Management Agency.

40 (f) EXPENSES.—The Secretary may provide members of the Surge Ca-  
41 pacity Force with travel expenses, including per diem in lieu of subsistence,

1 at rates authorized for employees of agencies under subchapter I of chapter  
2 57 of title 5, for the purpose of participating in any training that relates  
3 to service as a member of the Surge Capacity Force.

4 (g) IMMEDIATE IMPLEMENTATION OF SURGE CAPACITY FORCE INVOLV-  
5 ING FEDERAL EMPLOYEES.—The Secretary shall develop and implement—

6 (1) the procedures under subsection (b); and

7 (2) other elements of the plan needed to establish the portion of the  
8 Surge Capacity Force consisting of individuals designated under those  
9 procedures.

#### 10 **§ 20302. Evacuation preparedness technical assistance**

11 The Secretary, acting through the Administrator and in coordination with  
12 the heads of other appropriate Federal agencies, shall provide evacuation  
13 preparedness technical assistance to State, local, and tribal governments, in-  
14 cluding the preparation of hurricane evacuation studies and technical assist-  
15 ance in developing evacuation plans, assessing storm surge estimates, evacu-  
16 ation zones, evacuation clearance times, transportation capacity, and shelter  
17 capacity.

#### 18 **§ 20303. Urban Search and Rescue Response System**

19 There is in the Agency the Urban Search and Rescue Response System.

#### 20 **§ 20304. Metropolitan Medical Response Program**

21 (a) IN GENERAL.—There is in the Agency the Metropolitan Medical Re-  
22 sponse Program.

23 (b) PURPOSES.—The Metropolitan Medical Response Program shall in-  
24 clude each purpose of the Program as it existed on June 1, 2006.

#### 25 **§ 20305. Logistics**

26 The Secretary, acting through the Administrator, shall develop an effi-  
27 cient, transparent, and flexible logistics system for procurement and delivery  
28 of goods and services necessary for an effective and timely response to natu-  
29 ral disasters, acts of terrorism, and other man-made disasters and for real-  
30 time visibility of items at each point throughout the logistics system.

#### 31 **§ 20306. Prepositioned equipment program**

32 (a) IN GENERAL.—The Secretary, acting through the Administrator,  
33 shall establish a prepositioned equipment program to preposition standard-  
34 ized emergency equipment in at least 11 locations to sustain and replenish  
35 critical assets used by State, local, and tribal governments in response to  
36 (or rendered inoperable by the effects of) natural disasters, acts of terror-  
37 ism, and other man-made disasters.

38 (b) NOTICE.—The Secretary shall notify State, local, and tribal officials  
39 in an area in which a location for the prepositioned equipment program will  
40 be closed not later than 60 days before the date of closure.

1     **§ 20307. Basic life supporting first aid and education**

2         The Secretary, acting through the Administrator, shall enter into agree-  
3     ments with organizations to provide funds to emergency response providers  
4     to provide education and training in life supporting first aid to children.

5     **§ 20308. Improvements to information technology systems**

6         The Secretary, acting through the Administrator and in coordination with  
7     the Chief Information Officer of the Department, shall take appropriate  
8     measures to update and improve the information technology systems of the  
9     Agency, including measures to—

10           (1) ensure that the multiple information technology systems of the  
11         Agency (including the National Emergency Management Information  
12         System, the Logistics Information Management System III, and the  
13         Automated Deployment Database) are, to the extent practicable, fully  
14         compatible and can share and access information, as appropriate, from  
15         each other;

16           (2) ensure technology enhancements reach the headquarters and re-  
17         gional offices of the Agency in a timely fashion, to allow seamless inte-  
18         gration;

19           (3) develop and maintain a testing environment that ensures that all  
20         system components are properly and thoroughly tested before their re-  
21         lease;

22           (4) ensure that the information technology systems of the Agency  
23         have the capacity to track disaster response personnel, mission assign-  
24         ments task orders, commodities, and supplies used in response to a  
25         natural disaster, act of terrorism, or other man-made disaster;

26           (5) make appropriate improvements to the National Emergency  
27         Management Information System to address shortcomings in the sys-  
28         tem on October 4, 2006; and

29           (6) provide training, manuals, and guidance on information tech-  
30         nology systems to personnel, including disaster response personnel, to  
31         help ensure employees can properly use information technology sys-  
32         tems.

33     **§ 20309. Disclosure of certain information to law enforce-**  
34           **ment agencies**

35         If circumstances require an evacuation, sheltering, or mass relocation, the  
36     Secretary, acting through the Administrator, may disclose information in  
37     any individual assistance database of the Agency under section 552a(b) of  
38     title 5 to any law enforcement agency of the Federal Government or a State,  
39     local, or tribal government in order to identify illegal conduct or address  
40     public safety or security issues, including compliance with sex offender noti-  
41     fication laws. Chapter 205—Comprehensive Preparedness System

**Subchapter I—National Preparedness System**

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**Subchapter I—National Preparedness System**

**§ 20501. Definitions**

In this chapter:

(1) CAPABILITY.—The term “capability” means the ability to provide the means to accomplish one or more tasks under specific conditions and to specific performance standards. A capability may be achieved with any combination of properly planned, organized, equipped, trained, and exercised personnel that achieves the intended outcome.

(2) CREDENTIALLED; CREDENTIALING.—The terms “credentialed” and “credentialing” have the meanings given those terms in section 11101 of this title.

(3) HAZARD.—The term “hazard” has the meaning given that term under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195a).

(4) MISSION ASSIGNMENT.—The term “mission assignment” means a work order issued to a Federal agency by the Agency, directing completion by that agency of a specified task and setting forth funding, other managerial controls, and guidance.

(5) NATIONAL PREPAREDNESS GOAL.—The term “national preparedness goal” means the national preparedness goal established under section 20503 of this title.

1 (6) NATIONAL PREPAREDNESS SYSTEM.—The term “national pre-  
2 paredness system” means the national preparedness system established  
3 under section 20504 of this title.

4 (7) NATIONAL TRAINING PROGRAM.—The term “national training  
5 program” means the national training program established under sec-  
6 tion 20508(a) of this title.

7 (8) OPERATIONAL READINESS.—The term “operational readiness”  
8 means the capability of an organization, an asset, a system, or equip-  
9 ment to perform the missions or functions for which it is organized or  
10 designed.

11 (9) PERFORMANCE MEASURE.—The term “performance measure”  
12 means a quantitative or qualitative characteristic used to gauge the re-  
13 sults of an outcome compared to its intended purpose.

14 (10) PERFORMANCE METRIC.—The term “performance metric”  
15 means a particular value or characteristic used to measure the outcome  
16 that is generally expressed in terms of a baseline and a target.

17 (11) PREVENTION.—The term “prevention” means any activity  
18 undertaken to avoid, prevent, or stop a threatened or actual act of ter-  
19 rorism.

20 (12) RESOURCES.—The term “resources” has the meaning given  
21 that term in section 11101 of this title.

22 (13) TYPE.—The term “type” means a classification of resources  
23 that refers to the capability of a resource.

24 (14) TYPED; TYPING.—The terms “typed” and “typing” have the  
25 meanings given those terms in section 11101 of this title.

26 **§ 20502. Development of national preparedness goal and na-**  
27 **tional development system**

28 To prepare the Nation for all hazards, including natural disasters, acts  
29 of terrorism, and other man-made disasters, the President, consistent with  
30 the declaration of policy under section 601 of the Robert T. Stafford Disas-  
31 ter Relief and Emergency Assistance Act (42 U.S.C. 5195) and chapter 111  
32 of this title, shall develop a national preparedness goal and a national pre-  
33 paredness system.

34 **§ 20503. National preparedness goal**

35 (a) ESTABLISHMENT.—The President, acting through the Administrator,  
36 shall complete, revise, and update, as necessary, a national preparedness  
37 goal that defines the target level of preparedness to ensure the Nation’s  
38 ability to prevent, respond to, recover from, and mitigate against natural  
39 disasters, acts of terrorism, and other man-made disasters.

40 (b) CONSISTENT WITH NATIONAL INCIDENT MANAGEMENT SYSTEM AND  
41 NATIONAL RESPONSE PLAN.—The national preparedness goal, to the great-

1 est extent practicable, shall be consistent with the National Incident Man-  
2 agement System and the National Response Plan.

3 **§ 20504. National preparedness system**

4 (a) ESTABLISHMENT.—The President, acting through the Administrator,  
5 shall develop a national preparedness system to enable the Nation to meet  
6 the national preparedness goal.

7 (b) COMPONENTS.—The national preparedness system shall include the  
8 following components:

- 9 (1) Target capabilities and preparedness priorities.
- 10 (2) Equipment and training standards.
- 11 (3) Training and exercises.
- 12 (4) Comprehensive assessment system.
- 13 (5) Remedial action management program.
- 14 (6) Federal response capability inventory.
- 15 (7) Reporting requirements.
- 16 (8) Federal preparedness.

17 (c) NATIONAL PLANNING SCENARIOS.—The national preparedness system  
18 may include national planning scenarios.

19 **§ 20505. National planning scenarios**

20 (a) IN GENERAL.—The Secretary, acting through the Administrator and  
21 in coordination with the heads of appropriate Federal agencies and the Na-  
22 tional Advisory Council, may develop planning scenarios to reflect the re-  
23 lative risk requirements presented by all hazards, including natural disasters,  
24 acts of terrorism, and other man-made disasters, to provide the foundation  
25 for the flexible and adaptive development of target capabilities and the iden-  
26 tification of target capability levels to meet the national preparedness goal.

27 (b) DEVELOPMENT.—In developing, revising, and replacing national plan-  
28 ning scenarios, the Secretary shall ensure that the scenarios—

- 29 (1) reflect the relative risk of all hazards and illustrate the potential  
30 scope, magnitude, and complexity of a broad range of representative  
31 hazards; and
- 32 (2) provide the minimum number of representative scenarios nec-  
33 essary to identify and define the tasks and target capabilities required  
34 to respond to all hazards.

35 **§ 20506. Target capabilities and preparedness priorities**

36 (a) ESTABLISHMENT OF GUIDELINES ON TARGET CAPABILITIES.—The  
37 Secretary, acting through the Administrator and in coordination with the  
38 heads of appropriate Federal agencies, the National Council on Disability,  
39 and the National Advisory Council, shall complete, revise, and update, as  
40 necessary, guidelines to define risk-based target capabilities for Federal,  
41 State, local, and tribal government preparedness that will enable the Nation



1 to prevent, respond to, recover from, and mitigate against all hazards, in-  
2 cluding natural disasters, acts of terrorism, and other man-made disasters.

3 (b) DISTRIBUTION OF GUIDELINES.—The Secretary shall ensure that the  
4 guidelines are provided promptly to the appropriate committees of Congress  
5 and the States.

6 (c) OBJECTIVES.—The Secretary shall ensure that the guidelines are spe-  
7 cific, flexible, and measurable.

8 (d) TERRORISM RISK ASSESSMENT.—With respect to analyzing and  
9 assessing the risk of acts of terrorism, the Secretary shall consider—

10 (1) the variables of threat, vulnerability, and consequences related to  
11 population (including transient commuting and tourist populations),  
12 areas of high population density, critical infrastructure, coastline, and  
13 international borders; and

14 (2) the most current risk assessment available from the Chief Intel-  
15 ligence Officer of the Department of the threats of terrorism against  
16 the United States.

17 (e) PREPAREDNESS PRIORITIES.—In establishing the guidelines under  
18 subsection (a), the Secretary shall establish preparedness priorities that ap-  
19 propriately balance the risk of all hazards, including natural disasters, acts  
20 of terrorism, and other man-made disasters, with the resources required to  
21 prevent, respond to, recover from, and mitigate against the hazards.

22 (f) MUTUAL AID AGREEMENTS.—The Secretary may provide support for  
23 the development of mutual aid agreements in States.

#### 24 **§ 20507. Equipment and training standards**

25 (a) Equipment Standards.—

26 (1) IN GENERAL.—The Secretary, acting through the Administrator  
27 and in coordination with the heads of appropriate Federal agencies and  
28 the National Advisory Council, shall support the development, promul-  
29 gation, and updating, as necessary, of national voluntary consensus  
30 standards for the performance, use, and validation of equipment used  
31 by Federal, State, local, and tribal governments and nongovernmental  
32 emergency response providers.

33 (2) REQUIREMENTS.—The national voluntary consensus standards  
34 shall—

35 (A) be designed to achieve equipment and other capabilities con-  
36 sistent with the national preparedness goal, including the safety  
37 and health of emergency response providers;

38 (B) to the maximum extent practicable, be consistent with exist-  
39 ing national voluntary consensus standards;

1 (C) take into account, as appropriate, threats that may not have  
2 been contemplated when the existing standards were developed;  
3 and

4 (D) focus on maximizing operability, interoperability, interchange-  
5 ability, durability, flexibility, efficiency, efficacy, portability, sustain-  
6 ability, and safety.

7 (b) TRAINING STANDARDS.—The Secretary shall—

8 (1) support the development, promulgation, and regular updating, as  
9 necessary, of national voluntary consensus standards for training; and

10 (2) ensure that the training provided under the national training  
11 program is consistent with the standards.

12 (c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In carrying out  
13 this section, the Secretary shall consult with representatives of relevant pub-  
14 lic and private-sector national voluntary consensus standards development  
15 organizations.

16 **§ 20508. Training and exercises**

17 (a) National Training Program.—

18 (1) IN GENERAL.—The Secretary, acting through the Administrator  
19 and in coordination with the heads of appropriate Federal agencies, the  
20 National Council on Disability, and the National Advisory Council,  
21 shall carry out a national training program to implement the national  
22 preparedness goal, National Incident Management System, National  
23 Response Plan, and other related plans and strategies.

24 (2) TRAINING PARTNERS.—In developing and implementing the na-  
25 tional training program, the Secretary shall—

26 (A) work with government training facilities, academic institu-  
27 tions, private organizations, and other entities that provide special-  
28 ized, state-of-the-art training for emergency managers or emer-  
29 gency response providers; and

30 (B) utilize, as appropriate, training courses provided by commu-  
31 nity colleges, State and local public safety academies, State and  
32 private universities, and other facilities.

33 (b) NATIONAL EXERCISE PROGRAM.—

34 (1) IN GENERAL.—The Secretary, in coordination with the heads of  
35 appropriate Federal agencies, the National Council on Disability, and  
36 the National Advisory Council, shall carry out a national exercise pro-  
37 gram to test and evaluate the national preparedness goal, National In-  
38 cident Management System, National Response Plan, and other related  
39 plans and strategies.

40 (2) REQUIREMENTS.—The national exercise program—

41 (A) shall be—

1 (i) as realistic as practicable, based on current risk assess-  
2 ments, including credible threats, vulnerabilities, and conse-  
3 quences, and designed to stress the national preparedness  
4 system;

5 (ii) designed, as practicable, to simulate the partial or com-  
6 plete incapacitation of a State, local, or tribal government;

7 (iii) carried out, as appropriate, with a minimum degree of  
8 notice to involved parties regarding the timing and details of  
9 the exercises, consistent with safety considerations;

10 (iv) designed to provide for the systematic evaluation of  
11 readiness and enhance operational understanding of the inci-  
12 dent command system and relevant mutual aid agreements;

13 (v) designed to address the unique requirements of popu-  
14 lations with special needs, including the elderly; and

15 (vi) designed to promptly develop after-action reports and  
16 plans for quickly incorporating lessons learned into future op-  
17 erations; and

18 (B) shall include a selection of model exercises that State, local,  
19 and tribal governments can readily adapt for use and provide as-  
20 sistance to State, local, and tribal governments with the design,  
21 implementation, and evaluation of exercises (whether a model exer-  
22 cise program or an exercise designed locally) that—

23 (i) conform to the requirements under subparagraph (A);

24 (ii) are consistent with any applicable State, local, or tribal  
25 strategy or plan; and

26 (iii) provide for systematic evaluation of readiness.

27 (3) NATIONAL LEVEL EXERCISES.—The Secretary shall periodically,  
28 but not less than biennially, perform national exercises to test and  
29 evaluate the following:

30 (A) The capability of Federal, State, local, and tribal govern-  
31 ments to detect, disrupt, and prevent threatened or actual cata-  
32 strophic acts of terrorism, especially those involving weapons of  
33 mass destruction.

34 (B) The readiness of Federal, State, local, and tribal govern-  
35 ments to respond and recover in a coordinated and unified manner  
36 to catastrophic incidents.

37 **§ 20509. Comprehensive assessment system**

38 (a) ESTABLISHMENT.—The Secretary, acting through the Administrator  
39 and in coordination with the National Council on Disability and the Na-  
40 tional Advisory Council, shall establish a comprehensive system to assess,

1 on an ongoing basis, the Nation's prevention capabilities and overall pre-  
2 paredness, including operational readiness.

3 (b) PERFORMANCE METRICS AND MEASURES.—The Secretary shall en-  
4 sure that each component of the national preparedness system, National In-  
5 cident Management System, National Response Plan, and other related  
6 plans and strategies, and the reports required under section 20512 of this  
7 title is developed, revised, and updated with clear and quantifiable perform-  
8 ance metrics, measures, and outcomes.

9 (c) CONTENTS.—The assessment system established under subsection (a)  
10 shall assess

11 (1) compliance with the national preparedness system, National In-  
12 cident Management System, National Response Plan, and other related  
13 plans and strategies;

14 (2) capability levels at the time of assessment against target capabil-  
15 ity levels defined pursuant to the guidelines established under section  
16 20506(a) of this title;

17 (3) resource needs to meet the desired target capability levels defined  
18 pursuant to the guidelines established under section 20506(a); and

19 (4) performance of training, exercises, and operations.

#### 20 **§ 20510. Remedial action management program**

21 The Secretary, acting through the Administrator and in coordination with  
22 the National Council on Disability and the National Advisory Council, shall  
23 establish a remedial action management program to—

24 (1) analyze training, exercises, and real-world events to identify and  
25 disseminate lessons learned and best practices;

26 (2) generate and disseminate, as appropriate, after action reports to  
27 participants in exercises and real-world events; and

28 (3) conduct remedial action tracking and long-term trend analysis.

#### 29 **§ 20511. Federal response capability inventory**

30 (a) IN GENERAL.—Under section 611(h)(1)(C) of the Robert T. Stafford  
31 Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(h)(1)(C)),  
32 the Secretary, acting through the Administrator, shall accelerate the com-  
33 pletion of the inventory of Federal response capabilities.

34 (b) CONTENTS.—For each Federal agency with responsibilities under the  
35 National Response Plan, the inventory shall include—

36 (1) for each capability

37 (A) the performance parameters of the capability;

38 (B) the timeframe within which the capability can be brought  
39 to bear on an incident; and

1 (C) the readiness of the capability to respond to all hazards, in-  
2 cluding natural disasters, acts of terrorism, and other man-made  
3 disasters;

4 (2) a list of personnel credentialed under section 11110 of this title;

5 (3) a list of resources typed under section 11110; and

6 (4) emergency communications assets maintained by the Federal  
7 Government and, if appropriate, State, local, and tribal governments  
8 and the private sector.

9 (c) DEPARTMENT OF DEFENSE.—The Secretary, in coordination with the  
10 Secretary of Defense, shall develop a list of organizations and functions  
11 within the Department of Defense that may be used, pursuant to the au-  
12 thority provided under the National Response Plan and sections 402, 403,  
13 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assist-  
14 ance Act (42 U.S.C. 5170a, 5170b, 5192), to provide support to civil au-  
15 thorities during natural disasters, acts of terrorism, and other man-made  
16 disasters.

17 (d) DATABASE.—The Secretary shall establish an inventory database to  
18 allow—

19 (1) real-time exchange of information regarding

20 (A) capabilities;

21 (B) readiness;

22 (C) the compatibility of equipment;

23 (D) credentialed personnel; and

24 (E) typed resources;

25 (2) easy identification and rapid deployment of capabilities, cre-  
26 dentialiaed personnel, and typed resources during an incident; and

27 (3) the sharing of the inventory described in subsection (a) with  
28 other Federal agencies, as appropriate.

## 29 **§ 20512. Reporting requirements**

30 (a) FEDERAL PREPAREDNESS REPORT.—

31 (1) IN GENERAL.—The Secretary, acting through the Administrator  
32 and in coordination with the heads of appropriate Federal agencies,  
33 shall submit annually to the appropriate committees of Congress a re-  
34 port on the Nation's level of preparedness for all hazards, including  
35 natural disasters, acts of terrorism, and other man-made disasters.

36 (2) Contents.—Each report shall include—

37 (A) an assessment of how Federal assistance supports the na-  
38 tional preparedness system;

39 (B) the results of the comprehensive assessment carried out  
40 under section 20509 of this title;

1 (C) a review of the inventory described in section 20511 of this  
2 title, including the number and type of credentialed personnel in  
3 each category of personnel trained and ready to respond to a natu-  
4 ral disaster, act of terrorism, or other man-made disaster;

5 (D) an assessment of resource needs to meet preparedness pri-  
6 orities established under section 20506(e) of this title, including

7 (i) an estimate of the amount of Federal, State, local, and  
8 tribal expenditures required to attain the preparedness prior-  
9 ities; and

10 (ii) the extent to which the use of Federal assistance dur-  
11 ing the preceding fiscal year achieved the preparedness prior-  
12 ities;

13 (E) an evaluation of the extent to which grants administered by  
14 the Department, including grants under chapter 125 of this title—

15 (i) have contributed to the progress of State, local, and  
16 tribal governments in achieving target capabilities; and

17 (ii) have led to the reduction of risk from natural disasters,  
18 acts of terrorism, or other man-made disasters nationally and  
19 in State, local, and tribal jurisdictions; and

20 (F) a discussion of whether the list of credentialed personnel of  
21 the Agency described in section 20511(b)(2) of this title—

22 (i) complies with the strategic human capital plan devel-  
23 oped under section 10102 of title 5; and

24 (ii) is sufficient to respond to a natural disaster, act of ter-  
25 rorism, or other man-made disaster, including a catastrophic  
26 incident.

27 (b) CATASTROPHIC RESOURCE ESTIMATE.—

28 (1) IN GENERAL.—The Secretary shall develop and submit annually  
29 to the appropriate committees of Congress an estimate of the resources  
30 of the Agency and other Federal agencies needed for and devoted spe-  
31 cifically to developing the capabilities of Federal, State, local, and tribal  
32 governments necessary to respond to a catastrophic incident.

33 (2) CONTENTS.—Each estimate shall include the resources both nec-  
34 essary for and devoted to—

35 (A) planning;

36 (B) training and exercises;

37 (C) Regional Office enhancements;

38 (D) staffing, including for surge capacity during a catastrophic  
39 incident;

40 (E) additional logistics capabilities;

1 (F) other responsibilities under the catastrophic incident annex  
2 and the catastrophic incident supplement of the National Response  
3 Plan;

4 (G) State, local, and tribal government catastrophic incident  
5 preparedness; and

6 (H) increases in the fixed costs or expenses of the Agency, in-  
7 cluding rent or property acquisition costs or expenses, taxes, con-  
8 tributions to the working capital fund of the Department, and se-  
9 curity costs for the year after the year in which the estimate is  
10 submitted.

11 (c) State Preparedness Report.—

12 (1) IN GENERAL.—A State receiving Federal preparedness assistance  
13 administered by the Department annually shall submit a report to the  
14 Secretary on the State's level of preparedness.

15 (2) CONTENTS.—Each report shall include—

16 (A) an assessment of State compliance with the national pre-  
17 paredness system, National Incident Management System, Na-  
18 tional Response Plan, and other related plans and strategies;

19 (B) an assessment of current capability levels and a description  
20 of target capability levels; and

21 (C) a discussion of the extent to which target capabilities identi-  
22 fied in the applicable State homeland security plan and other ap-  
23 plicable plans remain unmet and an assessment of resources need-  
24 ed to meet the preparedness priorities established under section  
25 20506(e) of this title, including

26 (i) an estimate of the amount of expenditures required to  
27 attain the preparedness priorities; and

28 (ii) the extent to which the use of Federal assistance dur-  
29 ing the preceding fiscal year achieved the preparedness prior-  
30 ities.

31 **§ 20513. Federal preparedness**

32 (a) AGENCY RESPONSIBILITY.—In support of the national preparedness  
33 system, the President shall ensure that each Federal agency with respon-  
34 sibilities under the National Response Plan—

35 (1) has the operational capability to meet the national preparedness  
36 goal, including

37 (A) the personnel to make and communicate decisions;

38 (B) organizational structures that are assigned, trained, and ex-  
39 exercised for the missions of the agency;

40 (C) sufficient physical resources; and

1 (D) the command, control, and communication channels to  
2 make, monitor, and communicate decisions;

3 (2) complies with the National Incident Management System, includ-  
4 ing credentialing of personnel and typing of resources likely needed to  
5 respond to a natural disaster, act of terrorism, or other man-made dis-  
6 aster under section 11110 of this title;

7 (3) develops, trains, and exercises rosters of response personnel to  
8 be deployed when the agency is called on to support a Federal re-  
9 sponse;

10 (4) develops deliberate operational plans and the corresponding capa-  
11 bilities, including crisis planning, to respond effectively to natural dis-  
12 asters, acts of terrorism, and other man-made disasters in support of  
13 the National Response Plan to ensure a coordinated Federal response;  
14 and

15 (5) regularly updates, verifies the accuracy of, and provides to the  
16 Secretary the information in the inventory required under section  
17 20511 of this title.

18 (b) OPERATIONAL PLANS.—An operations plan developed under sub-  
19 section (a)(4) shall meet the following requirements:

20 (1) The operations plan shall be coordinated under a unified system  
21 with a common terminology, approach, and framework.

22 (2) The operations plan shall be developed, in coordination with  
23 State, local, and tribal government officials, to address both regional  
24 and national risks.

25 (3) The operations plan shall contain, as appropriate, the following  
26 elements:

27 (A) Concepts of operations.

28 (B) Critical tasks and responsibilities.

29 (C) Detailed resource and personnel requirements, together with  
30 sourcing requirements.

31 (D) Specific provisions for the rapid integration of the resources  
32 and personnel of the agency into the overall response.

33 (4) The operations plan shall address, as appropriate, the following  
34 matters:

35 (A) Support of State, local, and tribal governments in conduct-  
36 ing mass evacuations, including

37 (i) transportation and relocation;

38 (ii) short- and long-term sheltering and accommodation;

39 (iii) provisions for populations with special needs, keeping  
40 families together, and expeditious location of missing chil-  
41 dren; and



1 (iv) policies and provisions for pets.

2 (B) The preparedness and deployment of public health and med-  
3 ical resources, including resources to address the needs of evacuees  
4 and populations with special needs.

5 (C) The coordination of interagency search and rescue oper-  
6 ations, including land, water, and airborne search and rescue oper-  
7 ations.

8 (D) The roles and responsibilities of the Senior Federal Law  
9 Enforcement Official with respect to other law enforcement enti-  
10 ties.

11 (E) The protection of critical infrastructure.

12 (F) The coordination of maritime salvage efforts among relevant  
13 agencies.

14 (G) The coordination of Department of Defense and National  
15 Guard support of civilian authorities.

16 (H) To the extent practicable, the utilization of Department of  
17 Defense, National Air and Space Administration, National Oceanic  
18 and Atmospheric Administration, and commercial aircraft and sat-  
19 ellite remotely sensed imagery.

20 (I) The coordination and integration of support from the private  
21 sector and nongovernmental organizations.

22 (J) The safe disposal of debris, including hazardous materials,  
23 and, when practicable, the recycling of debris.

24 (K) The identification of the required surge capacity.

25 (L) Specific provisions for the recovery of affected geographic  
26 areas.

27 (e) MISSION ASSIGNMENTS.—To expedite the provision of assistance  
28 under the National Response Plan, the President shall ensure that the Ad-  
29 ministrator, in coordination with Federal agencies with responsibilities  
30 under the National Response Plan, develops pre-scripted mission assign-  
31 ments, including logistics, communications, mass care, health services, and  
32 public safety.

33 (d) CERTIFICATION.—The President shall certify to the Committee on  
34 Homeland Security and Governmental Affairs of the Senate and the Com-  
35 mittee on Homeland Security and the Committee on Transportation and In-  
36 frastructure of the House of Representatives on an annual basis that each  
37 Federal agency with responsibilities under the National Response Plan com-  
38 plies with subsections (a) and (b).

39 (e) CONSTRUCTION.—Nothing in this section shall be construed to limit  
40 the authority of the Secretary of Defense with regard to—

- 1 (1) the command, control, training, planning, equipment, exercises,  
2 or employment of Department of Defense forces; or  
3 (2) the allocation of Department of Defense resources.

4 **§ 20514. Use of existing resources**

5 In establishing the national preparedness goal and national preparedness  
6 system, the Secretary, acting through the Administrator, shall use existing  
7 preparedness documents, planning tools, and guidelines to the extent prac-  
8 ticable and consistent with this subtitle.

9 **Subchapter II—Additional Preparedness**

10 **§ 20521. Emergency Management Assistance Compact grants**

11 (a) IN GENERAL.—The Secretary, acting through the Administrator, may  
12 make grants to administer the Emergency Management Assistance Compact  
13 consented to by the Joint Resolution entitled “Joint Resolution granting the  
14 consent of Congress to the Emergency Management Assistance Compact”  
15 (Public Law 104–321, 110 Stat. 3877).

16 (b) USES.—A grant under this section shall be used—

17 (1) to carry out recommendations identified in the Emergency Man-  
18 agement Assistance Compact after-action reports for the 2004 and  
19 2005 hurricane season;

20 (2) to administer compact operations on behalf of all member States  
21 and territories;

22 (3) to continue coordination with the Agency and appropriate Fed-  
23 eral agencies;

24 (4) to continue coordination with State, local, and tribal government  
25 entities and their respective national organizations; and

26 (5) to assist State and local governments, emergency response pro-  
27 viders, and organizations representing the providers with credentialing  
28 emergency response providers and the typing of emergency response re-  
29 sources.

30 (c) COORDINATION.—The Secretary shall consult with the Administrator  
31 of the Emergency Management Assistance Compact to ensure effective co-  
32 ordination of efforts in responding to requests for assistance.

33 **§ 20522. Emergency Management Performance Grants Pro-**  
34 **gram**

35 (a) DEFINITIONS.—In this section:

36 (1) PROGRAM.—The term “program” means the emergency manage-  
37 ment performance grants program described in subsection (b).

38 (2) STATE.—The term “State” as the meaning given that term in  
39 section 102 of the Robert T. Stafford Disaster Relief and Emergency  
40 Assistance Act (42 U.S.C. 5122).

1 (b) IN GENERAL.—The Secretary, acting through the Administrator,  
2 shall continue implementation of an emergency management performance  
3 grants program to make grants to States to assist State, local, and tribal  
4 governments in preparing for all hazards, as authorized by the Robert T.  
5 Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et  
6 seq.).

7 (c) FEDERAL SHARE.—Except as otherwise specifically provided by title  
8 VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act  
9 (42 U.S.C. 5195 et seq.), the Federal share of the cost of an activity carried  
10 out using funds made available under the program shall not exceed 50 per-  
11 cent.

12 (d) APPORTIONMENT.—The Secretary shall apportion the amounts appro-  
13 priated each fiscal year to carry out the program among the States as fol-  
14 lows:

15 (1) The Secretary shall first apportion 0.25 percent of the amounts  
16 to each of American Samoa, the Northern Mariana Islands, Guam, and  
17 the Virgin Islands and 0.75 percent of the amounts to each of the re-  
18 maining States.

19 (2) Remainder.—The Secretary shall apportion the remainder of the  
20 amounts in the ratio that—

21 (A) the population of each State; bears to

22 (B) the population of all States.

23 **§ 20523. Training for emergency response providers from**  
24 **Federal Government, foreign governments, or pri-**  
25 **ivate entities**

26 (a) IN GENERAL.THE CENTER FOR DOMESTIC PREPAREDNESS MAY PRO-  
27 VIDE TRAINING TO EMERGENCY RESPONSE PROVIDERS FROM THE FEDERAL  
28 GOVERNMENT, FOREIGN GOVERNMENTS, OR PRIVATE ENTITIES IF THE  
29 CENTER FOR DOMESTIC PREPAREDNESS IS REIMBURSED FOR THE COST OF  
30 THE TRAINING. ANY REIMBURSEMENT UNDER THIS SUBSECTION SHALL BE  
31 CREDITED TO THE ACCOUNT FROM WHICH THE EXPENDITURE BEING REIM-  
32 BURSED WAS MADE AND IS AVAILABLE, WITHOUT FISCAL YEAR LIMITATION,  
33 FOR THE PURPOSES FOR WHICH AMOUNTS IN THE ACCOUNT MAY BE EX-  
34 PENDED.

35 (b) TRAINING NOT TO INTERFERE WITH PRIMARY MISSION.THE HEAD  
36 OF THE CENTER FOR DOMESTIC PREPAREDNESS SHALL ENSURE THAT ANY  
37 TRAINING PROVIDED UNDER SUBSECTION (A) DOES NOT INTERFERE WITH  
38 THE PRIMARY MISSION OF THE CENTER FOR DOMESTIC PREPAREDNESS TO  
39 TRAIN STATE AND LOCAL EMERGENCY RESPONSE PROVIDERS.

40 (c) TRAINING FEDERAL EMERGENCY MANAGEMENT AGENCY EMPLOY-  
41 EES.SUBJECT TO SUBSECTION (B), SUBSECTION (A) DOES NOT PROHIBIT

1 THE CENTER FOR DOMESTIC PREPAREDNESS FROM PROVIDING TRAINING  
2 TO EMPLOYEES OF THE AGENCY IN EXISTING CHEMICAL, BIOLOGICAL, RA-  
3 DIOLOGICAL, NUCLEAR, EXPLOSIVES, MASS CASUALTY, AND MEDICAL SURGE  
4 COURSES PURSUANT TO 5 U.S.C. 4103 WITHOUT REIMBURSEMENT FOR THE  
5 COST OF THE TRAINING.

6 **§ 20524. National exercise simulation center**

7 The President shall establish a national exercise simulation center that—

- 8 (1) uses a mix of live, virtual, and constructive simulations to—  
9 (A) prepare elected officials, emergency managers, emergency  
10 response providers, and emergency support providers at all levels  
11 of government to operate cohesively  
12 (B) provide a learning environment for the homeland security  
13 personnel of all Federal agencies;  
14 (C) assist in the development of operational procedures and ex-  
15 ercises, particularly those based on catastrophic incidents; and  
16 (D) allow incident commanders to exercise decision-making in a  
17 simulated environment; and  
18 (2) uses modeling and simulation for training, exercises, and com-  
19 mand and control functions at the operational level.

20 **Subchapter III—Miscellaneous Authorities**

21 **§ 20531. National Disaster Recovery Strategy**

22 (a) IN GENERAL.—The Secretary, acting through the Administrator and  
23 in coordination with the Secretary of Housing and Urban Development, the  
24 Administrator of the Environmental Protection Agency, the Secretary of Ag-  
25 riculture, the Secretary of Commerce, the Secretary of the Treasury, the  
26 Secretary of Transportation, the Administrator of the Small Business Ad-  
27 ministration, the Assistant Secretary for Indian Affairs of the Department  
28 of the Interior, and the heads of other appropriate Federal agencies, State,  
29 local, and tribal government officials (including through the National Advi-  
30 sory Council), and representatives of appropriate nongovernmental organiza-  
31 tions, shall develop, coordinate, and maintain a National Disaster Recovery  
32 Strategy to serve as a guide to recovery efforts after major disasters and  
33 emergencies.

34 (b) CONTENTS.—The National Disaster Recovery Strategy shall—

- 35 (1) outline the most efficient and cost-effective Federal programs  
36 that will meet the recovery needs of States, local and tribal govern-  
37 ments, and individuals and households affected by a major disaster;  
38 (2) clearly define the role, programs, authorities, and responsibilities  
39 of each Federal agency that may be of assistance in providing assist-  
40 ance in the recovery from a major disaster;

1 (3) promote the use of the most appropriate and cost-effective build-  
2 ing materials (based on the hazards present in an area) in an area af-  
3 fected by a major disaster, with the goal of encouraging the construc-  
4 tion of disaster-resistant buildings; and

5 (4) describe in detail the programs that may be offered by the agen-  
6 cies described in paragraph (2), including

7 (A) discussing funding issues;

8 (B) detailing how responsibilities under the National Disaster  
9 Recovery Strategy will be shared; and

10 (C) addressing other matters concerning the cooperative effort  
11 to provide recovery assistance.

12 (c) REPORT.—

13 (1) IN GENERAL.—The Secretary shall submit to the appropriate  
14 committees of Congress a report describing in detail the National Dis-  
15 aster Recovery Strategy and any additional authorities necessary to im-  
16 plement any portion of the National Disaster Recovery Strategy.

17 (2) UPDATE.—The Secretary shall submit to the appropriate com-  
18 mittees of Congress a report updating the report submitted under para-  
19 graph (1)—

20 (A) on the same date that any change is made to the National  
21 Disaster Recovery Strategy; and

22 (B) on a periodic basis after the submission of the report under  
23 paragraph (1), but not less than once every 5 years after the date  
24 of the submission.

25 **§ 20532. National Disaster Housing Strategy**

26 (a) IN GENERAL.—The Secretary, acting through the Administrator and  
27 in coordination with representatives of the Federal agencies, governments,  
28 and organizations listed in subsection (b)(2) of this section, the National  
29 Advisory Council, the National Council on Disability, and other entities at  
30 the Secretary's discretion, shall develop, coordinate, and maintain a Na-  
31 tional Disaster Housing Strategy.

32 (b) CONTENTS.—The National Disaster Housing Strategy shall—

33 (1) outline the most efficient and cost effective Federal programs  
34 that will best meet the short-term and long-term housing needs of indi-  
35 viduals and households affected by a major disaster;

36 (2) clearly define the role, programs, authorities, and responsibilities  
37 of each entity in providing housing assistance in the event of a major  
38 disaster, including—

39 (A) the Agency;

40 (B) the Department of Housing and Urban Development;

41 (C) the Department of Agriculture;

- 1 (D) the Department of Veterans Affairs;
- 2 (E) the Department of Health and Human Services;
- 3 (F) the Bureau of Indian Affairs;
- 4 (G) any other Federal agency that may provide housing assist-
- 5 ance in the event of a major disaster;
- 6 (H) the American Red Cross; and
- 7 (I) State, local, and tribal governments;
- 8 (3) describe in detail the programs that may be offered by the enti-
- 9 ties described in paragraph (2), including
- 10 (A) outlining any funding issues;
- 11 (B) detailing how responsibilities under the National Disaster
- 12 Housing Strategy will be shared; and
- 13 (C) addressing other matters concerning the cooperative effort
- 14 to provide housing assistance during a major disaster;
- 15 (4) consider methods through which housing assistance can be pro-
- 16 vided to individuals and households where employment and other re-
- 17 sources for living are available;
- 18 (5) describe programs directed to meet the needs of special needs
- 19 and low-income populations and ensure that a sufficient number of
- 20 housing units are provided for individuals with disabilities;
- 21 (6) describe plans for the operation of clusters of housing provided
- 22 to individuals and households, including access to public services, site
- 23 management, security, and site density;
- 24 (7) describe plans for promoting the repair or rehabilitation of exist-
- 25 ing rental housing, including through lease agreements or other means,
- 26 in order to improve the provision of housing to individuals and house-
- 27 holds under section 408 of the Robert T. Stafford Disaster Relief and
- 28 Emergency Assistance Act (42 U.S.C. 5174); and
- 29 (8) describe any additional authorities necessary to carry out any
- 30 portion of the strategy.
- 31 (c) Guidance.—The Secretary should develop and make publicly available
- 32 guidance on—
- 33 (1) types of housing assistance available under the Robert T. Staf-
- 34 ford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121
- 35 et seq.) to individuals and households affected by an emergency or
- 36 major disaster;
- 37 (2) eligibility for assistance (including, where appropriate, the con-
- 38 tinuation of assistance); and
- 39 (3) application procedures for assistance.
- 40 (d) Report.—

1 (1) IN GENERAL.—The Secretary shall submit to the appropriate  
2 committees of Congress a report describing in detail the National Dis-  
3 aster Housing Strategy, including programs directed to meeting the  
4 needs of special needs populations.

5 (2) Update.—The Secretary shall submit to the appropriate commit-  
6 tees of Congress a report updating the report submitted under para-  
7 graph (1)—

8 (A) on the same date that any change is made to the National  
9 Disaster Housing Strategy; and

10 (B) on a periodic basis after the submission of the report under  
11 paragraph (1), but not less than once every 5 years after the date  
12 of the submission.

### 13 **§ 20533. Individuals with disabilities guidelines**

14 The Secretary, acting through the Administrator and in coordination with  
15 the National Advisory Council, the National Council on Disability, the Inter-  
16 agency Coordinating Council on Preparedness and Individuals With Disabil-  
17 ities established under Executive Order No. 13347 (69 Fed. Reg. 44573),  
18 and the Disability Coordinator (established under section 11113 of this  
19 title), shall develop guidelines to accommodate individuals with disabilities,  
20 which shall include guidelines for—

21 (1) the accessibility of, and communications and programs in, shel-  
22 ters, recovery centers, and other facilities; and

23 (2) devices used in connection with disaster operations, including  
24 first aid stations, mass feeding areas, portable payphone stations, port-  
25 able toilets, and temporary housing.

### 26 **§ 20534. Reunification**

27 (a) DEFINITIONS.—In this section:

28 (1) CHILD LOCATOR CENTER.—The term “Child Locator Center”  
29 means the National Emergency Child Locator Center established under  
30 subsection (b).

31 (2) DECLARED EVENT.—The term “declared event” means a major  
32 disaster or emergency.

33 (3) DISPLACED ADULT.—The term “displaced adult” means an indi-  
34 vidual 21 years of age or older who is displaced from the habitual resi-  
35 dence of that individual as a result of a declared event.

36 (4) DISPLACED CHILD.—The term “displaced child” means an indi-  
37 vidual under 21 years of age who is displaced from the habitual resi-  
38 dence of that individual as a result of a declared event.

39 (b) NATIONAL EMERGENCY CHILD LOCATOR CENTER.—

40 (1) IN GENERAL.—The Secretary, acting through the Administrator  
41 and in coordination with the Attorney General of the United States,

1 shall establish in the National Center for Missing and Exploited Chil-  
2 dren the National Emergency Child Locator Center. In establishing the  
3 Child Locator Center, the Secretary shall establish procedures to make  
4 all relevant information available to the Child Locator Center in a time-  
5 ly manner to facilitate the expeditious identification and reunification  
6 of children with their families.

7 (2) Purposes.—The purposes of the Child Locator Center are to—

8 (A) enable individuals to provide to the Child Locator Center  
9 the name of and other identifying information about a displaced  
10 child or a displaced adult who may have information about the lo-  
11 cation of a displaced child;

12 (B) enable individuals to receive information about other  
13 sources of information about displaced children and displaced  
14 adults; and

15 (C) assist law enforcement in locating displaced children.

16 (3) Responsibilities and duties.—The responsibilities and duties of  
17 the Child Locator Center are to—

18 (A) establish a toll-free telephone number to receive reports of  
19 displaced children and information about displaced adults that  
20 may assist in locating displaced children;

21 (B) create a website to provide information about displaced chil-  
22 dren;

23 (C) deploy its staff to the location of a declared event to gather  
24 information about displaced children;

25 (D) assist in the reunification of displaced children with their  
26 families;

27 (E) provide information to the public about additional resources  
28 for disaster assistance;

29 (F) work in partnership with Federal, State, and local law en-  
30 forcement agencies;

31 (G) provide technical assistance in locating displaced children;

32 (H) share information on displaced children and displaced  
33 adults with governmental agencies and nongovernmental organiza-  
34 tions providing disaster assistance;

35 (I) use its resources to gather information about displaced chil-  
36 dren;

37 (J) refer reports of displaced adults to—

38 (i) an entity designated by the Attorney General to provide  
39 technical assistance in locating displaced adults; and

40 (ii) the National Emergency Family Registry and Locator  
41 System established under section 20535(b) of this title;



1 (K) enter into cooperative agreements with Federal and State agen-  
2 cies and other organizations such as the American Red Cross as nec-  
3 essary to implement the mission of the Child Locator Center; and

4 (L) develop an emergency response plan to prepare for the activation  
5 of the Child Locator Center.

6 **§ 20535. National Emergency Family Registry and Locator**  
7 **System**

8 (a) DEFINITION.—In this section, the term “displaced individual” means  
9 an individual displaced by an emergency or major disaster.

10 (b) ESTABLISHMENT.—The Secretary, acting through the Administrator,  
11 shall establish a National Emergency Family Registry and Locator System  
12 to help reunify families separated after an emergency or major disaster.

13 (c) OPERATION.—The National Emergency Family Registry and Locator  
14 System shall—

15 (1) allow a displaced adult (including medical patients) to voluntarily  
16 register (and allow an adult that is the parent or guardian of a dis-  
17 placed child to register the child), by submitting personal information  
18 to be entered into a database (such as the name, current location of  
19 residence, and any other relevant information that could be used by  
20 others seeking to locate that individual);

21 (2) ensure that information submitted under paragraph (1) is acces-  
22 sible to those individuals named by a displaced individual and to those  
23 law enforcement officials;

24 (3) be accessible through the Internet and through a toll-free num-  
25 ber, to receive reports of displaced individuals; and

26 (4) include a means of referring displaced children to the National  
27 Emergency Child Locator Center established under section 20534 of  
28 this title.

29 (d) INFORMING THE PUBLIC.—The Secretary shall establish a mechanism  
30 to inform the public about the National Emergency Family Registry and  
31 Locator System and its potential usefulness for assisting to reunite dis-  
32 placed individuals with their families.

33 (e) COORDINATION.—The Secretary shall enter a memorandum of under-  
34 standing with the Department of Justice, the National Center for Missing  
35 and Exploited Children, the Department of Health and Human Services,  
36 and the American Red Cross and other relevant private organizations that  
37 will enhance the sharing of information to facilitate reuniting displaced indi-  
38 viduals (including medical patients) with their families.

1                   **Chapter 207 Prevention of Fraud, Waste, and Abuse**

Sec.20701. Advance contracting.20702. Limitations on tiering of subcontractors.20703. Oversight and accountability of Federal disaster expenditures.20704. Limitation on length of certain noncompetitive contracts.20705. Fraud, waste, and abuse controls.20706. Registry of disaster response contractors.20707. Fraud prevention training program.

2                   **§ 20701. Advance contracting**

3                   (a) Entering Into Contracts.—

4                   (1) IN GENERAL.—The Secretary, acting through the Administrator,  
5                   shall enter into one or more contracts for recurring disaster response  
6                   requirements, including specific goods and services, for which the Agen-  
7                   cy is capable of contracting for in advance of a natural disaster or act  
8                   of terrorism or other man-made disaster in a cost effective manner,  
9                   using a contracting strategy that maximizes the use of advance con-  
10                  tracts to the extent practical and cost-effective. A previously awarded  
11                  contract for goods or services may be maintained in fulfilling this re-  
12                  quirement.

13                  (2) CONSIDERED FACTORS.—Before entering into any contract under  
14                  this subsection, the Secretary shall consider section 307 of the Robert  
15                  T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.  
16                  5150).

17                  (3) PRE-NEGOTIATED FEDERAL CONTRACTS FOR GOODS AND SERV-  
18                  ICES.—The Secretary, in coordination with State and local govern-  
19                  ments and other Federal agencies, shall establish a process to ensure  
20                  that Federal pre-negotiated contracts for goods and services are coordi-  
21                  nated with State and local governments, as appropriate.

22                  (4) PRE-NEGOTIATED STATE AND LOCAL CONTRACTS FOR GOODS  
23                  AND SERVICES.—The Secretary shall encourage State and local govern-  
24                  ments to establish pre-negotiated contracts with vendors for goods and  
25                  services in advance of natural disasters and acts of terrorism or other  
26                  man-made disasters.

27                  (b) MAINTENANCE OF CONTRACTS.—The Secretary is responsible for  
28                  maintaining contracts for appropriate levels of goods and services in accord-  
29                  ance with a contracting strategy that maximizes the use of advance con-  
30                  tracts to the extent practical and cost-effective.

31                  (c) REPORT ON CONTRACTS NOT USING COMPETITIVE PROCEDURES.—  
32                  At the end of each fiscal quarter, the Secretary shall submit a report on  
33                  each disaster assistance contract entered into by the Agency by other than  
34                  competitive procedures to the appropriate committees of Congress.

35                  **§ 20702. Limitations on tiering of subcontractors**

36                  (a) APPLICATION.—This section applies to any cost-reimbursement type  
37                  contract or task or delivery order in an amount greater than the simplified

1 acquisition threshold (as defined by section 134 of title 41) entered into by  
2 the Department to facilitate response to or recovery from a natural disaster  
3 or act of terrorism or other man-made disaster.

4 (b) REGULATIONS.—The Secretary shall promulgate regulations applica-  
5 ble to contracts described in subsection (a) to minimize the excessive use  
6 by contractors of subcontractors or tiers of subcontractors to perform the  
7 principal work of the contract.

8 (c) SPECIFIC REQUIREMENT.—At a minimum, the regulations promul-  
9 gated under subsection (b) shall preclude a contractor from using sub-  
10 contracts for more than 65 percent of the cost of the contract or the cost  
11 of any individual task or delivery order (not including overhead and profit),  
12 unless the Secretary determines that this requirement is not feasible or  
13 practicable.

14 **§ 20703. Oversight and accountability of Federal disaster ex-**  
15 **penditures**

16 (a) DEFINITION.—In this section, the term “oversight funds” means  
17 funds referred to in subsection (b) that are designated for use in performing  
18 oversight activities.

19 (b) AUTHORITY OF SECRETARY TO DESIGNATE FUNDS FOR OVERSIGHT  
20 ACTIVITIES.—The Secretary, acting through the Administrator, may des-  
21 ignate up to one percent of the total amount provided to a Federal agency  
22 for a mission assignment as oversight funds to be used by the recipient  
23 agency for performing oversight of activities carried out under the Agency  
24 reimbursable mission assignment process. The funds are available until ex-  
25 pended.

26 (c) USE OF FUNDS.—

27 (1) TYPES OF OVERSIGHT ACTIVITIES.—Oversight funds may be  
28 used for the following types of oversight activities related to Agency  
29 mission assignments:

30 (A) Monitoring, tracking, and auditing expenditures of funds.

31 (B) Ensuring that sufficient management and internal control  
32 mechanisms are available so that Agency funds are spent appro-  
33 priately and in accordance with all applicable laws and regulations.

34 (C) Reviewing selected contracts and other activities.

35 (D) Investigating allegations of fraud involving Agency funds.

36 (E) Conducting and participating in fraud prevention activities  
37 with other Federal, State, and local government personnel and  
38 contractors.

39 (2) PLANS AND REPORTS.—Oversight funds may be used to issue the  
40 plans required under subsection (f) and the reports required under sub-  
41 section (g).

1 (d) RESTRICTION ON USE OF FUNDS.—Oversight funds may not be used  
2 to finance existing agency oversight responsibilities related to direct agency  
3 appropriations used for disaster response, relief, and recovery activities.

4 (e) METHODS OF OVERSIGHT ACTIVITIES.—

5 (1) IN GENERAL.—Oversight activities may be carried out by an  
6 agency under this section either directly or by contract. The activities  
7 may include evaluations and financial and performance audits.

8 (2) COORDINATION OF OVERSIGHT ACTIVITIES.—To the extent prac-  
9 ticable, evaluations and audits under this section shall be performed by  
10 the inspector general of the agency.

11 (f) DEVELOPMENT OF OVERSIGHT PLANS.—

12 (1) IN GENERAL.—If an agency receives oversight funds for a fiscal  
13 year, the head of the agency shall prepare a plan describing the over-  
14 sight activities for disaster response, relief, and recovery anticipated to  
15 be undertaken during the subsequent fiscal year.

16 (2) SELECTION OF OVERSIGHT ACTIVITIES.—In preparing the plan,  
17 the head of the agency shall select oversight activities based upon a  
18 risk assessment of those areas that present the greatest risk of fraud,  
19 waste, and abuse.

20 (3) SCHEDULE.—The plan shall include a schedule for conducting  
21 oversight activities, including anticipated dates of completion.

22 (g) FEDERAL DISASTER ASSISTANCE ACCOUNTABILITY REPORTS.—An  
23 agency receiving oversight funds under this section shall submit annually to  
24 the Secretary and the appropriate committees of Congress a consolidated re-  
25 port regarding the use of the funds, including information summarizing  
26 oversight activities and the results achieved.

27 **§ 20704. Limitation on length of certain noncompetitive con-**  
28 **tracts**

29 (a) REGULATIONS.—The Secretary shall promulgate regulations applica-  
30 ble to contracts described in subsection (c) to restrict the contract period  
31 of a contract entered into using procedures other than competitive proce-  
32 dures pursuant to the exception provided in section 3304(a)(2) of title 41  
33 to the minimum contract period necessary—

34 (1) to meet the urgent and compelling requirements of the work to  
35 be performed under the contract; and

36 (2) to enter into another contract for the required goods or services  
37 through the use of competitive procedures.

38 (b) SPECIFIC CONTRACT PERIOD.—The regulations promulgated under  
39 subsection (a) shall require the contract period to not exceed 150 days, un-  
40 less the Secretary determines that exceptional circumstances apply.

1 (c) COVERED CONTRACTS.—This section applies to any contract in an  
2 amount greater than the simplified acquisition threshold (as defined by sec-  
3 tion 134 of title 41) entered into by the Department to facilitate response  
4 to or recovery from a natural disaster, act of terrorism, or other man-made  
5 disaster.

6 **§ 20705. Fraud, waste, and abuse controls**

7 (a) IN GENERAL.—The Secretary, acting through the Administrator,  
8 shall ensure that—

9 (1) all programs within the Agency administering Federal disaster  
10 relief assistance develop and maintain proper internal management con-  
11 trols to prevent and detect fraud, waste, and abuse;

12 (2) application databases used by the Agency to collect information  
13 on eligible recipients record disbursements;

14 (3) tracking to prevent and detect fraud, waste, and abuse is de-  
15 signed to highlight and identify ineligible applications; and

16 (4) the databases used to collect information from applications for  
17 assistance are integrated with disbursements and payment records.

18 (b) AUDITS AND REVIEWS REQUIRED.—The Secretary shall ensure that  
19 any database or similar application processing system for Federal disaster  
20 relief assistance programs administered by the Agency undergoes a review  
21 by the Inspector General of the Department to determine the existence and  
22 implementation of internal controls required under this section and the  
23 amendments made by this section.

24 **§ 20706. Registry of disaster response contractors**

25 (a) DEFINITIONS.—In this section, the terms “small business concern”,  
26 “small business concern owned and controlled by service-disabled veterans”,  
27 “small business concern owned and controlled by socially and economically  
28 disadvantaged individuals”, and “small business concern owned and con-  
29 trolled by women” and have the meanings given those terms under the  
30 Small Business Act (15 U.S.C. 631 et seq.).

31 (b) REGISTRY.—

32 (1) IN GENERAL.—The Secretary, acting through the Administrator,  
33 shall establish and maintain a registry of contractors who are willing  
34 to perform debris removal, distribution of supplies, reconstruction, and  
35 other disaster or emergency relief activities.

36 (2) CONTENTS.—The registry shall include, for each business con-  
37 cern—

38 (A) the name of the business concern;

39 (B) the location of the business concern;

40 (C) the area served by the business concern;

1 (D) the type of good or service provided by the business con-  
2 cern;

3 (E) the bonding level of the business concern; and

4 (F) whether the business concern is—

5 (i) a small business concern;

6 (ii) a small business concern owned and controlled by so-  
7 cially and economically disadvantaged individuals;

8 (iii) a small business concern owned and controlled by  
9 women; or

10 (iv) a small business concern owned and controlled by serv-  
11 ice-disabled veterans.

12 (3) SOURCE OF INFORMATION.—

13 (A) Submission.—Information maintained in the registry shall  
14 be submitted on a voluntary basis and be kept current by the sub-  
15 mitting business concerns.

16 (B) ATTESTATION.—Each business concern submitting informa-  
17 tion to the registry shall submit—

18 (i) an attestation that the information is true; and

19 (ii) documentation supporting the attestation.

20 (C) VERIFICATION.—The Secretary shall verify that the docu-  
21 mentation submitted by each business concern supports the infor-  
22 mation submitted by that business concern.

23 (4) AVAILABILITY.—The registry shall be made generally available  
24 on the Internet site of the Agency.

25 (5) CONSULTATION OF REGISTRY AS PART OF ACQUISITION PLAN-  
26 NING.—A Federal agency shall consult the registry as part of the ac-  
27 quisition planning for contracting for debris removal, distribution of  
28 supplies in a disaster, reconstruction, and other disaster or emergency  
29 relief activities.

### 30 **§ 20707. Fraud prevention training program**

31 The Secretary, acting through the Administrator, shall develop and imple-  
32 ment a program to provide training on the prevention of waste, fraud, and  
33 abuse of Federal disaster relief assistance relating to the response to or re-  
34 recovery from natural disasters and acts of terrorism or other man-made dis-  
35 asters and ways to identify potential waste, fraud, and abuse.

## 36 **Subtitle III— Port Security and** 37 **Accountability**

### 38 **Chapter 301—General**

Sec.

30101. Definitions.

1     **§ 30101. Definitions**

2     In this subtitle:

3           (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—Except as other-  
4     wise provided, the term “appropriate congressional committees”  
5     means—

6           (A) the Committee on Appropriations of the Senate;

7           (B) the Committee on Commerce, Science, and Transportation  
8     of the Senate;

9           (C) the Committee on Finance of the Senate;

10          (D) the Committee on Homeland Security and Governmental  
11     Affairs of the Senate;

12          (E) the Committee on Appropriations of the House of Rep-  
13     resentatives;

14          (F) the Committee on Homeland Security of the House of Rep-  
15     resentatives;

16          (G) the Committee on Transportation and Infrastructure of the  
17     House of Representatives;

18          (H) the Committee on Ways and Means of the House of Rep-  
19     resentatives; and

20          (I) other congressional committees, as appropriate.

21          (2) COMMERCIAL OPERATIONS ADVISORY COMMITTEE.—The term  
22     “Commercial Operations Advisory Committee” means the Advisory  
23     Committee established under section 9503(e) of the Omnibus Budget  
24     Reconciliation Act of 1987 (Public Law 100–203, 19 U.S.C. 2071  
25     note) or any successor committee.

26          (3) COMMERCIAL SEAPORT PERSONNEL.—The term “commercial  
27     seaport personnel” includes any person engaged in an activity relating  
28     to the loading or unloading of cargo or passengers, the movement or  
29     tracking of cargo, the maintenance and repair of intermodal equipment,  
30     the operation of cargo-related equipment (whether or not integral to  
31     the vessel), and the handling of mooring lines on the dock when a ves-  
32     sel is made fast or let go in the United States.

33          (4) COMMISSIONER.—The term “Commissioner” means the Commis-  
34     sioner responsible for the Bureau of Customs and Border Protection.

35          (5) CONTAINER.—The term “container” has the meaning given the  
36     term in the International Convention for Safe Containers, with an-  
37     nexes, done at Geneva, December 2, 1972 (29 UST 3707).

38          (6) CONTAINER SECURITY DEVICE.—The term “container security  
39     device” means a device, or system—

40           (A) designed, at a minimum

41           (i) to identify positively a container;

1 (ii) to detect and record unauthorized intrusion into a con-  
2 tainer; and

3 (iii) to secure a container against tampering throughout  
4 the supply chain; and

5 (B) that has a low false alarm rate, as determined by the Sec-  
6 retary.

7 (7) DEPARTMENT.—The term “Department” means the Department  
8 of Homeland Security.

9 (8) EXAMINATION.—The term “examination” means an inspection of  
10 cargo to detect the presence of mis-declared, restricted, or prohibited  
11 items that utilizes nonintrusive imaging and detection technology.

12 (9) INSPECTION.—The term “inspection” means the comprehensive  
13 process used by the Bureau of Customs and Border Protection—

14 (A) to assess goods entering the United States to appraise them  
15 for duty purposes, to detect the presence of restricted or prohib-  
16 ited items, and to ensure compliance with all applicable laws; and

17 (B) that may include screening, conducting an examination, or  
18 conducting a search.

19 (10) INTERNATIONAL SUPPLY CHAIN.—The term “international sup-  
20 ply chain” means the end-to-end process for shipping goods to or from  
21 the United States beginning at the point of origin (including manufac-  
22 turer, supplier, or vendor) through a point of distribution to the des-  
23 tination.

24 (11) RADIATION DETECTION EQUIPMENT.—The term “radiation de-  
25 tection equipment” means any technology that is capable of detecting  
26 or identifying nuclear and radiological material or nuclear and radio-  
27 logical explosive devices.

28 (12) SCAN.—The term “scan” means utilizing nonintrusive imaging  
29 equipment, radiation detection equipment, or both, to capture data, in-  
30 cluding images of a container.

31 (13) SCREENING.—The term “screening” means a visual or auto-  
32 mated review of information about goods, including manifest or entry  
33 documentation accompanying a shipment being imported into the  
34 United States, to determine the presence of mis-declared, restricted, or  
35 prohibited items and assess the level of threat posed by the affected  
36 cargo.

37 (14) SEARCH.—The term “search” means an intrusive examination  
38 in which a container is opened and its contents are devanned and vis-  
39 ually inspected for the presence of mis-declared, restricted, or prohib-  
40 ited items.



1 (15) SECRETARY.—The term “Secretary” means the Secretary of  
2 Homeland Security.

3 (16) TRANSPORTATION DISRUPTION.—The term “transportation dis-  
4 ruption” means any significant delay, interruption, or stoppage in the  
5 flow of trade caused by a natural disaster, heightened threat level, act  
6 of terrorism, or transportation security incident.

7 (17) TRANSPORTATION SECURITY INCIDENT.—The term “transportation  
8 security incident” has the meaning given the term in section  
9 70101(6) of title 46.

## 10 **Chapter 303 Security of United States Seaports**

Sec.

30301. Port Security Exercise Program.

30302. Facility exercise requirements.

30303. Domestic radiation detection and imaging.

30304. Integration of detection equipment and technologies.

30305. Inspection of car ferries entering from abroad.

30306. Random searches of containers.

30307. Threat assessment screening of port truck drivers.

30308. Center of Excellence for Maritime Domain Awareness.

### 11 **§ 30301. Port Security Exercise Program**

12 (a) IN GENERAL.—The Secretary, in coordination with the Commandant  
13 of the Coast Guard, shall establish a Port Security Exercise Program (in  
14 this section referred to as the “Exercise Program”) to test and evaluate the  
15 capabilities of Federal, State, local, and foreign governments, commercial  
16 seaport personnel and management, governmental and nongovernmental  
17 emergency response providers, the private sector, or any other organization  
18 or entity, as the Secretary determines to be appropriate, to prevent, prepare  
19 for, mitigate against, respond to, and recover from acts of terrorism, natural  
20 disasters, and other emergencies at facilities required to submit a plan  
21 under section 70103(e) of title 46.

22 (b) REQUIREMENTS.—The Secretary shall ensure that the Exercise Pro-  
23 gram—

24 (1) conducts, on a periodic basis, port security exercises at the facili-  
25 ties that are—

26 (A) scaled and tailored to the needs of each facility;

27 (B) live, in the case of the most at-risk facilities;

28 (C) as realistic as practicable and based on current risk assess-  
29 ments, including credible threats, vulnerabilities, and conse-  
30 quences;

31 (D) consistent with the National Incident Management System,  
32 the National Response Plan, the National Infrastructure Protec-  
33 tion Plan, the National Preparedness Guidance, the National Pre-  
34 paredness Goal, the National Maritime Transportation Security  
35 Plan, and other national initiatives;

1 (E) evaluated against clear and consistent performance meas-  
2 ures;

3 (F) assessed to learn best practices, which shall be shared with  
4 appropriate Federal, State, and local officials, commercial seaport  
5 personnel and management, governmental and nongovernmental  
6 emergency response providers, and the private sector; and

7 (G) followed by remedial action in response to lessons learned;  
8 and

9 (2) assists State and local governments and facilities in designing,  
10 implementing, and evaluating exercises that—

11 (A) conform to the requirements of paragraph (1); and

12 (B) are consistent with any applicable Area Maritime Transpor-  
13 tation Security Plan and State or Urban Area Homeland Security  
14 Plan.

15 (c) IMPROVEMENT PLAN.—The Secretary shall establish a port security  
16 exercise improvement plan process to—

17 (1) identify and analyze each port security exercise for lessons  
18 learned and best practices;

19 (2) disseminate lessons learned and best practices to participants in  
20 the Exercise Program;

21 (3) monitor the implementation of lessons learned and best practices  
22 by participants in the Exercise Program; and

23 (4) conduct remedial action tracking and long-term trend analysis.

#### 24 **§ 30302. Facility exercise requirements**

25 The Secretary of the Department in which the Coast Guard is operating  
26 shall require each high-risk facility to conduct live or full-scale exercises de-  
27 scribed in section 105.220(e) of title 33, Code of Federal Regulations, not  
28 less frequently than once every 2 years, in accordance with the facility secu-  
29 rity plan required under section 70103(e) of title 46.

#### 30 **§ 30303. Domestic radiation detection and imaging**

31 (a) SCANNING CONTAINERS.—Subject to section 318 of the Tariff Act of  
32 1930 (19 U.S.C. 1318), all containers entering the United States through  
33 the 22 ports through which the greatest volume of containers enter the  
34 United States by vessel shall be scanned for radiation. To the extent prac-  
35 ticable, the Secretary shall deploy next-generation radiation detection tech-  
36 nology.

37 (b) STRATEGY.—The Secretary shall develop and implement a strategy  
38 for the deployment of radiation detection capabilities that includes—

39 (1) a risk-based prioritization of ports of entry at which radiation  
40 detection equipment will be deployed;

1 (2) a proposed timeline of when radiation detection equipment will  
2 be deployed at each port of entry identified under paragraph (1);

3 (3) the type of equipment to be used at each port of entry identified  
4 under paragraph (1), including the joint deployment and utilization of  
5 radiation detection equipment and nonintrusive imaging equipment;

6 (4) standard operating procedures for examining containers with the  
7 equipment, including sensor alarming, networking, and communications  
8 and response protocols;

9 (5) operator training plans;

10 (6) an evaluation of the environmental health and safety impacts of  
11 nonintrusive imaging technology and a radiation risk reduction plan, in  
12 consultation with the Nuclear Regulatory Commission, the Occupa-  
13 tional Safety and Health Administration, and the National Institute for  
14 Occupational Safety and Health, that seeks to minimize radiation expo-  
15 sure of workers and the public to levels as low as reasonably achievable;

16 (7) the policy of the Department for using nonintrusive imaging  
17 equipment in tandem with radiation detection equipment; and

18 (8) a classified annex that—

19 (A) details plans for covert testing; and

20 (B) outlines the risk-based prioritization of ports of entry iden-  
21 tified under paragraph (1).

22 (c) EXPANSION TO OTHER UNITED STATES PORTS OF ENTRY.—

23 (1) IN GENERAL.—The Secretary shall expand the strategy devel-  
24 oped under subsection (b), in a manner consistent with the require-  
25 ments of subsection (b), to provide for the deployment of radiation de-  
26 tection capabilities at all other United States ports of entry not covered  
27 by the strategy developed under subsection (b).

28 (2) RISK ASSESSMENT.—In expanding the strategy under paragraph  
29 (1), the Secretary shall identify and assess the risks to those other  
30 ports of entry in order to determine what equipment and practices will  
31 best mitigate the risks.

32 (d) STANDARDS.—The Secretary, acting through the Director for Domes-  
33 tic Nuclear Detection and in collaboration with the National Institute of  
34 Standards and Technology, shall publish technical capability standards and  
35 recommended standard operating procedures for the use of nonintrusive im-  
36 aging and radiation detection equipment in the United States. The stand-  
37 ards and procedures—

38 (1) should take into account relevant standards and procedures uti-  
39 lized by other Federal departments or agencies as well as those devel-  
40 oped by international bodies; and

1 (2) shall not be designed so as to endorse specific companies or cre-  
2 ate sovereignty conflicts with participating countries.

3 (e) INTERMODAL RAIL RADIATION DETECTION TEST CENTER.—

4 (1) ESTABLISHMENT.—In accordance with subsection (b), and in  
5 order to comply with this section, the Secretary shall establish an  
6 Intermodal Rail Radiation Detection Test Center (in this subsection re-  
7 ferred to as the “Test Center”).

8 (2) PROJECTS.—The Secretary shall conduct multiple, concurrent  
9 projects at the Test Center to rapidly identify and test concepts specific  
10 to the challenges posed by on-dock rail.

11 (3) LOCATION.—The Test Center shall be located within a public  
12 port facility at which a majority of the containerized cargo is directly  
13 laden from (or unladen to) on-dock, intermodal rail.

14 **§ 30304. Integration of detection equipment and tech-**  
15 **nologies**

16 The Secretary is responsible for ensuring that domestic chemical, biologi-  
17 cal, radiological, and nuclear detection equipment and technologies are inte-  
18 grated, as appropriate, with other border security systems and detection  
19 technologies.

20 **§ 30305. Inspection of car ferries entering from abroad**

21 The Secretary, acting through the Commissioner, in coordination with the  
22 Secretary of State, and in cooperation with ferry operators and appropriate  
23 foreign government officials, shall seek to develop a plan for the inspection  
24 of passengers and vehicles before the passengers board, or the vehicles are  
25 loaded onto, a ferry bound for a United States facility required to submit  
26 a plan under section 70103(c) of title 46.

27 **§ 30306. Random searches of containers**

28 The Secretary, acting through the Commissioner, shall develop and imple-  
29 ment a plan, utilizing best practices for empirical scientific research design  
30 and random sampling, to conduct random searches of containers in addition  
31 to any targeted or pre-shipment inspection of the containers required by law  
32 or regulation or conducted under any other program conducted by the Sec-  
33 retary. Nothing in this section shall be construed to mean that implementa-  
34 tion of the random sampling plan precludes additional searches of contain-  
35 ers not inspected pursuant to the plan.

36 **§ 30307. Threat assessment screening of port truck drivers**

37 The Secretary shall implement a threat assessment screening, including  
38 name-based checks against terrorist watch lists and immigration status  
39 check, for all port truck drivers with access to secure areas of a port who  
40 have a commercial driver’s license but do not have a current and valid haz-  
41 ardous materials endorsement issued under part 1572 of title 49, Code of

1 Federal Regulations, that is the same as the threat assessment screening  
 2 required for facility employees and longshoremen by the Commandant of the  
 3 Coast Guard under Coast Guard Notice USCG-2006-24189 (71 Fed. Reg.  
 4 25066).

5 **§ 30308. Center of Excellence for Maritime Domain Aware-**  
 6 **ness**

7 (a) ESTABLISHMENT.—The Secretary shall establish a university-based  
 8 Center for Excellence for Maritime Domain Awareness following the merit-  
 9 review processes and procedures that have been established by the Secretary  
 10 for selecting university program centers of excellence.

11 (b) DUTIES.—The Center established under subsection (a) shall—

12 (1) prioritize its activities based on the “National Plan To Improve  
 13 Maritime Domain Awareness” published by the Department in October  
 14 2005;

15 (2) recognize the extensive previous and ongoing work and existing  
 16 competence in the field of maritime domain awareness at numerous  
 17 academic and research institutions, such as the Naval Postgraduate  
 18 School;

19 (3) leverage existing knowledge and continue development of a broad  
 20 base of expertise in academia and industry in maritime domain aware-  
 21 ness; and

22 (4) provide educational, technical, and analytical assistance to Fed-  
 23 eral agencies with responsibilities for maritime domain awareness, in-  
 24 cluding the Coast Guard, to focus on the need for interoperability, in-  
 25 formation sharing, and common information technology standards and  
 26 architecture. Chapter 305—Security of the International Supply Chain

**Subchapter I—General Provisions**

Sec.

30501. Strategic plan to enhance the security of the international supply chain.

30502. Post-incident resumption of trade.

30503. Automated targeting system.

30504. Container security standards and procedures.

30505. Container Security Initiative.

**Subchapter II—Customs-Trade Partnership Against Terrorism**

30511. Establishment.

30512. Eligible entities.

30513. Minimum requirements.

30514. Tier 1 participants.

30515. Tier 2 participants.

30516. Tier 3 participants.

30517. Consequences for lack of compliance.

30518. Revalidation.

30519. Noncontainerized cargo.

30520. Program management.

**Subchapter III Miscellaneous Provisions**

30531. Screening and scanning of cargo containers.

30532. International cooperation and coordination.

30533. Information sharing relating to supply chain security cooperation.



1 security Plan, the National Strategy for Maritime Security, and the 8  
2 supporting plans of the Strategy, as required by Homeland Security  
3 Presidential Directive 13.

4 (e) CONSULTATION.—In developing protocols under subsection (b)(10),  
5 the Secretary shall consult with Federal, State, local, and private-sector  
6 stakeholders, including the National Maritime Security Advisory Committee  
7 and the Commercial Operations Advisory Committee.

8 (d) COMMUNICATION.—To the extent practicable, the strategic plan devel-  
9 oped under subsection (a) shall provide for coordination with, and lines of  
10 communication among, appropriate Federal, State, local, and private-sector  
11 stakeholders on law enforcement actions, intermodal rerouting plans, and  
12 other strategic infrastructure issues resulting from a transportation security  
13 incident or transportation disruption.

14 (e) UTILIZATION OF ADVISORY COMMITTEES.—As part of the consulta-  
15 tions described in subsection (a), the Secretary shall, to the extent prac-  
16 ticable, utilize the Homeland Security Advisory Committee, the National  
17 Maritime Security Advisory Committee, and the Commercial Operations Ad-  
18 visory Committee to review, as necessary, the strategic plan and any subse-  
19 quent updates to the strategic plan.

20 (f) INTERNATIONAL STANDARDS AND PRACTICES.—In furtherance of the  
21 strategic plan required under subsection (a), the Secretary is encouraged to  
22 consider proposed or established standards and practices of foreign govern-  
23 ments and international organizations, including the International Maritime  
24 Organization, the World Customs Organization, the International Labor Or-  
25 ganization, and the International Organization for Standardization, as ap-  
26 propriate, to establish standards and best practices for the security of con-  
27 tainers moving through the international supply chain.

## 28 **§ 30502. Post-incident resumption of trade**

29 (a) In General.—The Secretary shall develop and update, as necessary,  
30 protocols for the resumption of trade under section 30501(b)(10) of this  
31 title in the event of a transportation disruption or a transportation security  
32 incident. The protocols shall include—

33 (1) the identification of the appropriate initial incident commander,  
34 if the Commandant of the Coast Guard is not the appropriate individ-  
35 ual, and lead departments, agencies, or offices to execute the protocols;

36 (2) a plan to redeploy resources and personnel, as necessary, to rees-  
37 tablish the flow of trade;

38 (3) a plan to provide training for the periodic instruction of person-  
39 nel of the Bureau of Customs and Border Protection, the Coast Guard,  
40 and the Transportation Security Administration in trade resumption  
41 functions and responsibilities; and

1 (4) appropriate factors for establishing prioritization of vessels and  
2 cargo determined by the President to be critical for response and recov-  
3 ery, including factors relating to public health, national security, and  
4 economic need.

5 (b) VESSELS.—In determining the prioritization of vessels accessing fa-  
6 cilities (as defined under section 70101 of title 46), the Commandant of the  
7 Coast Guard may, to the extent practicable and consistent with the proto-  
8 cols and plans required under this section to ensure the safe and secure  
9 transit of vessels to ports in the United States after a transportation secu-  
10 rity incident, give priority to a vessel

11 (1) that has an approved security plan under section 70103(c) of  
12 title 46, or a valid international ship security certificate, as provided  
13 under part 104 of title 33, Code of Federal Regulations;

14 (2) that is manned by individuals who are described in section  
15 70105(b)(2)(B) of title 46; and

16 (3) that is operated by validated participants in the Customs-Trade  
17 Partnership Against Terrorism program.

18 (c) CARGO.—In determining the prioritization of the resumption of the  
19 flow of cargo and consistent with the protocols established under this sec-  
20 tion, the Commissioner may give preference to cargo—

21 (1) entering a port of entry directly from a foreign seaport des-  
22 ignated under the Container Security Initiative;

23 (2) from the supply chain of a validated C-TPAT participant and  
24 other private-sector entities, as appropriate; or

25 (3) that has undergone

26 (A) a nuclear or radiological detection scan;

27 (B) an x-ray, density, or other imaging scan; and

28 (C) a system to positively identify the container at the last port  
29 of departure prior to arrival in the United States, which data has  
30 been evaluated and analyzed by personnel of the Bureau of Cus-  
31 toms and Border Protection.

32 (d) COORDINATION.—The Secretary shall ensure that there is appropriate  
33 coordination among the Commandant of the Coast Guard, the Commis-  
34 sioner, and other Federal officials following a maritime disruption or mari-  
35 time transportation security incident in order to provide for the resumption  
36 of trade.

37 (e) Communication.—Consistent with section 30501 of this title, the  
38 Commandant of the Coast Guard, the Commissioner, and other appropriate  
39 Federal officials shall promptly communicate any revised procedures or in-  
40 structions intended for the private sector following a maritime disruption or  
41 maritime transportation security incident.



1     **§ 30503. Automated targeting system**

2         (a) IN GENERAL.—The Secretary, acting through the Commissioner,  
3 shall—

4             (1) identify and seek the submission of data related to the movement  
5 of a shipment of cargo through the international supply chain; and

6             (2) analyze the data described in paragraph (1) to identify high-risk  
7 cargo for inspection.

8         (b) REQUIREMENT.—The Secretary, acting through the Commissioner,  
9 shall require the electronic transmission to the Department of additional  
10 data elements for improved high-risk targeting, including appropriate secu-  
11 rity elements of entry data, as determined by the Secretary, to be provided  
12 as advanced information with respect to cargo destined for importation into  
13 the United States prior to loading of the cargo on vessels at foreign sea-  
14 ports.

15         (c) CONSIDERATION.—The Secretary, acting through the Commissioner,  
16 shall—

17             (1) consider the cost, benefit, and feasibility of—

18                 (A) requiring additional non-manifest documentation;

19                 (B) reducing the time period allowed by law for revisions to a  
20 container cargo manifest;

21                 (C) reducing the time period allowed by law for submission of  
22 certain elements of entry data, for vessel or cargo; and

23                 (D) other actions the Secretary considers beneficial for improv-  
24 ing the information relied upon for the Automated Targeting Sys-  
25 tem and any successor targeting system in furthering the security  
26 and integrity of the international supply chain; and

27             (2) consult with stakeholders, including the Commercial Operations  
28 Advisory Committee, and identify to them the need for the information,  
29 and the appropriate timing of its submission.

30         (d) REGULATIONS.—The Secretary shall promulgate regulations to carry  
31 out this section. In promulgating regulations, the Secretary shall adhere to  
32 the parameters applicable to the development of regulations under section  
33 343(a) of the Trade Act of 2002 (Public Law 107–210, 19 U.S.C. 2071  
34 note), including provisions relating to consultation, technology, analysis, use  
35 of information, confidentiality, and timing requirements.

36         (e) SYSTEM IMPROVEMENTS.—The Secretary, acting through the Com-  
37 missioner, shall—

38             (1) conduct, through an independent panel, a review of the effective-  
39 ness and capabilities of the Automated Targeting System;

40             (2) consider future iterations of the Automated Targeting System,  
41 which would incorporate smart features, such as more complex algo-

1           rhythms and real-time intelligence, instead of relying solely on rule sets  
2           that are periodically updated;

3           (3) ensure that the Automated Targeting System has the capability  
4           to electronically compare manifest and other available data for cargo  
5           entered into or bound for the United States to detect any significant  
6           anomalies between the data and facilitate the resolution of the anom-  
7           alies;

8           (4) ensure that the Automated Targeting System has the capability  
9           to electronically identify, compile, and compare select data elements for  
10          cargo entered into or bound for the United States following a maritime  
11          transportation security incident, in order to efficiently identify cargo  
12          for increased inspection or expeditious release; and

13          (5) develop a schedule to address the recommendations of the Comp-  
14          troller General of the United States, the Inspector General of the De-  
15          partment of the Treasury, and the Inspector General of the Depart-  
16          ment with respect to the operation of the Automated Targeting System.

17          (f) SECURE TRANSMISSION OF CERTAIN INFORMATION.—All information  
18          required by the Department from supply chain partners shall be transmitted  
19          in a secure fashion, as determined by the Secretary, so as to protect the  
20          information from unauthorized access.

21          **§ 30504. Container security standards and procedure**

22          (a) ESTABLISHMENT.—

23                  (1) IN GENERAL.—The Secretary shall initiate a rulemaking proceed-  
24                  ing to establish minimum standards and procedures for securing con-  
25                  tainers in transit to the United States.

26                  (2) DEADLINE FOR ENFORCEMENT.—

27                          (A) ENFORCEMENT OF RULE.—Not later than 2 years after the  
28                          date on which the standards and procedures are established under  
29                          paragraph (1), all containers bound for ports of entry in the  
30                          United States shall meet the standards and procedures.

31                          (B) INTERIM REQUIREMENT.—If an interim final rule issued  
32                          pursuant to the proceeding described in paragraph (1) was not is-  
33                          sued by April 1, 2008—

34                                  (i) all containers in transit to the United States are re-  
35                                  quired to meet the requirements of International Organization  
36                                  for Standardization Publicly Available Specification 17712  
37                                  standard for sealing containers; and

38                                  (ii) the requirements of this subparagraph cease to be ef-  
39                                  fective on the effective date of the interim final rule issued  
40                                  under this subsection.

1 (b) REVIEW AND ENHANCEMENT.—The Secretary shall regularly review  
2 and enhance the standards and procedures established under subsection (a),  
3 as appropriate, based on tests of technologies as they become commercially  
4 available to detect container intrusion and the highest consequence threats,  
5 particularly weapons of mass destruction.

6 (c) INTERNATIONAL CARGO SECURITY STANDARDS.—The Secretary, in  
7 consultation with the Secretary of State, the Secretary of Energy, and other  
8 Federal Government officials, as appropriate, and with the Commercial Op-  
9 erations Advisory Committee, the Homeland Security Advisory Committee,  
10 and the National Maritime Security Advisory Committee, is encouraged to  
11 promote and establish international standards for the security of containers  
12 moving through the international supply chain with foreign governments  
13 and international organizations, including the International Maritime Orga-  
14 nization, the International Organization for Standardization, the Inter-  
15 national Labor Organization, and the World Customs Organization.

16 (d) INTERNATIONAL TRADE AND OTHER OBLIGATIONS.—In carrying out  
17 this section, the Secretary shall consult with appropriate Federal depart-  
18 ments and agencies and private-sector stakeholders and ensure that actions  
19 under this section do not violate international trade obligations or other  
20 international obligations of the United States.

21 **§ 30505. Container Security Initiative**

22 (a) ESTABLISHMENT.—The Secretary, acting through the Commissioner,  
23 shall establish and implement a program (in this section referred to as the  
24 “Container Security Initiative”) to identify and examine or search maritime  
25 containers that pose a security risk before loading the containers in a for-  
26 eign port for shipment to the United States, either directly or through a  
27 foreign port.

28 (b) ASSESSMENT.—The Secretary, acting through the Commissioner, may  
29 designate foreign seaports to participate in the Container Security Initiative  
30 after the Secretary has assessed the costs, benefits, and other factors associ-  
31 ated with the designation, including

32 (1) the level of risk for the potential compromise of containers by  
33 terrorists, or other threats as determined by the Secretary;

34 (2) the volume of cargo being imported to the United States directly  
35 from, or being transshipped through, the foreign seaport;

36 (3) the results of the Coast Guard assessments conducted under sec-  
37 tion 70108 of title 46;

38 (4) the commitment of the government of the country in which the  
39 foreign seaport is located to cooperating with the Department in shar-  
40 ing critical data and risk management information and to maintain  
41 programs to ensure employee integrity; and

1 (5) the potential for validation of security practices at the foreign  
2 seaport by the Department.

3 (e) NOTIFICATION.—The Secretary shall notify the appropriate congres-  
4 sional committees of the designation of a foreign port under the Container  
5 Security Initiative or the revocation of a designation before notifying the  
6 public of the designation or revocation.

7 (d) NEGOTIATIONS.—The Secretary, in cooperation with the Secretary of  
8 State and in consultation with the United States Trade Representative, may  
9 enter into negotiations with the government of each foreign nation in which  
10 a seaport is designated under the Container Security Initiative to ensure full  
11 compliance with the requirements under the Container Security Initiative.

12 (e) OVERSEAS INSPECTIONS.—

13 (1) REQUIREMENTS AND PROCEDURES.—The Secretary shall—

14 (A) establish minimum technical capability criteria and standard  
15 operating procedures for the use of nonintrusive inspection and  
16 nuclear and radiological detection systems in conjunction with the  
17 Container Security Initiative;

18 (B) require each port designated under the Container Security  
19 Initiative to operate nonintrusive inspection and nuclear and radio-  
20 logical detection systems in accordance with the technical capabil-  
21 ity criteria and standard operating procedures established under  
22 subparagraph (A);

23 (C) continually monitor the technologies, processes, and tech-  
24 niques used to inspect cargo at ports designated under the Con-  
25 tainer Security Initiative to ensure adherence to the criteria and  
26 the use of the procedures; and

27 (D) consult with the Secretary of Energy in establishing the  
28 minimum technical capability criteria and standard operating pro-  
29 cedures established under subparagraph (A) pertaining to radi-  
30 ation detection technologies to promote consistency in detection  
31 systems at foreign ports designated under the Container Security  
32 Initiative.

33 (2) CONSTRAINTS.—The criteria and procedures established under  
34 paragraph (1)(A)—

35 (A) shall be consistent, as practicable, with relevant standards  
36 and procedures utilized by other Federal departments or agencies,  
37 or developed by international bodies if the United States consents  
38 to the standards and procedures;

39 (B) shall not apply to activities conducted under the Megaports  
40 Initiative of the Department of Energy; and

1 (C) shall not be designed to endorse the product or technology  
2 of any specific company or to conflict with the sovereignty of a  
3 country in which a foreign seaport designated under the Container  
4 Security Initiative is located.

5 (f) SAVINGS PROVISION.—The authority of the Secretary under this sec-  
6 tion shall not affect any authority or duplicate any efforts or responsibilities  
7 of the Federal Government with respect to the deployment of radiation de-  
8 tection equipment outside of the United States.

9 (g) COORDINATION.—The Secretary shall—

10 (1) coordinate with the Secretary of Energy, as necessary, to provide  
11 radiation detection equipment required to support the Container Secu-  
12 rity Initiative through the Department of Energy’s Second Line of De-  
13 fense Program and Megaports Initiative; or

14 (2) work with the private sector or host governments, when possible,  
15 to obtain radiation detection equipment that meets the Department’s  
16 and the Department of Energy’s technical specifications for the equip-  
17 ment.

18 (h) STAFFING.—The Secretary shall develop a human capital manage-  
19 ment plan to determine adequate staffing levels in the United States and  
20 in foreign seaports including, as appropriate, the remote location of person-  
21 nel in countries in which foreign seaports are designated under the Con-  
22 tainer Security Initiative.

23 (i) ANNUAL DISCUSSIONS.—The Secretary, in coordination with the ap-  
24 propriate Federal officials, shall hold annual discussions with foreign gov-  
25 ernments of countries in which foreign seaports designated under the Con-  
26 tainer Security Initiative are located regarding best practices, technical as-  
27 sistance, training needs, and technological developments that will assist in  
28 ensuring the efficient and secure movement of international cargo.

29 (j) LESSER RISK PORT.—The Secretary, acting through the Commis-  
30 sioner, may treat cargo loaded in a foreign seaport designated under the  
31 Container Security Initiative as presenting a lesser risk than similar cargo  
32 loaded in a foreign seaport that is not designated under the Container Secu-  
33 rity Initiative, for the purpose of clearing the cargo into the United States.

34 (k) PROHIBITION.—

35 (1) IN GENERAL.—The Secretary shall issue a “do not load” order,  
36 using existing authorities, to prevent the onload of any cargo loaded  
37 at a port designated under the Container Security Initiative that has  
38 been identified as high risk, including by the Automated Targeting Sys-  
39 tem, unless the cargo is determined to no longer be high risk  
40 through—

- 1 (A) a scan of the cargo with nonintrusive imaging equipment  
2 and radiation detection equipment;  
3 (B) a search of the cargo; or  
4 (C) additional information received by the Department.

5 (2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be  
6 construed to interfere with the ability of the Secretary to deny entry  
7 of any cargo into the United States.

8 (l) Coordination of Assessments.—

9 (1) IN GENERAL.—The Secretary of the department in which the  
10 Coast Guard is operating shall, to the extent practicable, conduct the  
11 assessments required by the following provisions of law concurrently, or  
12 develop a process by which they are integrated and conducted by the  
13 Coast Guard:

- 14 (A) This section.  
15 (B) Section 30514 of this title.  
16 (C) Section 70108 of title 46.

17 (2) LIMITATION.—Nothing in paragraph (1) shall be construed to af-  
18 fect or diminish the Secretary’s authority or discretion—

- 19 (A) to conduct an assessment of a foreign port at any time;  
20 (B) to compel the Secretary to conduct an assessment of a for-  
21 eign port so as to ensure that 2 or more assessments are con-  
22 ducted concurrently; or  
23 (C) to cancel an assessment of a foreign port if the Secretary  
24 is unable to conduct 2 or more assessments concurrently.

25 (3) MULTIPLE ASSESSMENT REPORT.—The Secretary shall provide  
26 written notice to the Committee on Commerce, Science, and Transpor-  
27 tation of the Senate and the Committees on Transportation and Infra-  
28 structure and Homeland Security of the House of Representatives  
29 whenever the Secretary conducts 2 or more assessments of the same  
30 port within a 3-year period.

31 **Subchapter IICustoms-Trade Partnership Against Terrorism**  
32 **§ 30511. Establishment**

33 (a) IN GENERAL.—The Secretary, acting through the Commissioner, may  
34 establish a voluntary government-private sector program (to be known as  
35 the “Customs-Trade Partnership Against Terrorism” or “C-TPAT”) to  
36 strengthen and improve the overall security of the international supply chain  
37 and United States border security, and to facilitate the movement of secure  
38 cargo through the international supply chain, by providing benefits to par-  
39 ticipants meeting or exceeding the program requirements. Participants in C-  
40 TPAT shall include Tier 1 participants, Tier 2 participants, and Tier 3 par-  
41 ticipants.

1 (b) REVIEW OF MINIMUM SECURITY REQUIREMENTS.—The Secretary,  
2 acting through the Commissioner, shall review the minimum security re-  
3 quirements of C-TPAT at least once every year and update requirements  
4 as necessary.

5 **§ 30512. Eligible entities**

6 Importers, customs brokers, forwarders, air, sea, land carriers, contract  
7 logistics providers, and other entities in the international supply chain and  
8 intermodal transportation system are eligible to apply to voluntarily enter  
9 into partnerships with the Department under C-TPAT.

10 **§ 30513. Minimum requirements**

11 An applicant seeking to participate in C-TPAT shall—

12 (1) demonstrate a history of moving cargo in the international sup-  
13 ply chain;

14 (2) conduct an assessment of its supply chain based upon security  
15 criteria established by the Secretary, acting through the Commissioner,  
16 including

17 (A) business partner requirements;

18 (B) container security;

19 (C) physical security and access controls;

20 (D) personnel security;

21 (E) procedural security;

22 (F) security training and threat awareness; and

23 (G) information technology security;

24 (3) implement and maintain security measures and supply chain se-  
25 curity practices meeting security criteria established by the Commis-  
26 sioner; and

27 (4) meet all other requirements established by the Commissioner, in  
28 consultation with the Commercial Operations Advisory Committee.

29 **§ 30514. Tier 1 participants**

30 (a) BENEFITS.—The Secretary, acting through the Commissioner, shall  
31 offer limited benefits to a Tier 1 participant who has been certified in ac-  
32 cordance with the guidelines referred to in subsection (b). Benefits may in-  
33 clude a reduction in the score assigned pursuant to the Automated Target-  
34 ing System of not greater than 20 percent of the high-risk threshold estab-  
35 lished by the Secretary.

36 (b) GUIDELINES.—The Secretary, acting through the Commissioner, shall  
37 update the guidelines for certifying a C-TPAT participant's security meas-  
38 ures and supply chain security practices under this section. The guidelines  
39 shall include a background investigation and extensive documentation re-  
40 view.

1 (c) TIMEFRAME.—To the extent practicable, the Secretary, acting  
2 through the Commissioner, shall complete the Tier 1 certification process  
3 within 90 days of receipt of an application for participation in C-TPAT.

4 **§ 30515. Tier 2 participants**

5 (a) VALIDATION.—The Secretary, acting through the Commissioner, shall  
6 validate the security measures and supply chain security practices of a Tier  
7 1 participant in accordance with the guidelines referred to in subsection (c).  
8 The validation shall include on-site assessments at appropriate foreign loca-  
9 tions utilized by the Tier 1 participant in its supply chain and shall, to the  
10 extent practicable, be completed not later than 1 year after certification as  
11 a Tier 1 participant.

12 (b) BENEFITS.—The Secretary, acting through the Commissioner, shall  
13 extend benefits to each C-TPAT participant that has been validated as a  
14 Tier 2 participant under this section, which may include—

- 15 (1) reduced scores in the Automated Targeting System;
- 16 (2) reduced examinations of cargo; and
- 17 (3) priority searches of cargo.

18 (c) GUIDELINES.—The Secretary, acting through the Commissioner, shall  
19 develop a schedule and update the guidelines for validating a participant's  
20 security measures and supply chain security practices under this section.

21 **§ 30516. Tier 3 participants**

22 (a) IN GENERAL.—The Secretary, acting through the Commissioner, shall  
23 establish a third tier of C-TPAT participation that offers additional benefits  
24 to participants who demonstrate a sustained commitment to maintaining se-  
25 curity measures and supply chain security practices that exceed the guide-  
26 lines established for validation as a Tier 2 participant in C-TPAT under  
27 section 30515 of this title.

28 (b) CRITERIA.—The Secretary, acting through the Commissioner, shall  
29 designate criteria for validating a C-TPAT participant as a Tier 3 partici-  
30 pant under this section. Criteria may include—

- 31 (1) compliance with any additional guidelines established by the Sec-  
32 retary that exceed the guidelines established under section 30515 of  
33 this title for validating a C-TPAT participant as a Tier 2 participant,  
34 particularly with respect to controls over access to cargo throughout  
35 the supply chain;
- 36 (2) submission of additional information regarding cargo prior to  
37 loading, as determined by the Secretary;
- 38 (3) utilization of container security devices, technologies, policies, or  
39 practices that meet standards and criteria established by the Secretary;
- 40 and



1 (4) compliance with any other cargo requirements established by the  
2 Secretary.

3 (c) BENEFITS.—The Secretary, acting through the Commissioner, in con-  
4 sultation with the Commercial Operations Advisory Committee and the Na-  
5 tional Maritime Security Advisory Committee, shall extend benefits to each  
6 C-TPAT participant that has been validated as a Tier 3 participant under  
7 this section, which may include—

8 (1) the expedited release of a Tier 3 participant's cargo in destina-  
9 tion ports within the United States during all threat levels designated  
10 by the Secretary;

11 (2) further reduction in examinations of cargo;

12 (3) priority for examinations of cargo; and

13 (4) further reduction in the risk score assigned pursuant to the  
14 Automated Targeting System; and

15 (5) inclusion in joint incident management exercises, as appropriate.

16 **§ 30517. Consequences for lack of compliance**

17 (a) IN GENERAL.—If at any time a C-TPAT participant's security meas-  
18 ures and supply chain security practices fail to meet any of the require-  
19 ments under this subchapter, the Commissioner may deny the participant  
20 benefits otherwise available under this subchapter in whole or in part. The  
21 Commissioner shall develop procedures that provide appropriate protections  
22 to C-TPAT participants before benefits are revoked. The procedures may  
23 not limit the ability of the Commissioner to take actions to protect the na-  
24 tional security of the United States.

25 (b) FALSE OR MISLEADING INFORMATION.—If a C-TPAT participant  
26 knowingly provides false or misleading information to the Commissioner  
27 during the validation process provided for under this subchapter, the Com-  
28 missioner shall suspend or expel the participant from C-TPAT for an appro-  
29 priate period of time. The Commissioner, after the completion of the process  
30 under subsection (c), may publish in the Federal Register a list of partici-  
31 pants who have been suspended or expelled from C-TPAT under this sub-  
32 section, and may make the list available to C-TPAT participants.

33 (c) Right of Appeal.—

34 (1) APPEAL OF DENIAL OF BENEFITS.—A C-TPAT participant may  
35 appeal a decision of the Commissioner under subsection (a). The appeal  
36 shall be filed with the Secretary not later than 90 days after the date  
37 of the decision, and the Secretary shall issue a determination not later  
38 than 180 days after the appeal is filed.

39 (2) APPEALS OF SUSPENSION OR EXPULSION.—A C-TPAT partici-  
40 pant may appeal a decision of the Commissioner under subsection (b).

1           The appeal shall be filed with the Secretary not later than 30 days  
2           after the date of the decision, and the Secretary shall issue a deter-  
3           mination not later than 180 days after the appeal is filed.

4           **§ 30518. Revalidation**

5           The Secretary, acting through the Commissioner, shall develop and imple-  
6           ment—

- 7           (1) a revalidation process for Tier 2 and Tier 3 participants;
- 8           (2) a framework based upon objective criteria for identifying partici-  
9           pants for periodic revalidation not less frequently than once during  
10           each 4-year period following the initial validation; and
- 11           (3) an annual plan for revalidation that includes—
  - 12           (A) performance measures;
  - 13           (B) an assessment of the personnel needed to perform the re-  
14           validations; and
  - 15           (C) the number of participants that will be revalidated during  
16           the following year.

17           **§ 30519. Noncontainerized cargo**

18           The Secretary, acting through the Commissioner, shall consider the po-  
19           tential for participation in C-TPAT by importers of noncontainerized car-  
20           goes that otherwise meet the requirements under this suchapter.

21           **§ 30520. Program management**

22           (a) IN GENERAL.—The Secretary, acting through the Commissioner, shall  
23           establish sufficient internal quality controls and record management to sup-  
24           port the management systems of C-TPAT. In managing the program, the  
25           Secretary shall ensure that the program includes the following:

- 26           (1) A 5-year plan to identify outcome-based goals and performance  
27           measures of the program.
- 28           (2) An annual plan for each fiscal year designed to match available  
29           resources to the projected workload.
- 30           (3) A standardized work program to be used by agency personnel to  
31           carry out the certifications, validations, and revalidations of partici-  
32           pants. The Secretary shall keep records and monitor staff hours associ-  
33           ated with the completion of each review.

34           (b) DOCUMENTATION OF REVIEWS.—The Secretary, acting through the  
35           Commissioner, shall maintain a record management system to document de-  
36           terminations on the reviews of each C-TPAT participant, including certifi-  
37           cations, validations, and revalidations.

38           (c) CONFIDENTIAL INFORMATION SAFEGUARDS.—In consultation with  
39           the Commercial Operations Advisory Committee, the Secretary, acting  
40           through the Commissioner, shall develop and implement procedures to en-  
41           sure the protection of confidential data collected, stored, or shared with gov-

1 ernment agencies or as part of the application, certification, validation, and  
2 revalidation processes.

3 (d) RESOURCE MANAGEMENT STAFFING PLAN.—The Secretary, acting  
4 through the Commissioner, shall—

5 (1) develop a staffing plan to recruit and train staff (including a for-  
6 malized training program) to meet the objectives identified in the stra-  
7 tegic plan of the C-TPAT program; and

8 (2) provide cross-training in postincident trade resumption for per-  
9 sonnel who administer the C-TPAT program.

10 (e) REPORT TO CONGRESS.—In connection with the President’s annual  
11 budget submission for the Department, the Secretary shall report to the ap-  
12 propriate congressional committees on the progress made by the Commis-  
13 sioner to certify, validate, and revalidate C-TPAT participants. The report  
14 shall be due on the same date that the President’s budget is submitted to  
15 the Congress.

### 16 **Subchapter III Miscellaneous Provisions**

#### 17 **§ 30531. Screening and scanning of cargo containers**

18 (a) ONE HUNDRED PERCENT SCREENING OF CARGO CONTAINERS AND  
19 100 PERCENT SCANNING OF HIGH-RISK CONTAINERS.—

20 (1) SCREENING OF CARGO CONTAINERS.—The Secretary shall ensure  
21 that 100 percent of the cargo containers originating outside the United  
22 States and unloaded at a United States seaport undergo a screening  
23 to identify high-risk containers

24 (2) SCANNING OF HIGH-RISK CONTAINERS.—The Secretary shall en-  
25 sure that 100 percent of the containers that have been identified as  
26 high-risk under paragraph (1), or through other means, are scanned  
27 or searched before the containers leave a United States seaport facility.

28 (b) FULL-SCALE IMPLEMENTATION.—

29 (1) IN GENERAL.—A container that was loaded on a vessel in a for-  
30 eign port shall not enter the United States (either directly or via a for-  
31 eign port) unless the container was scanned by nonintrusive imaging  
32 equipment and radiation detection equipment at a foreign port before  
33 it was loaded on a vessel.

34 (2) APPLICATION.—Paragraph (1) shall apply with respect to con-  
35 tainers loaded on a vessel in a foreign country on or after the earlier  
36 of—

37 (A) July 1, 2012; or

38 (B) another date established by the Secretary under paragraph

39 (3).

40 (3) ESTABLISHMENT OF EARLIER DEADLINE.—The Secretary shall  
41 establish a date under paragraph (2)(B) pursuant to the lessons

1 learned through the pilot integrated scanning systems established  
2 under section 231 of the Act of October 13, 2006 (Public Law 109–  
3 347, 120 Stat. 1915).

4 (4) EXTENSIONS.—The Secretary may extend the date specified in  
5 subparagraph (A) or (B) of paragraph (2) for 2 years, and may renew  
6 the extension in additional 2-year increments, for containers loaded in  
7 a port or ports, if the Secretary certifies to Congress that at least 2  
8 of the following conditions exist:

9 (A) Systems to scan containers under paragraph (1) are not  
10 available for purchase and installation.

11 (B) Systems to scan containers under paragraph (1) do not  
12 have a sufficiently low false alarm rate for use in the supply chain.

13 (C) Systems to scan containers under paragraph (1) cannot be  
14 purchased, deployed, or operated at ports overseas, including, if  
15 applicable, because a port does not have the physical characteris-  
16 tics to install a system.

17 (D) Systems to scan containers under paragraph (1) cannot be  
18 integrated, as necessary, with existing systems.

19 (E) Use of systems that are available to scan containers under  
20 paragraph (1) will significantly impact trade capacity and the flow  
21 of cargo.

22 (F) Systems to scan containers under paragraph (1) do not ade-  
23 quately provide an automated notification of questionable or high-  
24 risk cargo as a trigger for further inspection by appropriately  
25 trained personnel.

26 (5) EXEMPTION FOR MILITARY CARGO.—Notwithstanding any other  
27 provision of this section, supplies bought by the Secretary of Defense  
28 and transported in compliance with section 2631 of title 10, United  
29 States Code, and military cargo of foreign countries are exempt from  
30 the requirements of this section.

31 (6) REPORT ON EXTENSIONS.—An extension under paragraph  
32 (4) for a port takes effect on the expiration of the 60-day period  
33 beginning on the date the Secretary provides a report to Congress  
34 that—

35 (A) states what container traffic will be affected by the exten-  
36 sion;

37 (B) provides supporting evidence to support the Secretary’s cer-  
38 tification of the basis for the extension; and

39 (C) explains what measures the Secretary is taking to ensure  
40 that scanning can be implemented as early as possible at the port  
41 or ports that are the subject of the report.

1           (7) REPORT ON RENEWAL OF EXTENSION.—If an extension under  
2 paragraph (4) takes effect, the Secretary shall, after 1 year, submit a  
3 report to Congress on whether the Secretary expects to seek to renew  
4 the extension.

5           (8) SCANNING TECHNOLOGY STANDARDS.—In implementing para-  
6 graph (1), the Secretary shall—

7               (A) establish technological and operational standards for sys-  
8 tems to scan containers;

9               (B) ensure that the standards are consistent with the global nu-  
10 clear detection architecture developed under the Homeland Secu-  
11 rity Act of 2002 (Public Law 107–296, 116 Stat. 2135); and

12               (C) coordinate with other Federal agencies that administer  
13 scanning or detection programs at foreign ports.

14           (9) INTERNATIONAL TRADE AND OTHER OBLIGATIONS.—In carrying  
15 out this subsection, the Secretary shall consult with appropriate Fed-  
16 eral departments and agencies and private-sector stakeholders, and en-  
17 sure that actions under this section do not violate international trade  
18 obligations, and are consistent with the World Customs Organization  
19 framework, or other international obligations of the United States.

20           (e) REPORT.—Not later than 6 months after the submission of a report  
21 under 231(d) of the Act of October 13, 2006 (Public Law 109–347, 120  
22 Stat. 1916), and every 6 months thereafter, the Secretary shall submit a  
23 report to the appropriate congressional committees describing the status of  
24 full-scale deployment under subsection (b) and the cost of deploying the sys-  
25 tem at each foreign port at which the integrated scanning systems are de-  
26 ployed.

27 **§ 30532. International cooperation and coordination**

28           (a) Inspection Technology and Training.—The Secretary, in coordination  
29 with the Secretary of State, the Secretary of Energy, and appropriate rep-  
30 resentatives of other Federal agencies, may provide technical assistance,  
31 equipment, and training to facilitate the implementation of supply chain se-  
32 curity measures at ports designated under the Container Security Initiative.

33           (b) ACQUISITION AND TRAINING.—Unless otherwise prohibited by law,  
34 the Secretary may—

35               (1) lease, loan, provide, or otherwise assist in the deployment of non-  
36 intrusive inspection and radiation detection equipment at foreign land  
37 and sea ports under terms and conditions the Secretary prescribes, in-  
38 cluding nonreimbursable loans or the transfer of ownership of equip-  
39 ment; and

40               (2) provide training and technical assistance for domestic or foreign  
41 personnel responsible for operating or maintaining the equipment.

1    **§ 30533. Information sharing relating to supply chain secu-**  
2                    **urity cooperation**

3           (a) PURPOSES.—The purposes of this section are—

4               (1) to establish continuing liaison and to provide for supply chain se-  
5               curity cooperation between Department and the private sector; and

6               (2) to provide for regular and timely interchange of information be-  
7               tween the private sector and the Department concerning developments  
8               and security risks in the supply chain environment.

9           (b) DEVELOPMENT OF SYSTEM.—The Secretary shall develop a system  
10           to collect from and share appropriate risk information related to the supply  
11           chain with the private-sector entities determined appropriate by the Sec-  
12           retary.

13           (c) CONSULTATION.—In developing the system under subsection (b), the  
14           Secretary shall consult with the Commercial Operations Advisory Committee  
15           and a broad range of public and private-sector entities likely to utilize the  
16           system, including importers, exporters, carriers, customs brokers, and  
17           freight forwarders, among other parties.

18           (d) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section  
19           shall be construed to limit or otherwise affect the ability of a Federal, State,  
20           or local government entity, under applicable law, to obtain supply chain se-  
21           curity information, including information lawfully and properly disclosed  
22           generally or broadly to the public, and to use the information in any manner  
23           permitted by law.

24           (e) AUTHORITY TO ISSUE WARNINGS.—The Secretary may provide advi-  
25           sories, alerts, and warnings to relevant companies, targeted sectors, other  
26           governmental entities, or the general public regarding potential risks to the  
27           supply chain as appropriate. In issuing a warning, the Secretary shall take  
28           appropriate actions to protect from disclosure

29               (1) the source of any voluntarily submitted supply chain security in-  
30               formation that forms the basis for the warning; and

31               (2) information that is proprietary, business sensitive, relates specifi-  
32               cally to the submitting person or entity, or is otherwise not appro-  
33               priately in the public domain.

34                                    **Chapter 307—Administration**

Sec.

30701. Designation of liaison office of Department of State.

30702. Homeland Security Science and Technology Advisory Committee.

30703. Research, development, test, and evaluation efforts in furtherance of maritime and cargo security.

1     **§ 30701. Designation of liaison office of Department of State**

2         The Secretary of State shall designate a liaison office in the Department  
3 of State to assist the Secretary, as appropriate, in negotiating cargo secu-  
4 rity-related international agreements.

5     **§ 30702. Homeland Security Science and Technology Advi-**  
6             **sory Committee**

7         The Under Secretary for Science and Technology shall utilize the Home-  
8 land Security Science and Technology Advisory Committee, as appropriate,  
9 to provide outside expertise in advancing cargo security technology.

10    **§ 30703. Research, development, test, and evaluation efforts**  
11             **in furtherance of maritime and cargo security**

12         (a) IN GENERAL.—The Secretary shall—

13             (1) direct research, development, testing, and evaluation efforts in  
14 furtherance of maritime and cargo security;

15             (2) coordinate with public and private-sector entities to develop and  
16 test technologies, and process innovations in furtherance of these objec-  
17 tives; and

18             (3) evaluate the technologies.

19         (b) COORDINATION.—The Secretary, in coordination with the Under Sec-  
20 retary for Science and Technology, the Assistant Secretary for Policy, the  
21 Commandant of the Coast Guard, the Director for Domestic Nuclear Detec-  
22 tion, the Chief Financial Officer, and the heads of other appropriate offices  
23 or entities of the Department, shall ensure that—

24             (1) research, development, testing, and evaluation efforts funded by  
25 the Department in furtherance of maritime and cargo security are  
26 coordinated within the Department and with other appropriate Federal  
27 agencies to avoid duplication of efforts; and

28             (2) the results of the efforts are shared throughout the Department  
29 and with other Federal, State, and local agencies, as appropriate.

30             **Subtitle IV—Transportation Security**

31             **Chapter 401—General**

Sec.

40101. Definitions.

32    **§ 40101. Definitions**

33         (a) DEPARTMENT.—In chapters 403 through 407, the term “Depart-  
34 ment” means the Department of Homeland Security.

35         (b) SECRETARY.—In this subtitle, the term “Secretary” means the Sec-  
36 retary of Homeland Security.





1 ESTABLISHMENT.—The Secretary shall establish a National Transportation Security Center of Excellence to conduct research and education activities, and to develop or provide professional security training, including the training of transportation employees and transportation professionals.

2  
3  
4  
5 (b) DESIGNATION.—The Secretary shall select one of the institutions identified in subsection (c) as the lead institution responsible for coordinating the National Transportation Security Center of Excellence.

6  
7  
8 (c) Member Institutions.—

9 (1) CONSORTIUM.—The institution of higher education selected under subsection (b) shall execute agreements with the other institutions of higher education identified in this subsection and other institutions designated by the Secretary to develop a consortium to assist in accomplishing the goals of the Center.

10  
11  
12  
13  
14 (2) MEMBERS.—The National Transportation Security Center of Excellence consists of—

15  
16 (A) Texas Southern University in Houston, Texas;

17 (B) the National Transit Institute at Rutgers, The State University of New Jersey;

18  
19 (C) Tougaloo College;

20 (D) the Connecticut Transportation Institute at the University of Connecticut;

21  
22 (E) the Homeland Security Management Institute, Long Island University;

23  
24 (F) the Mack-Blackwell National Rural Transportation Study Center at the University of Arkansas; and

25  
26 (G) any additional institutions or facilities designated by the Secretary.

27  
28 (3) CERTAIN INCLUSIONS.—To the extent practicable, the Secretary shall ensure that an appropriate number of additional consortium colleges or universities designated by the Secretary under this subsection are Historically Black Colleges and Universities, Hispanic Serving Institutions, and Indian Tribally Controlled Colleges and Universities.

29  
30  
31  
32  
33 **§ 40303. Immunity for reports of suspected terrorist activity or suspicious behavior and response**

34  
35 (a) Definitions.—In this section:

36 (1) AUTHORIZED OFFICIAL.—The term “authorized official” means—

37  
38 (A) an employee or agent of a passenger transportation system or other person with responsibilities relating to the security of the system;

39  
40

1 (B) an officer, employee, or agent of the Department of Home-  
2 land Security, the Department of Transportation, or the Depart-  
3 ment of Justice with responsibilities relating to the security of pas-  
4 senger transportation systems; or

5 (C) a Federal, State, or local law enforcement officer.

6 (2) COVERED ACTIVITY.—The term “covered activity” means a sus-  
7 picious transaction, activity, or occurrence that involves, or is directed  
8 against, a passenger transportation system or vehicle or its passengers  
9 indicating that an individual may be engaging, or preparing to engage,  
10 in a violation of law relating to—

11 (A) a threat to a passenger transportation system or passenger  
12 safety or security; or

13 (B) an act of terrorism (as that term is defined in section 3077  
14 of title 18.

15 (3) PASSENGER TRANSPORTATION.—The term “passenger transpor-  
16 tation” means—

17 (A) public transportation, as defined in section 5302 of title 49;

18 (B) transportation by over-the-road bus, as defined in section  
19 40701 of this title, and school bus transportation;

20 (C) intercity rail passenger transportation, as defined in section  
21 24102 of title 49;

22 (D) the transportation of passengers onboard a passenger ves-  
23 sel, as defined in section 2101 of title 46;

24 (E) other regularly scheduled waterborne transportation service  
25 of passengers by vessel of at least 20 gross tons; and

26 (F) air transportation, as defined in section 40102 of title 49,  
27 of passengers.

28 (4) PASSENGER TRANSPORTATION SYSTEM.—The term “passenger  
29 transportation system” means an entity or entities organized to provide  
30 passenger transportation using vehicles, including the infrastructure  
31 used to provide the transportation.

32 (5) VEHICLE.—The term “vehicle” has the meaning given that term  
33 in section 1992(d)(16) of title 18.

34 (b) IMMUNITY FOR REPORTS OF SUSPECTED TERRORIST ACTIVITY OR  
35 SUSPICIOUS BEHAVIOR.—

36 (1) IN GENERAL.—A person who, in good faith and based on objec-  
37 tively reasonable suspicion, makes, or causes to be made, a voluntary  
38 report of covered activity to an authorized official shall be immune  
39 from civil liability under Federal, State, and local law for the report.



1     **§ 40312. Authorization of Visible Intermodal Prevention and**  
2                     **Response teams**

3     The Secretary, acting through the Administrator of the Transportation  
4     Security Administration, may develop Visible Intermodal Prevention and Re-  
5     sponse (in this section referred to as “VIPR”) teams to augment the secu-  
6     rity of any mode of transportation at any location within the United States.  
7     In forming a VIPR team, the Secretary—

8             (1) may use any asset of the Department, including Federal air mar-  
9             shals, surface transportation security inspectors, canine detection  
10            teams, and advanced screening technology;

11            (2) may determine when a VIPR team shall be deployed, as well as  
12            the duration of the deployment;

13            (3) shall, prior to and during the deployment, consult with local se-  
14            curity and law enforcement officials in the jurisdiction where the VIPR  
15            team is or will be deployed, to develop and agree upon the appropriate  
16            operational protocols and provide relevant information about the mis-  
17            sion of the VIPR team, as appropriate; and

18            (4) shall, prior to and during the deployment, consult with all trans-  
19            portation entities directly affected by the deployment of a VIPR team,  
20            as appropriate, including railroad carriers, air carriers, airport owners,  
21            over-the-road bus operators and terminal owners and operators, motor  
22            carriers, public transportation agencies, owners or operators of high-  
23            ways, port operators and facility owners, vessel owners and operators  
24            and pipeline operators.

25     **§ 40313. Surface transportation security inspectors**

26            (a) IN GENERAL.—The Secretary, acting through the Administrator of  
27            the Transportation Security Administration, may train, employ, and utilize  
28            surface transportation security inspectors.

29            (b) MISSION.—The Secretary shall use surface transportation security in-  
30            spector to assist surface transportation carriers, operators, owners, entities,  
31            and facilities to enhance their security against terrorist attack and other se-  
32            curity threats and to assist the Secretary in enforcing applicable surface  
33            transportation security regulations and directives

34            (c) AUTHORITIES.—Surface transportation security inspectors employed  
35            under this section shall be authorized powers and delegated responsibilities  
36            the Secretary determines appropriate, subject to subsection (e).

37            (d) REQUIREMENTS.—The Secretary shall require that surface transpor-  
38            tation security inspectors have relevant transportation experience and other  
39            security and inspection qualifications, as determined appropriate.

40            (e) LIMITATIONS.—

1 (1) INSPECTORS.—Surface transportation inspectors shall be prohib-  
2 ited from issuing fines to public transportation agencies (as defined in  
3 section 40501 of this title) for violations of the Department’s regula-  
4 tions or orders except through the process described in paragraph (2).

5 (2) CIVIL PENALTIES.—The Secretary shall be prohibited from as-  
6 sessing civil penalties against public transportation agencies (as defined  
7 in section 40501 of this title) for violations of the Department’s regula-  
8 tions or orders, except in accordance with the following:

9 (A) In the case of a public transportation agency that is found  
10 to be in violation of a regulation or order issued by the Secretary,  
11 the Secretary shall seek correction of the violation through a writ-  
12 ten notice to the public transportation agency and shall give the  
13 public transportation agency reasonable opportunity to correct the  
14 violation or propose an alternative means of compliance acceptable  
15 to the Secretary.

16 (B) If the public transportation agency does not correct the vio-  
17 lation or propose an alternative means of compliance acceptable to  
18 the Secretary within a reasonable time period that is specified in  
19 the written notice, the Secretary may take any action authorized  
20 in chapter 113 of this title.

21 (3) LIMITATION ON SECRETARY.—The Secretary shall not initiate  
22 civil enforcement actions for violations of administrative and procedural  
23 requirements pertaining to the application for, and expenditure of,  
24 funds awarded under transportation security grant programs under the  
25 Implementing Recommendations of the 9/11 Commission Act of 2007  
26 (Public Law 110–53, 121 Stat. 266).

27 (f) COORDINATION.—The Secretary shall ensure that the mission of the  
28 surface transportation security inspectors is consistent with any relevant  
29 risk assessments required by the Implementing Recommendations of the 9/  
30 11 Commission Act of 2007 (Public Law 110–53, 121 Stat. 266) or com-  
31 pleted by the Department, the modal plans required under section 11314  
32 of this title, the Memorandum of Understanding between the Department  
33 and the Department of Transportation on Roles and Responsibilities, dated  
34 September 28, 2004, and all subsequent annexes to this Memorandum of  
35 Understanding, and other relevant documents setting forth the Depart-  
36 ment’s transportation security strategy, as appropriate.

37 (g) CONSULTATION.—The Secretary shall periodically consult with the  
38 surface transportation entities that are or may be inspected by the surface  
39 transportation security inspectors, including, as appropriate, railroad car-  
40 riers, over-the-road bus operators and terminal owners and operators, motor

1 carriers, public transportation agencies, owners or operators of highways,  
2 and pipeline operators on—

3 (1) the inspectors' duties, responsibilities, authorities, and mission;  
4 and

5 (2) strategies to improve transportation security and to ensure com-  
6 pliance with transportation security requirements.

7 **§ 40314. Surface transportation security technology infor-**  
8 **mation sharing**

9 (a) IN GENERAL.—

10 (1) INFORMATION SHARING.—The Secretary, in consultation with  
11 the Secretary of Transportation, shall establish a program to provide  
12 appropriate information that the Department has gathered or devel-  
13 oped on the performance, use, and testing of technologies that may be  
14 used to enhance railroad, public transportation, and surface transpor-  
15 tation security to surface transportation entities, including railroad car-  
16 riers, over-the-road bus operators and terminal owners and operators,  
17 motor carriers, public transportation agencies, owners or operators of  
18 highways, pipeline operators, and State, local, and tribal governments  
19 that provide security assistance to the entities.

20 (2) DESIGNATION OF QUALIFIED ANTITERRORISM TECHNOLOGIES.—  
21 The Secretary shall include in the information provided in paragraph  
22 (1) whether the technology is designated as a qualified antiterrorism  
23 technology under the Support Anti-terrorism by Fostering Effective  
24 Technologies Act of 2002 (Public Law 107–296, title VIII, subtitle G,  
25 116 Stat. 2238), as appropriate.

26 (b) PURPOSE.—The purpose of the program is to assist eligible grant re-  
27 cipients under this subtitle and others, as appropriate, to purchase and use  
28 the best technology and equipment available to meet the security needs of  
29 the Nation's surface transportation system.

30 (c) COORDINATION.—The Secretary shall ensure that the program estab-  
31 lished under this section makes use of and is consistent with other Depart-  
32 ment technology testing, information sharing, evaluation, and standards-set-  
33 ting programs, as appropriate.

34 **§ 40315. Transportation Security Administration personnel**  
35 **limitations**

36 Any statutory limitation on the number of employees in the Transpor-  
37 tation Security Administration does not apply to employees carrying out this  
38 chapter, chapters 401, 405, and 407 of this title, and titles XII through  
39 XV of the Implementing Recommendations of the 9/11 Commission Act of  
40 2007 (Public Law 110–53, 121 Stat. 381).

1    **§ 40316. National explosives detection canine team training**  
2                    **program**

3           (a) DEFINITION.—In this section, the term “explosives detection canine  
4 team” means a canine and a canine handler that are trained to detect explo-  
5 sives, radiological materials, chemical, nuclear or biological weapons, or  
6 other threats as defined by the Secretary.

7           (b) IN GENERAL.—

8               (1) INCREASED CAPACITY.—The Secretary shall—

9                   (A) begin to increase the number of explosives detection canine  
10 teams certified by the Transportation Security Administration for  
11 the purposes of transportation-related security by up to 200 ca-  
12 nine teams annually by the end of 2010; and

13                   (B) encourage State, local, and tribal governments and private  
14 owners of high-risk transportation facilities to strengthen security  
15 through the use of highly trained explosives detection canine  
16 teams.

17               (2) WAYS TO INCREASE NUMBER OF EXPLOSIVES DETECTION CA-  
18 NINE TEAMS.—The Secretary shall increase the number of explosives  
19 detection canine teams by—

20                   (A) using the Transportation Security Administration’s Na-  
21 tional Explosives Detection Canine Team Training Center, includ-  
22 ing expanding and upgrading existing facilities, procuring and  
23 breeding additional canines, and increasing staffing and oversight  
24 commensurate with the increased training and deployment capa-  
25 bilities;

26                   (B) partnering with other Federal, State, or local agencies, non-  
27 profit organizations, universities, or the private sector to increase  
28 the training capacity for canine detection teams;

29                   (C) procuring explosives detection canines trained by nonprofit  
30 organizations, universities, or the private sector provided they are  
31 trained in a manner consistent with the standards and require-  
32 ments developed under subsection (e) or other criteria developed  
33 by the Secretary; or

34                   (D) a combination of subparagraphs (A), (B), and (C), as ap-  
35 propriate.

36           (c) STANDARDS FOR EXPLOSIVES DETECTION CANINE EAMS.—

37               (1) IN GENERAL.—Based on the feasibility in meeting the ongoing  
38 demand for quality explosives detection canine teams, the Secretary  
39 shall establish criteria, including canine training curricula, performance  
40 standards, and other requirements approved by the Transportation Se-  
41 curity Administration necessary to ensure that explosives detection ca-

1 nine teams trained by nonprofit organizations, universities, and private-  
2 sector entities are adequately trained and maintained.

3 (2) EXPANSION.—In developing and implementing the curricula, per-  
4 formance standards, and other requirements, the Secretary shall—

5 (A) coordinate with key stakeholders, including international,  
6 Federal, State, and local officials, and private sector and academic  
7 entities to develop best practice guidelines for a standardized pro-  
8 gram, as appropriate;

9 (B) require that explosives detection canine teams trained by  
10 nonprofit organizations, universities, or private-sector entities that  
11 are used or made available by the Secretary be trained consistent  
12 with specific training criteria developed by the Secretary; and

13 (C) review the status of the private-sector programs on at least  
14 an annual basis to ensure compliance with training curricula, per-  
15 formance standards, and other requirements.

16 (d) DEPLOYMENT.—The Secretary shall—

17 (1) use the additional explosives detection canine teams as part of  
18 the Department's efforts to strengthen security across the Nation's  
19 transportation network, and may use the canine teams on a more lim-  
20 ited basis to support other homeland security missions, as determined  
21 appropriate by the Secretary;

22 (2) make available explosives detection canine teams to all modes of  
23 transportation, for high-risk areas or to address specific threats, on an  
24 as-needed basis and as otherwise determined appropriate by the Sec-  
25 retary;

26 (3) encourage, but not require, any transportation facility or system  
27 to deploy TSA-certified explosives detection canine teams developed  
28 under this section; and(4) consider specific needs and training require-  
29 ments for explosives detection canine teams to be deployed across the  
30 Nation's transportation network, including in venues of multiple modes  
31 of transportation, as appropriate.

32 (e) CANINE PROCUREMENT.—The Secretary, acting through the Adminis-  
33 trator of the Transportation Security Administration, shall work to ensure  
34 that explosives detection canine teams are procured as efficiently as possible  
35 and at the best price, while maintaining the needed level of quality, includ-  
36 ing, if appropriate, through increased domestic breeding.

37 **§ 40317. Roles of the Department of Homeland Security and**  
38 **the Department of Transportation**

39 (a) IN GENERAL.—The Secretary is the principal Federal official respon-  
40 sible for transportation security.



1 (b) EQUIVALENT ROLES AND RESPONSIBILITIES.—In carrying out this  
 2 chapter, chapters 401, 405, and 407 of this title, and titles XII through  
 3 XV of the Implementing Recommendations of the 9/11 Commission Act of  
 4 2007 Public Law 110–53, 121 Stat. 381), the roles and responsibilities of  
 5 the Department of Homeland Security and the Department of Transpor-  
 6 tation are the same as their roles and responsibilities under the following:

7 (1) The Aviation and Transportation Security Act (Public Law  
 8 107–71, 115 Stat. 597).

9 (2) The Intelligence Reform and Terrorism Prevention Act of  
 10 2004 (Public Law 108–458, 118 Stat. 3638).

11 (3) The National Infrastructure Protection Plan required by  
 12 Homeland Security Presidential Directive 7.

13 (4) The Homeland Security Act of 2002 (Public Law 107–296,  
 14 116 Stat. 2135).

15 (5) The National Response Plan.

16 (6) Executive Order No. 13416: Strengthening Surface Trans-  
 17 portation Security, dated December 5, 2006 (71 Fed. Reg.  
 18 71033).

19 (7) The Memorandum of Understanding between the Depart-  
 20 ment of Homeland Security and the Department of Transpor-  
 21 tation on Roles and Responsibilities, dated September 28, 2004,  
 22 and any and all subsequent annexes to this Memorandum of Un-  
 23 derstanding and other relevant agreements between the two De-  
 24 partments.

## 25 **Chapter 405—Public Transportation Security**

Sec.

40501. Definitions.

40502. National Strategy for Public Transportation Security.

40503. Security assessments and plans.

40504. Public transportation security improvement grants.

40505. Security exercises.

40506. Public transportation security training program.

40507. Public transportation research and development.

40508. Information sharing.

40509. Reporting requirements.

40510. Public transportation employee protections.

40511. Security background checks of covered individuals for public transportation.

40512. Limitation on fines and civil penalties.

### 26 **§ 40501. Definitions**

27 In this chapter:

28 (1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term “appro-  
 29 priate congressional committee” means the Committee on Banking,  
 30 Housing, and Urban Affairs and the Committee on Homeland Security  
 31 and Governmental Affairs of the Senate and the Committee on Home-

1 land Security and the Committee on Transportation and Infrastructure  
2 of the House.

3 (2) DISADVANTAGED BUSINESS CONCERN.—The term “disadvan-  
4 tagged business concern” means a small business that is owned and con-  
5 trolled by socially and economically disadvantaged individuals as de-  
6 fined in part 124, title 13, Code of Federal Regulations.

7 (3) FRONTLINE EMPLOYEE.—The term “frontline employee” means  
8 an employee of a public transportation agency who is a transit vehicle  
9 driver or operator, dispatcher, maintenance and maintenance support  
10 employee, station attendant, customer service employee, security em-  
11 ployee, or transit police, or any other employee who has direct contact  
12 with riders on a regular basis, and any other employee of a public  
13 transportation agency that the Secretary determines should receive se-  
14 curity training under section 40505 of this title.

15 (4) PUBLIC TRANSPORTATION AGENCY.—The term “public transpor-  
16 tation agency” means a publicly owned operator of public transpor-  
17 tation eligible to receive Federal assistance under chapter 53 of title  
18 49.

19 **§ 40502. National Strategy for Public Transportation Secu-**  
20 **urity**

21 (a) NATIONAL STRATEGY.—Based on the previous and ongoing security  
22 assessments conducted by the Department and the Department of Trans-  
23 portation, the Secretary, consistent with and as required by section 11314  
24 of this title, shall develop and implement the modal plan for public transpor-  
25 tation, entitled the “National Strategy for Public Transportation Security”  
26 (in this section referred to as the “Strategy”).

27 (b) PURPOSE.—

28 (1) Guidelines.—In developing the Strategy, the Secretary shall es-  
29 tablish guidelines for public transportation security that—

30 (A) minimize security threats to public transportation systems;  
31 and

32 (B) maximize the abilities of public transportation systems to  
33 mitigate damage resulting from terrorist attack or other major in-  
34 cident.

35 (2) ASSESSMENTS AND CONSULTATIONS.—In developing the Strat-  
36 egy, the Secretary shall—

37 (A) use established and ongoing public transportation security  
38 assessments as the basis of the Strategy; and

39 (B) consult with all relevant stakeholders, including public  
40 transportation agencies, nonprofit labor organizations representing

1 public transportation employees, emergency responders, public  
2 safety officials, and other relevant parties.

3 (e) CONTENTS.—In the Strategy, the Secretary shall describe prioritized  
4 goals, objectives, policies, actions, and schedules to improve the security of  
5 public transportation.

6 (d) RESPONSIBILITIES.—The Secretary shall include in the Strategy a de-  
7 scription of the roles, responsibilities, and authorities of Federal, State, and  
8 local agencies, tribal governments, and appropriate stakeholders. The Strat-  
9 egy shall also include—

10 (1) the identification of, and a plan to address, gaps and unneces-  
11 sary overlaps in the roles, responsibilities, and authorities of Federal  
12 agencies; and

13 (2) a process for coordinating existing or future security strategies  
14 and plans for public transportation, including

15 (A) the National Infrastructure Protection Plan required by  
16 Homeland Security Presidential Directive 7;

17 (B) Executive Order No. 13416: Strengthening Surface Trans-  
18 portation Security dated December 5, 2006 (71 Fed. Reg. 71033);

19 (C) the Memorandum of Understanding between the Depart-  
20 ment and the Department of Transportation on Roles and Respon-  
21 sibilities dated September 28, 2004, and subsequent annexes and  
22 agreements.

23 (e) ADEQUACY OF EXISTING PLANS AND STRATEGIES.—In developing the  
24 Strategy, the Secretary shall use relevant existing risk assessments and  
25 strategies developed by the Department or other Federal agencies, including  
26 those developed or implemented under section 11314 of this title or Home-  
27 land Security Presidential Directive 7.I75§ 40503. Security assessments  
28 and plans

29 (a) PUBLIC TRANSPORTATION SECURITY ASSESSMENTS.—

30 (1) SUBMISSION.—The Administrator of the Federal Transit Admin-  
31 istration shall submit all public transportation security assessments and  
32 all other relevant information to the Secretary.

33 (2) SECRETARIAL REVIEW.—Not later than 60 days after receiving  
34 the submission under paragraph (1), the Secretary shall review and  
35 augment the security assessments received, and conduct additional se-  
36 curity assessments as necessary to ensure that at a minimum, all high  
37 risk public transportation agencies, as determined by the Secretary, will  
38 have a completed security assessment.

39 (3) CONTENT.—The Secretary shall ensure that each completed se-  
40 curity assessment includes—

1 (A) identification of critical assets, infrastructure, and systems  
2 and their vulnerabilities; and

3 (B) identification of any other security weaknesses, including  
4 weaknesses in emergency response planning and employee train-  
5 ing.

6 (b) BUS AND RURAL PUBLIC TRANSPORTATION SYSTEMS.—The Sec-  
7 retary shall—

8 (1) conduct security assessments, based on a representative  
9 sample, to determine the specific needs of—

10 (A) local bus-only public transportation systems; and

11 (B) public transportation systems that receive funds under sec-  
12 tion 5311 of title 49; and

13 (2) make the representative assessments available for use by simi-  
14 larly situated systems.

15 (c) SECURITY PLANS.—

16 (1) REQUIREMENT FOR PLAN.—

17 (A) HIGH RISK AGENCIES.—The Secretary shall require public  
18 transportation agencies determined by the Secretary to be at high  
19 risk for terrorism to develop a comprehensive security plan. The  
20 Secretary shall provide technical assistance and guidance to public  
21 transportation agencies in preparing and implementing security  
22 plans under this section.

23 (B) OTHER AGENCIES.—Subject to subparagraph (C), the Sec-  
24 retary may also establish a security program for public transpor-  
25 tation agencies not designated high risk by the Secretary, to assist  
26 those public transportation agencies that request assistance, in-  
27 cluding

28 (i) guidance to assist agencies in conducting security as-  
29 sessments and preparing and implementing security plans;  
30 and

31 (ii) a process for the Secretary to review and approve as-  
32 sessments and plans, as appropriate.

33 (C) PLAN NOT REQUIRED.—A public transportation agency that  
34 has not been designated high risk may not be required to develop  
35 a security plan.

36 (2) CONTENT.—The Secretary shall ensure that security plans in-  
37 clude, as appropriate

38 (A) a prioritized list of all items included in the public transpor-  
39 tation agency's security assessment that have not yet been ad-  
40 dressed;

1 (B) a detailed list of any additional capital and operational im-  
2 provements identified by the Department or the public transpor-  
3 tation agency and a certification of the public transportation agen-  
4 cy's technical capacity for operating and maintaining security  
5 equipment that may be identified in the list;

6 (C) specific procedures to be implemented or used by the public  
7 transportation agency in response to a terrorist attack, including  
8 evacuation and passenger communication plans and appropriate  
9 evacuation and communication measures for the elderly and indi-  
10 viduals with disabilities;

11 (D) a coordinated response plan that establishes procedures for  
12 appropriate interaction with State and local law enforcement agen-  
13 cies, emergency responders, and Federal officials in order to coor-  
14 dinate security measures and plans for response in the event of  
15 a terrorist attack or other major incident;

16 (E) a strategy and timeline for conducting training under sec-  
17 tion 40506 of this title;

18 (F) plans for providing redundant and other appropriate backup  
19 systems necessary to ensure the continued operation of critical ele-  
20 ments of the public transportation system in the event of a terror-  
21 ist attack or other major incident;

22 (G) plans for providing service capabilities throughout the sys-  
23 tem in the event of a terrorist attack or other major incident in  
24 the city or region which the public transportation system serves;

25 (H) methods to mitigate damage within a public transportation  
26 system in case of an attack on the system, including a plan for  
27 communication and coordination with emergency responders; and

28 (I) other actions or procedures as the Secretary determines are  
29 appropriate to address the security of the public transportation  
30 system.

31 (3) REVIEW.—Not later than 6 months after receiving the plans re-  
32 quired under this section, the Secretary shall—

33 (A) review each security plan submitted;

34 (B) require the public transportation agency to make any  
35 amendments needed to ensure that the plan meets the require-  
36 ments of this section; and

37 (C) approve any security plan that meets the requirements of  
38 this section.

39 (4) EXEMPTION.—The Secretary may not require a public transpor-  
40 tation agency to develop a security plan under paragraph (1) if the  
41 agency does not receive a grant under section 40504 of this title.

1           (5) WAIVER.—The Secretary may waive the exemption provided in  
2           paragraph (4) to require a public transportation agency to develop a  
3           security plan under paragraph (1) in the absence of grant funds under  
4           section 40504 of this title if not less than 3 days after making the de-  
5           termination the Secretary provides the appropriate congressional com-  
6           mittees and the public transportation agency written notification detail-  
7           ing the need for the security plan, the reasons grant funding has not  
8           been made available, and the reason the agency has been designated  
9           high risk.

10          (d) CONSISTENCY WITH OTHER PLANS.—The Secretary shall ensure that  
11          the security plans developed by public transportation agencies under this  
12          section are consistent with the security assessments developed by the De-  
13          partment and the National Strategy for Public Transportation Security de-  
14          veloped under section 40502 of this title.

15          (e) UPDATES.—The Secretary annually shall—

16               (1) update the security assessments referred to in subsection (a);

17               (2) update the security improvement priorities required under sub-  
18               section (f); and

19               (3) require public transportation agencies to update the security  
20               plans required under subsection (e) as appropriate.

21          (f) SECURITY IMPROVEMENT PRIORITIES.—

22               (1) IN GENERAL.—Each fiscal year, the Secretary, after consultation  
23               with management and nonprofit employee labor organizations rep-  
24               resenting public transportation employees as appropriate, and with ap-  
25               propriate State and local officials, shall utilize the information devel-  
26               oped or received in this section to establish security improvement prior-  
27               ities unique to each individual public transportation agency that has  
28               been assessed.

29               (2) ALLOCATIONS.—The Secretary shall use the security improve-  
30               ment priorities established in paragraph (1) as the basis for allocating  
31               risk-based grant funds under section 40504 of this title, unless the Sec-  
32               retary notifies the appropriate congressional committees that the Sec-  
33               retary has determined an adjustment is necessary to respond to an ur-  
34               gent threat or other significant national security factors.

35          (g) SHARED FACILITIES.—The Secretary shall encourage the development  
36          and implementation of coordinated assessments and security plans to the ex-  
37          tent a public transportation agency shares facilities (such as tunnels,  
38          bridges, stations, or platforms) with another public transportation agency,  
39          a freight or passenger railroad carrier, or over-the-road bus operator that  
40          are geographically close or otherwise co-located.

41          (h) NONDISCLOSURE OF INFORMATION.—

1 (1) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this  
2 section shall be construed as authorizing the withholding of any infor-  
3 mation from Congress.

4 (2) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—  
5 Nothing in this section shall be construed as affecting any authority  
6 or obligation of a Federal agency to disclose any record or information  
7 that the Federal agency obtains from a public transportation agency  
8 under any other Federal law.

9 (i) DETERMINATION.—In response to a petition by a public transpor-  
10 tation agency or at the discretion of the Secretary, the Secretary may recog-  
11 nize existing procedures, protocols, and standards of a public transportation  
12 agency that the Secretary determines meet all or part of the requirements  
13 of this section regarding security assessments or security plans.

14 **§ 40504. Public transportation security improvement grants**

15 (a) SECURITY ASSISTANCE PROGRAM.—

16 (1) IN GENERAL.—The Secretary shall establish a program for mak-  
17 ing grants to eligible public transportation agencies for security im-  
18 provements described in subsection (b).

19 (2) ELIGIBILITY.—A public transportation agency is eligible for a  
20 grant under this section if the Secretary has performed a security as-  
21 sessment or the agency has developed a security plan under section  
22 40503 of this title. Grant funds shall only be awarded for permissible  
23 uses under subsection (b) to—

- 24 (A) address items included in a security assessment; or  
25 (B) further a security plan.

26 (b) USES OF FUNDS.—A recipient of a grant under subsection (a) shall  
27 use the grant funds for one or more of the following:

- 28 (1) Capital uses of funds, including  
29 (A) tunnel protection systems;  
30 (B) perimeter protection systems, including access control, in-  
31 stallation of improved lighting, fencing, and barricades;  
32 (C) redundant critical operations control systems;  
33 (D) chemical, biological, radiological, or explosive detection sys-  
34 tems, including the acquisition of canines used for detection;  
35 (E) surveillance equipment;  
36 (F) communications equipment, including mobile service equip-  
37 ment to provide access to wireless Enhanced 911 (E911) emer-  
38 gency services in an underground fixed guideway system;  
39 (G) emergency response equipment, including personal protec-  
40 tive equipment;  
41 (H) fire suppression and decontamination equipment;

1 (I) global positioning or tracking and recovery equipment, and  
2 other automated-vehicle-locator-type system equipment;

3 (J) evacuation improvements;

4 (K) purchase and placement of bomb-resistant trash cans  
5 throughout public transportation facilities, including subway exits,  
6 entrances, and tunnels;

7 (L) capital costs associated with security awareness, security  
8 preparedness, and security response training, including training  
9 under section 40506 of this title and exercises under section  
10 40505 of this title;

11 (M) security improvements for public transportation systems,  
12 including extensions thereto, in final design or under construction;

13 (N) security improvements for stations and other public trans-  
14 portation infrastructure, including stations and other public trans-  
15 portation infrastructure owned by State or local governments; and

16 (O) other capital security improvements determined appropriate  
17 by the Secretary.

18 (2) Operating uses of funds, including

19 (A) security training, including training under section 40506 of  
20 this title and training developed by institutions of higher education  
21 and by nonprofit employee labor organizations, for public trans-  
22 portation employees, including frontline employees;

23 (B) live or simulated exercises under section 40505 of this title;

24 (C) public awareness campaigns for enhanced public transpor-  
25 tation security;

26 (D) canine patrols for chemical, radiological, biological, or explo-  
27 sives detection;

28 (E) development of security plans under section 40503 of this  
29 title;

30 (F) overtime reimbursement including reimbursement of State,  
31 local, and tribal governments, for costs for enhanced security per-  
32 sonnel during significant national and international public events;

33 (G) operational costs, including reimbursement of State, local,  
34 and tribal governments for costs for personnel assigned to full-  
35 time or part-time security or counterterrorism duties related to  
36 public transportation, provided that this expense totals no more  
37 than 10 percent of the total grant funds received by a public  
38 transportation agency in any 1 year; and

39 (H) other operational security costs determined appropriate by  
40 the Secretary, excluding routine, ongoing personnel costs, other  
41 than those set forth in this section.



1 (c) SECRETARY'S RESPONSIBILITIES.—In carrying out the responsibilities  
2 under subsection (a), the Secretary shall—

3 (1) determine the requirements for recipients of grants under this  
4 section, including application requirements;

5 (2) under subsection (a)(2), select the recipients of grants based  
6 solely on risk; and

7 (3) under subsection (b), establish the priorities for which grant  
8 funds may be used under this section.

9 (d) DISTRIBUTION OF GRANTS.—The Secretary and the Secretary of  
10 Transportation shall determine the most effective and efficient way to dis-  
11 tribute grant funds to the recipients of grants determined by the Secretary  
12 under subsection (a). Subject to the determination made by the Secretaries,  
13 the Secretary may transfer funds to the Secretary of Transportation for the  
14 purposes of disbursing funds to the grant recipient.

15 (e) GRANT SUBJECT TO CERTAIN TERMS AND CONDITIONS.—Except as  
16 otherwise specifically provided in this section, a grant provided under this  
17 section is subject to the terms and conditions applicable to a grant made  
18 under section 5307 of title 49, as in effect on January 1, 2007, and other  
19 terms and conditions determined necessary by the Secretary.

20 (f) LIMITATION ON USES OF FUNDS.—Grants made under this section  
21 may not be used to make any State or local government cost-sharing con-  
22 tribution under any other Federal law.

23 (g) ANNUAL REPORTS.—Each recipient of a grant under this section  
24 shall report annually to the Secretary on the use of the grant funds.

25 (h) GUIDELINES ON USE OF CONTRACTORS AND SUBCONTRACTORS.—  
26 Before distribution of funds to recipients of grants, the Secretary shall issue  
27 guidelines to ensure that, to the extent that recipients of grants under this  
28 section use contractors or subcontractors, the recipients shall use small, mi-  
29 nority, women-owned, or disadvantaged business concerns as contractors or  
30 subcontractors to the extent practicable.

31 (i) COORDINATION WITH STATE HOMELAND SECURITY PLANS.—In es-  
32 tablishing security improvement priorities under section 40503 of this title  
33 and in awarding grants for capital security improvements and operational  
34 security improvements under subsection (b), the Secretary shall act consist-  
35 ently with relevant State homeland security plans.

36 (j) MULTISTATE TRANSPORTATION SYSTEMS.—In cases in which a public  
37 transportation system operates in more than one State, the Secretary shall  
38 give appropriate consideration to the risks of the entire system, including  
39 those portions of the States into which the system crosses, in establishing  
40 security improvement priorities under section 40503 of this title and in

1     awarding grants for capital security improvements and operational security  
2     improvements under subsection (b).

3     (k) CONGRESSIONAL NOTIFICATION.—Not later than 3 days before the  
4     award of any grant under this section, the Secretary shall notify simulta-  
5     neously the appropriate congressional committees of the intent to award the  
6     grant.

7     (l) RETURN OF MISSPENT GRANT FUNDS.—The Secretary shall establish  
8     a process to require the return of any misspent grant funds received under  
9     this section determined to have been spent for a purpose other than those  
10    specified in the grant award.

11    **§ 40505. Security exercises**

12    (a) IN GENERAL.—The Secretary shall establish a program for conduct-  
13    ing security exercises for public transportation agencies for the purpose of  
14    assessing and improving the capabilities of entities described in subsection  
15    (b) to prevent, prepare for, mitigate against, respond to, and recover from  
16    acts of terrorism.

17    (b) COVERED ENTITIES.—Entities to be assessed under the program in-  
18    clude—

- 19       (1) Federal, State, and local agencies and tribal governments;  
20       (2) public transportation agencies;  
21       (3) governmental and nongovernmental emergency response provid-  
22       ers and law enforcement personnel, including transit police; and  
23       (4) any other organization or entity that the Secretary determines  
24       appropriate.

25    (c) REQUIREMENTS.—The Secretary shall ensure that the program—

26       (1) requires, for public transportation agencies that the Secretary  
27       considers appropriate, exercises to be conducted that are—

28           (A) scaled and tailored to the needs of specific public transpor-  
29           tation systems, and include taking into account the needs of the  
30           elderly and individuals with disabilities;

31           (B) live;

32           (C) coordinated with appropriate officials;

33           (D) as realistic as practicable and based on current risk assess-  
34           ments, including credible threats, vulnerabilities, and conse-  
35           quences;

36           (E) inclusive, as appropriate, of frontline employees and man-  
37           agers; and

38           (F) consistent with the National Incident Management System,  
39           the National Response Plan, the National Infrastructure Protec-  
40           tion Plan, the National Preparedness Guidance, the National Pre-  
41           paredness Goal, and other national initiatives of this type;

1 (2) provides that exercises described in paragraph (1) will be—  
2 (A) evaluated by the Secretary against clear and consistent perform-  
3 ance measures;

4 (B) assessed by the Secretary to learn best practices, which  
5 shall be shared with appropriate Federal, State, local, and tribal  
6 officials, governmental and nongovernmental emergency response  
7 providers, law enforcement personnel, including railroad and trans-  
8 sit police, and appropriate stakeholders; and

9 (C) followed by remedial action by covered entities in response  
10 to lessons learned;

11 (3) involves individuals in neighborhoods around the infrastructure  
12 of a public transportation system; and

13 (4) assists State, local, and tribal governments and public transpor-  
14 tation agencies in designing, implementing, and evaluating exercises  
15 that conform to the requirements of paragraph (2).

16 (d) NATIONAL EXERCISE PROGRAM.—The Secretary shall ensure that the  
17 exercise program developed under subsection (a) is a component of the Na-  
18 tional Exercise Program established under section 20508 of this title.

19 (e) FERRY SYSTEM EXEMPTION.—This section does not apply to a ferry  
20 system for which drills are required to be conducted under section 70103  
21 of title 46

## 22 **§ 40506. Public transportation security training program**

23 (a) APPLICABILITY.—A public transportation agency that receives a grant  
24 award under this chapter shall develop and implement a security training  
25 program under this section.

26 (b) IN GENERAL.—The Secretary shall develop and issue detailed final  
27 regulations for a public transportation security training program to prepare  
28 public transportation employees, including frontline employees, for potential  
29 security threats and conditions.

30 (c) CONSULTATION.—The Secretary shall develop the final regulations  
31 under subsection (b) in consultation with—

32 (1) appropriate law enforcement, fire service, security, and terrorism  
33 experts;

34 (2) representatives of public transportation agencies; and

35 (3) nonprofit employee labor organizations representing public trans-  
36 portation employees or emergency response personnel.

37 (d) PROGRAM ELEMENTS.—The final regulations developed under sub-  
38 section (b) shall require security training programs to include, at a mini-  
39 mum, elements to address the following:

40 (1) Determination of the seriousness of any occurrence or threat.

41 (2) Crew and passenger communication and coordination.

1 (3) Appropriate responses to defend oneself, including using non-  
2 lethal defense devices.

3 (4) Use of personal protective devices and other protective equip-  
4 ment.

5 (5) Evacuation procedures for passengers and employees, including  
6 individuals with disabilities and the elderly.

7 (6) Training related to behavioral and psychological understanding  
8 of, and responses to, terrorist incidents, including the ability to cope  
9 with hijacker behavior, and passenger responses.

10 (7) Live situational training exercises regarding various threat condi-  
11 tions, including tunnel evacuation procedures.

12 (8) Recognition and reporting of dangerous substances and sus-  
13 picious packages, persons, and situations.

14 (9) Understanding security incident procedures, including procedures  
15 for communicating with governmental and nongovernmental emergency  
16 response providers and for on scene interaction with emergency re-  
17 sponse providers.

18 (10) Operation and maintenance of security equipment and systems.

19 (11) Other security training activities that the Secretary deems ap-  
20 propriate.

21 (e) REQUIRED PROGRAMS.—

22 (1) DEVELOPMENT AND SUBMISSION TO SECRETARY.—Not later  
23 than 90 days after a public transportation agency meets the require-  
24 ments under subsection (a), the public transportation agency shall de-  
25 velop a security training program in accordance with the regulations  
26 developed under subsection (b) and submit the program to the Sec-  
27 retary for approval.

28 (2) APPROVAL.—Not later than 60 days after receiving a security  
29 training program proposal under this subsection, the Secretary shall  
30 approve the program or require the public transportation agency that  
31 developed the program to make any revisions to the program that the  
32 Secretary determines necessary for the program to meet the require-  
33 ments of the regulations. A public transportation agency shall respond  
34 to the Secretary's comments within 30 days after receiving them.

35 (3) TRAINING.—Not later than 1 year after the Secretary approves  
36 a security training program proposal under this subsection, the public  
37 transportation agency that developed the program shall complete the  
38 training of all employees covered under the program.

39 (4) UPDATES OF REGULATIONS AND PROGRAM REVISIONS.—The  
40 Secretary shall periodically review and update, as appropriate, the  
41 training regulations issued under subsection (b) to reflect new or

1 changing security threats. Each public transportation agency shall re-  
2 vise its training program accordingly and provide additional training as  
3 necessary to its workers within a reasonable time after the regulations  
4 are updated.

5 (f) LONG-TERM TRAINING REQUIREMENT.—A public transportation  
6 agency required to develop a security training program under this section  
7 shall provide routine and ongoing training for employees covered under the  
8 program, regardless of whether the public transportation agency receives  
9 subsequent grant awards.

10 (g) NATIONAL TRAINING PROGRAM.—The Secretary shall ensure that the  
11 training program developed under subsection (b) is a component of the Na-  
12 tional Training Program established under section 20508 of this title.

13 (h) FERRY EXEMPTION.—This section shall not apply to a ferry system  
14 for which training is required to be conducted under section 70103 of title  
15 46.

## 16 **§ 40507. Public transportation research and development**

17 (a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The  
18 Secretary shall carry out, through the Homeland Security Advanced Re-  
19 search Projects Agency in the Science and Technology Directorate and in  
20 consultation with the Transportation Security Administration and the Fed-  
21 eral Transit Administration, a research and development program to im-  
22 prove the security of transportation systems.

23 (b) AWARDING OF GRANTS AND CONTRACTS.—The Secretary shall award  
24 grants or contracts to public or private entities to conduct research and  
25 demonstrate technologies and methods to reduce and deter terrorist threats  
26 or mitigate damages resulting from terrorist attacks against public trans-  
27 portation systems.

28 (c) USE OF FUNDS.—Grants or contracts awarded under this section—

29 (1) shall be coordinated with activities of the Homeland Security Ad-  
30 vanced Research Projects Agency; and

31 (2) may be used to—

32 (A) research chemical, biological, radiological, or explosive detec-  
33 tion systems that do not significantly impede passenger access;

34 (B) research imaging technologies;

35 (C) conduct product evaluations and testing;

36 (D) improve security and redundancy for critical communica-  
37 tions, electrical power, and computer and train control systems;

38 (E) develop technologies for securing tunnels, transit bridges  
39 and aerial structures;

40 (F) research technologies that mitigate damages in the event of  
41 a cyber attack; and

1 (G) research other technologies or methods for reducing or de-  
2 terring terrorist attacks against public transportation systems, or  
3 mitigating damage from attacks.

4 (d) Privacy and Civil Rights and Civil Liberties Issues.—

5 (1) Consultation.—In carrying out research and development  
6 projects under this section, the Secretary shall consult with the Chief  
7 Privacy Officer of the Department and the Officer for Civil Rights and  
8 Civil Liberties of the Department, as appropriate, and in accordance  
9 with section 10542 of this title.

10 (2) Privacy impact assessments.—In accordance with sections 10542  
11 and 11505 of this title, the Chief Privacy Officer shall conduct privacy  
12 impact assessments and the Officer for Civil Rights and Civil Liberties  
13 shall conduct reviews, as appropriate, for research and development ini-  
14 tiatives developed under this section.

15 (e) REPORTING REQUIREMENT.—Each entity that is awarded a grant or  
16 contract under this section shall report annually to the Department on the  
17 use of grant or contract funds received under this section to ensure that  
18 the awards made are expended in accordance with the purposes of this  
19 chapter and the priorities developed by the Secretary.

20 (f) COORDINATION.—The Secretary shall ensure that the research is con-  
21 sistent with the priorities established in the National Strategy for Public  
22 Transportation Security and is coordinated, to the extent practicable, with  
23 other Federal, State, local, tribal, and private-sector public transportation,  
24 railroad, commuter railroad, and over-the-road bus research initiatives to le-  
25 verage resources and avoid unnecessary duplicative efforts.

26 (g) RETURN OF MISSPENT GRANT OR CONTRACT FUNDS.—If the Sec-  
27 retary determines that a grantee or contractor used any portion of the grant  
28 or contract funds received under this section for a purpose other than the  
29 allowable uses specified under subsection (c), the grantee or contractor shall  
30 return that amount to the Treasury.

31 **§ 40508. Information sharing**

32 (a) INTELLIGENCE SHARING.—The Secretary shall ensure that the De-  
33 partment of Transportation receives appropriate and timely notification of  
34 all credible terrorist threats against public transportation assets in the  
35 United States.

36 (b) INFORMATION SHARING ANALYSIS CENTER.—

37 (1) Authorization.—The Secretary shall provide for the reasonable  
38 costs of the Information Sharing and Analysis Center for Public Trans-  
39 portation (in this subsection referred to as the “ISAC”).

40 (2) Participation.—The Secretary—

1 (A) shall require public transportation agencies that the Sec-  
2 retary determines to be at high risk of terrorist attack to partici-  
3 pate in the ISAC;

4 (B) shall encourage all other public transportation agencies to  
5 participate in the ISAC;

6 (C) shall encourage the participation of nonprofit employee  
7 labor organizations representing public transportation employees,  
8 as appropriate; and

9 (D) shall not charge a fee for participating in the ISAC.

10 **§ 40509. Reporting requirements**

11 (a) ANNUAL REPORT TO CONGRESS.—

12 (1) IN GENERAL.—Not later than March 31 each year, the Secretary  
13 shall submit a report, containing the information described in para-  
14 graph (2), to the appropriate congressional committees.

15 (2) CONTENTS.—The report submitted under paragraph (1) shall in-  
16 clude—

17 (A) a description of the implementation of the provisions of this  
18 chapter;

19 (B) the amount of funds appropriated to carry out the provi-  
20 sions of this chapter that have not been expended or obligated;

21 (C) the National Strategy for Public Transportation Security  
22 required under section 40502 of this title;

23 (D) an estimate of the cost to implement the National Strategy  
24 for Public Transportation Security, which shall break out the ag-  
25 gregated total cost of needed capital and operational security im-  
26 provements for fiscal years 2008 through 2018; and

27 (E) the state of public transportation security in the United  
28 States, which shall include detailing the status of security assess-  
29 ments, the progress being made around the country in developing  
30 prioritized lists of security improvements necessary to make public  
31 transportation facilities and passengers more secure, the progress  
32 being made by agencies in developing security plans and how those  
33 plans differ from the security assessments and a prioritized list of  
34 security improvements being compiled by other agencies, as well  
35 as a random sample of an equal number of large- and small-scale  
36 projects currently underway.

37 (3) FORMAT.—The Secretary may submit the report in both classi-  
38 fied and redacted formats if the Secretary determines that it is appro-  
39 priate or necessary.

40 (b) ANNUAL REPORT TO CHIEF EXECUTIVE OFFICERS.—

1 (1) IN GENERAL.—Not later than March 31 each year, the Secretary  
2 shall submit a report to the chief executive officer of each State with  
3 a public transportation agency that has received a grant under this  
4 chapter.

5 (2) CONTENTS.—The report submitted under paragraph (1) shall  
6 specify

7 (A) the amount of grant funds distributed to each public trans-  
8 portation agency; and

9 (B) the use of the grant funds.

#### 10 **§ 40510. Public transportation employee protections**

11 (a) IN GENERAL.—A public transportation agency, a contractor or a sub-  
12 contractor of the agency, or an officer or employee of the agency, shall not  
13 discharge, demote, suspend, reprimand, or in any other way discriminate  
14 against an employee if the discrimination is due, in whole or in part, to the  
15 employee's lawful, good faith act done, or perceived by the employer to have  
16 been done or about to be done—

17 (1) to provide information, directly cause information to be provided,  
18 or otherwise directly assist in any investigation regarding any conduct  
19 that the employee reasonably believes constitutes a violation of any  
20 Federal law, rule, or regulation relating to public transportation safety  
21 or security, or fraud, waste, or abuse of Federal grants or other public  
22 funds intended to be used for public transportation safety or security,  
23 if the information or assistance is provided to, or an investigation stem-  
24 ming from the provided information is conducted by—

25 (A) a Federal, State, or local regulatory or law enforcement  
26 agency (including an office of the Inspector General under the In-  
27 spector General Act of 1978 (Public Law 95–452, 5 U.S.C. App.);

28 (B) a member of Congress, a committee of Congress, or the  
29 Government Accountability Office; o

30 (C) an individual with supervisory authority over the employee  
31 or another individual who has the authority to investigate, dis-  
32 cover, or terminate the misconduct;

33 (2) to refuse to violate or assist in the violation of any Federal law,  
34 rule, or regulation relating to public transportation safety or secu-  
35 rity;(3) to file a complaint or directly cause to be brought a proceeding  
36 relating to the enforcement of this section or to testify in that proceed-  
37 ing;

38 (4) to cooperate with a safety or security investigation by the Sec-  
39 retary of Transportation, the Secretary, or the National Transportation  
40 Safety Board; or



1 (5) to furnish information to the Secretary of Transportation, the  
2 Secretary, the National Transportation Safety Board, or another Fed-  
3 eral, State, or local regulatory or law enforcement agency as to the  
4 facts relating to any accident or incident resulting in injury or death  
5 to an individual or damage to property occurring in connection with  
6 public transportation.

7 (b) HAZARDOUS SAFETY OR SECURITY CONDITIONS.—

8 (1) IN GENERAL.—A public transportation agency, a contractor or  
9 a subcontractor of the agency, or an officer or employee of the agency,  
10 shall not discharge, demote, suspend, reprimand, or in any other way  
11 discriminate against an employee for—

12 (A) reporting a hazardous safety or security condition;

13 (B) refusing to work when confronted by a hazardous safety or  
14 security condition related to the performance of the employee's du-  
15 ties, if the conditions described in paragraph (2) exist; or

16 (C) refusing to authorize the use of any safety- or security-relat-  
17 ed equipment, track, or structures, if the employee is responsible  
18 for the inspection or repair of the equipment, track, or structures,  
19 when the employee believes that the equipment, track, or struc-  
20 tures are in a hazardous safety or security condition, if the condi-  
21 tions described in paragraph (2) exist.

22 (2) PROTECTED REFUSAL.—A refusal is protected under subpara-  
23 graphs (B) and (C) of paragraph (1) if—

24 (A) the refusal is made in good faith and no reasonable alter-  
25 native to the refusal is available to the employee;

26 (B) a reasonable individual in the circumstances then confront-  
27 ing the employee would conclude that—

28 (i) the hazardous condition presents an imminent danger of  
29 death or serious injury; and

30 (ii) the urgency of the situation does not allow sufficient  
31 time to eliminate the danger without the refusal; and

32 (C) the employee, where possible, has notified the public trans-  
33 portation agency of the existence of the hazardous condition and  
34 the intention not to perform further work, or not to authorize the  
35 use of the hazardous equipment, track, or structures, unless the  
36 condition is corrected immediately or the equipment, track, or  
37 structures are repaired properly or replaced.

38 (3) LIMITED APPLICABILITY.—Only paragraph (1)(A) applies to se-  
39 curity personnel, including transit police, employed or utilized by a pub-  
40 lic transportation agency to protect riders, equipment, assets, or facili-  
41 ties.

1 (c) ENFORCEMENT ACTION.—

2 (1) FILING AND NOTIFICATION.—An individual who believes that he  
3 or she has been discharged or otherwise discriminated against by a per-  
4 son in violation of subsection (a) or (b) may, not later than 180 days  
5 after the date on which the violation occurs, file (or have a person file  
6 on his or her behalf) a complaint with the Secretary of Labor alleging  
7 the discharge or discrimination. On receipt of a complaint filed under  
8 this paragraph, the Secretary of Labor shall notify, in writing, the indi-  
9 vidual named in the complaint and the individual's employer of the fil-  
10 ing of the complaint, the allegations contained in the complaint, the  
11 substance of evidence supporting the complaint, and the opportunities  
12 that will be afforded to the individual under paragraph (2).

13 (2) INVESTIGATION; PRELIMINARY ORDER.—

14 (A) IN GENERAL.—Not later than 60 days after the date of re-  
15 ceipt of a complaint filed under paragraph (1) and after affording  
16 the individual named in the complaint an opportunity to submit  
17 to the Secretary of Labor a written response to the complaint and  
18 an opportunity to meet with a representative of the Secretary of  
19 Labor to present statements from witnesses, the Secretary of  
20 Labor shall conduct an investigation and determine whether there  
21 is reasonable cause to believe that the complaint has merit and no-  
22 tify, in writing, the complainant and the person alleged to have  
23 committed a violation of subsection (a) or (b) of the Secretary of  
24 Labor's findings. If the Secretary of Labor concludes that there  
25 is a reasonable cause to believe that a violation of subsection (a)  
26 or (b) has occurred, the Secretary of Labor shall accompany the  
27 Secretary of Labor's findings with a preliminary order providing  
28 the relief prescribed by paragraph (3)(B). Not later than 30 days  
29 after the date of notification of findings under this paragraph, ei-  
30 ther the person alleged to have committed the violation or the  
31 complainant may file objections to the findings or preliminary  
32 order, or both, and request a hearing on the record. The filing of  
33 objections shall not operate to stay a reinstatement remedy con-  
34 tained in the preliminary order. Hearings shall be conducted expe-  
35 ditiously. If a hearing is not requested in the 30-day period, the  
36 preliminary order shall be deemed a final order that is not subject  
37 to judicial review.

38 (B) REQUIREMENTS.—

39 (i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary  
40 of Labor shall dismiss a complaint filed under this subsection  
41 and shall not conduct an investigation otherwise required

1 under subparagraph (A) unless the complainant makes a  
2 prima facie showing that any behavior described in subsection  
3 (a) or (b) was a contributing factor in the unfavorable per-  
4 sonnel action alleged in the complaint.

5 (ii) SHOWING BY EMPLOYER.—Notwithstanding a finding  
6 by the Secretary of Labor that the complainant has made the  
7 showing required under clause (i), no investigation otherwise  
8 required under paragraph (A) shall be conducted if the em-  
9 ployer demonstrates, by clear and convincing evidence, that  
10 the employer would have taken the same unfavorable person-  
11 nel action in the absence of that behavior.

12 (iii) CRITERION FOR DETERMINATION BY SECRETARY OF  
13 LABOR.—The Secretary of Labor may determine that a viola-  
14 tion of subsection (a) or (b) has occurred only if the com-  
15 plainant demonstrates that any behavior described in sub-  
16 section (a) or (b) was a contributing factor in the unfavorable  
17 personnel action alleged in the complaint.

18 (iv) PROHIBITION.—Relief may not be ordered under para-  
19 graph (A) if the employer demonstrates by clear and convinc-  
20 ing evidence that the employer would have taken the same  
21 unfavorable personnel action in the absence of that behavior.

22 (3) FINAL ORDER.—

23 (A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—  
24 Not later than 120 days after the date of conclusion of a hearing  
25 under paragraph (2), the Secretary of Labor shall issue a final  
26 order providing the relief prescribed by this paragraph or denying  
27 the complaint. At any time before issuance of a final order, a pro-  
28 ceeding under this subsection may be terminated on the basis of  
29 a settlement agreement entered into by the Secretary of Labor,  
30 the complainant, and the person alleged to have committed the  
31 violation.

32 (B) REMEDY.—If, in response to a complaint filed under para-  
33 graph (1), the Secretary of Labor determines that a violation of  
34 subsection (a) or (b) has occurred, the Secretary of Labor shall  
35 order the person who committed the violation to—

36 (i) take affirmative action to abate the violation; and

37 (ii) provide the remedies described in subsection (d).

38 (C) ORDER.—If an order is issued under subparagraph (B), the  
39 Secretary of Labor, at the request of the complainant, shall assess  
40 against the person against whom the order is issued a sum equal  
41 to the aggregate amount of all costs and expenses (including attor-

1           ney and expert witness fees) reasonably incurred, as determined  
2           by the Secretary of Labor, by the complainant for, or in connec-  
3           tion with, bringing the complaint on which the order was issued.

4           (D) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds  
5           that a complaint under paragraph (1) is frivolous or has been  
6           brought in bad faith, the Secretary of Labor may award to the  
7           prevailing employer reasonable attorney fees not exceeding \$1,000.

8           (4) REVIEW.—

9           (A) APPEAL TO COURT OF APPEALS.—A person adversely af-  
10          fected or aggrieved by an order issued under paragraph (3) may  
11          obtain review of the order in the United States Court of Appeals  
12          for the circuit in which the violation, with respect to which the  
13          order was issued, allegedly occurred or the circuit in which the  
14          complainant resided on the date of the violation. The petition for  
15          review must be filed not later than 60 days after the date of the  
16          issuance of the final order of the Secretary of Labor. Review shall  
17          conform to chapter 7 of title 5. The commencement of proceedings  
18          under this subparagraph shall not, unless ordered by the court,  
19          operate as a stay of the order.

20          (B) LIMITATION ON COLLATERAL ATTACK.—An order of the  
21          Secretary of Labor with respect to which review could have been  
22          obtained under subparagraph (A) shall not be subject to judicial  
23          review in any criminal or other civil proceeding.

24          (5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—When a  
25          person fails to comply with an order issued under paragraph (3), the  
26          Secretary of Labor may file a civil action in the United States district  
27          court for the district in which the violation was found to occur to en-  
28          force the order. In actions brought under this paragraph, the district  
29          courts have jurisdiction to grant all appropriate relief including injunc-  
30          tive relief and compensatory damages.

31          (6) ENFORCEMENT OF ORDER BY PARTIES.—

32          (A) COMMENCEMENT OF ACTION.—An individual on whose be-  
33          half an order was issued under paragraph (3) may commence a  
34          civil action against the person to whom the order was issued to  
35          require compliance with the order. The appropriate United States  
36          district court has jurisdiction, without regard to the amount in  
37          controversy or the citizenship of the parties, to enforce the order.

38          (B) ATTORNEY FEES.—The court, in issuing a final order under  
39          this paragraph, may award costs of litigation (including reasonable  
40          attorney and expert witness fees) to any party when the court de-  
41          termines an award is appropriate.

1           (7) DE NOVO REVIEW.—With respect to a complaint under para-  
2           graph (1), if the Secretary of Labor has not issued a final decision  
3           within 210 days after the filing of the complaint and if the delay is  
4           not due to the bad faith of the employee, the employee may bring an  
5           original action at law or equity for de novo review in the appropriate  
6           district court of the United States, which has jurisdiction over the ac-  
7           tion without regard to the amount in controversy, and which action  
8           shall, at the request of either party to the action, be tried by the court  
9           with a jury. The action shall be governed by the same legal burdens  
10          of proof specified in paragraph (2)(B) for review by the Secretary of  
11          Labor.

12          (d) REMEDIES.—

13           (1) IN GENERAL.—An employee prevailing in any action under sub-  
14           section (c) is entitled to all relief necessary to make the employee  
15           whole.

16           (2) DAMAGES.—Relief in an action under subsection (c) (including  
17           an action described in subsection (c)(7)) includes—

18                   (A) reinstatement with the same seniority status that the em-  
19                   ployee would have had, but for the discrimination;

20                   (B) any backpay, with interest; and

21                   (C) compensatory damages, including compensation for any spe-  
22                   cial damages sustained as a result of the discrimination, including  
23                   litigation costs, expert witness fees, and reasonable attorney fees.

24           (3) POSSIBLE RELIEF.—Relief in an action under subsection (c) may  
25           include punitive damages in an amount not to exceed \$250,000.

26          (e) ELECTION OF REMEDIES.—An employee may not seek protection  
27          under both this section and another provision of law for the same allegedly  
28          unlawful act of the public transportation agency.

29          (f) NO PREEMPTION.—Nothing in this section preempts or diminishes  
30          any other safeguards against discrimination, demotion, discharge, suspen-  
31          sion, threats, harassment, reprimand, retaliation, or other manner of dis-  
32          crimination provided by Federal or State law.

33          (g) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be  
34          construed to diminish the rights, privileges, or remedies of an employee  
35          under Federal or State law or under a collective bargaining agreement. The  
36          rights and remedies in this section may not be waived by an agreement, pol-  
37          icy, form, or condition of employment.

38          (h) DISCLOSURE OF IDENTITY.—

39           (1) IN GENERAL.—Except as provided in paragraph (2), or with the  
40           written consent of the employee, the Secretary of Transportation or the

1 Secretary may not disclose the name of an employee who has provided  
2 information described in subsection (a)(1).

3 (2) EXCEPTION.— The Secretary of Transportation or the Secretary  
4 shall disclose to the Attorney General the name of an employee de-  
5 scribed in paragraph (1) if the matter is referred to the Attorney Gen-  
6 eral for enforcement. The Secretary making the disclosure shall provide  
7 reasonable advance notice to the affected employee if disclosure of that  
8 individual's identity or identifying information is to occur.

9 (i) PROCESS FOR REPORTING SECURITY PROBLEMS TO THE DEPART-  
10 MENT.—

11 (1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish  
12 through regulations after an opportunity for notice and comment, and  
13 provide information to the public regarding, a process by which a per-  
14 son may submit a report to the Secretary regarding public transpor-  
15 tation security problems, deficiencies, or vulnerabilities.

16 (2) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under  
17 paragraph (1) identifies the person making the report, the Secretary  
18 shall respond promptly to the person and acknowledge receipt of the  
19 report.

20 (3) STEPS TO ADDRESS PROBLEM.—The Secretary shall review and  
21 consider the information provided in a report submitted under para-  
22 graph (1) and shall take appropriate steps to address any problems or  
23 deficiencies identified.

24 **§ 40511. Security background checks of covered individuals**  
25 **for public transportation**

26 (a) DEFINITIONS.—In this section:

27 (1) COVERED INDIVIDUAL.—The term “covered individual” means  
28 an employee of a public transportation agency or a contractor or sub-  
29 contractor of a public transportation agency.

30 (2) SECURITY BACKGROUND CHECK.—The term “security back-  
31 ground check” means reviewing the following for the purpose of identi-  
32 fying an individual who may pose a threat to transportation security,  
33 national security, or of terrorism:

34 (A) Relevant criminal history databases.

35 (B) In the case of an alien (as defined in section 101 of the  
36 Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the rel-  
37 evant databases to determine the status of the alien under the im-  
38 migration laws of the United States.

39 (C) Other relevant information or databases, as determined by  
40 the Secretary.

41 (b) GUIDANCE.—

1           (1) IN GENERAL.—Guidance, recommendations, suggested action  
2 items, and other widely disseminated voluntary action items issued by  
3 the Secretary to a public transportation agency or a contractor or sub-  
4 contractor of a public transportation agency relating to performing a  
5 security background check of a covered individual shall contain recom-  
6 mendations on the appropriate scope and application of a security  
7 background check, including the time period covered, the types of dis-  
8 qualifying offenses, and a redress process for adversely impacted covered  
9 individuals consistent with subsections (c) and (d).

10           (2) ADEQUATE REDRESS PROCESS.—If a public transportation agency  
11 or a contractor or subcontractor of a public transportation agency  
12 performs a security background check on a covered individual to fulfill  
13 guidance issued by the Secretary under paragraph (1), the Secretary  
14 shall not consider the guidance fulfilled unless an adequate redress  
15 process as described in subsection (d) is provided to covered individ-  
16 uals.

17           (c) REQUIREMENTS.—If the Secretary issues a rule, regulation or direc-  
18 tive requiring a public transportation agency or contractor or subcontractor  
19 of a public transportation agency to perform a security background check  
20 of a covered individual, then the Secretary shall prohibit a public transpor-  
21 tation agency or contractor or subcontractor of a public transportation  
22 agency from making an adverse employment decision, including removal or  
23 suspension of the employee, due to the rule, regulation, or directive with re-  
24 spect to a covered individual unless the public transportation agency or con-  
25 tractor or subcontractor of a public transportation agency determines that  
26 the covered individual—

27           (1) has been convicted of, has been found not guilty of by reason  
28 of insanity, or is under want, warrant, or indictment for a permanent  
29 disqualifying criminal offense listed in part 1572 of title 49, Code of  
30 Federal Regulations;

31           (2) was convicted of or found not guilty by reason of insanity of an  
32 interim disqualifying criminal offense listed in part 1572 of title 49,  
33 Code of Federal Regulations, within 7 years of the date that the public  
34 transportation agency or contractor or subcontractor of the public  
35 transportation agency performs the security background check; or

36           (3) was incarcerated for an interim disqualifying criminal offense  
37 listed in part 1572 of title 49, Code of Federal Regulations, and re-  
38 leased from incarceration within 5 years of the date that the public  
39 transportation agency or contractor or subcontractor of a public trans-  
40 portation agency performs the security background check.

1 (d) REDRESS PROCESS.—If the Secretary issues a rule, regulation, or di-  
2 rective requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background  
3 check of a covered individual, the Secretary shall—  
4

5 (1) provide an adequate redress process for a covered individual sub-  
6 jected to an adverse employment decision, including removal or suspen-  
7 sion of the employee, due to the rule, regulation, or directive that is  
8 consistent with the appeals and waiver process established for appli-  
9 cants for commercial motor vehicle hazardous materials endorsements  
10 and transportation workers at ports, as required by section 70105(e)  
11 of title 46; and

12 (2) have the authority to order an appropriate remedy, including re-  
13 instatement of the covered individual, should the Secretary determine  
14 that a public transportation agency or contractor or subcontractor of  
15 a public transportation agency wrongfully made an adverse employment  
16 decision regarding a covered individual pursuant to the rule, regulation,  
17 or directive.

18 (e) FALSE STATEMENTS.—A public transportation agency or a contractor  
19 or subcontractor of a public transportation agency may not knowingly mis-  
20 represent to an employee or other relevant person, including an arbiter in-  
21 volved in a labor arbitration, the scope, application, or meaning of rules,  
22 regulations, directives, or guidance issued by the Secretary related to secu-  
23 rity background check requirements for covered individuals when conducting  
24 a security background check. The Secretary shall issue a regulation that  
25 prohibits a public transportation agency or a contractor or subcontractor of  
26 a public transportation agency from knowingly misrepresenting to an em-  
27 ployee or other relevant person, including an arbiter involved in a labor arbi-  
28 tration, the scope, application, or meaning of rules, regulations, directives,  
29 or guidance issued by the Secretary related to security background check  
30 requirements for covered individuals when conducting a security background  
31 check.

32 (f) RIGHTS AND RESPONSIBILITIES.—Nothing in this section shall be  
33 construed to abridge a public transportation agency's or a contractor or  
34 subcontractor of a public transportation agency's rights or responsibilities  
35 to make adverse employment decisions permitted by other Federal, State,  
36 or local laws. Nothing in the section shall be construed to abridge rights  
37 and responsibilities of covered individuals, a public transportation agency,  
38 or a contractor or subcontractor of a public transportation agency under  
39 any other Federal, State, or local laws or collective bargaining agreement.

40 (g) NO PREEMPTION OF FEDERAL OR STATE LAW.—Nothing in this sec-  
41 tion shall be construed to preempt a Federal, State, or local law that re-



1     quires criminal history background checks, immigration status checks, or  
2     other background checks of covered individuals.

3     (h) STATUTORY CONSTRUCTION.—Nothing in this section shall be con-  
4     strued to affect the process for review established under section 70105(c)  
5     of title 46, including regulations issued under that section.

6     **§ 40512. Limitation on fines and civil penalties**

7     (a) INSPECTORS.—Surface transportation inspectors shall be prohibited  
8     from issuing fines to public transportation agencies for violations of the De-  
9     partment’s regulations or orders except through the process described in  
10    subsection (b)

11    (b) CIVIL PENALTIES.—The Secretary shall be prohibited from assessing  
12    civil penalties against public transportation agencies for violations of the  
13    Department’s regulations or orders, except in accordance with the following:

14       (1) VIOLATION OF REGULATION OR ORDER.—In the case of a public  
15       transportation agency that is found to be in violation of a regulation  
16       or order issued by the Secretary, the Secretary shall seek correction of  
17       the violation through a written notice to the public transportation agen-  
18       cy and shall give the public transportation agency reasonable oppor-  
19       tunity to correct the violation or propose an alternative means of com-  
20       pliance acceptable to the Secretary.

21       (2) NO CORRECTION OR PROPOSED ALTERNATIVE COMPLIANC.—If  
22       the public transportation agency does not correct the violation or pro-  
23       pose an alternative means of compliance acceptable to the Secretary  
24       within a reasonable time period that is specified in the written notice,  
25       the Secretary may take an action authorized in chapter 113 of this  
26       title.

27    (c) LIMITATION ON SECRETARY.—The Secretary shall not initiate civil  
28    enforcement actions for violations of administrative and procedural require-  
29    ments pertaining to the application for and expenditure of funds awarded  
30    under transportation security grant programs under this chapter.

31                   **Chapter 407—Surface Transportation Security**

Sec.

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40731. Assessments and plans.

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## **Subchapter I—General Provisions**

1

### **§ 40701. Definitions**

2

3 In this chapter:

3

4 (1) AMTRAK.—The term “Amtrak” means the National Railroad  
5 Passenger Corporation.

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6 (2) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term “appro-  
7 priate congressional committee” means the Committee on Commerce,  
8 Science, and Transportation and the Committee on Homeland Security  
9 and Governmental Affairs of the Senate and the Committee on Home-  
10 land Security and the Committee on Transportation and Infrastructure  
11 of the House.

10

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12 (3) DISADVANTAGED BUSINESS CONCERN.—The term “disadvan-  
13 taged business concern” means a small business that is owned and con-  
14 trolled by socially and economically disadvantaged individuals as de-  
15 fined in part 124, title 13, Code of Federal Regulations.

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16 (4) OVER-THE-ROAD BUS.—The term “over-the-road bus” means a  
17 bus characterized by an elevated passenger deck located over a baggage  
18 compartment.

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19 (5) OVER-THE-ROAD BUS FRONTLINE EMPLOYEE.—The term “over-  
20 the-road bus frontline employee” means an over-the-road bus driver, se-  
21 curity personnel, dispatcher, maintenance and maintenance support  
22 personnel, ticket agent, other terminal employee, and any other em-  
23 ployee of an over-the-road bus operator or terminal owner or operator  
24 that the Secretary determines should receive security training under  
25 this title.

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26 (6) RAILROAD.—The term “railroad” has the meaning that term has  
27 in section 20102 of title 49.

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28 (7) RAILROAD CARRIER.—The term “railroad carrier” has the mean-  
29 ing that term has in section 20102 of title 49.

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30 (8) RAILROAD FRONTLINE EMPLOYEE.—The term “railroad frontline  
31 employee” means a security personnel, dispatcher, locomotive engineer,

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1 conductor, trainman, other onboard employee, maintenance and main-  
2 tenance support personnel, bridge tender, and any other employee of  
3 a railroad carrier that the Secretary determines should receive security  
4 training under chapter 407 of this title.

5 (9) SECURITY-SENSITIVE MATERIAL.—The term “security-sensitive  
6 material” means a material, or a group or class of material, in a par-  
7 ticular amount and form that the Secretary, in consultation with the  
8 Secretary of Transportation, determines, through a rulemaking with  
9 opportunity for public comment, poses a significant risk to national se-  
10 curity while being transported in commerce due to the potential use of  
11 the material in an act of terrorism. In making a designation, the Sec-  
12 retary shall, at a minimum, consider the following:

13 (A) Class 7 radioactive materials.

14 (B) Division 1.1, 1.2, or 1.3 explosives.

15 (C) Materials poisonous or toxic by inhalation, including Divi-  
16 sion 2.3 gases and Division 6.1 materials.

17 (D) A select agent or toxin regulated by the Centers for Disease  
18 Control and Prevention under part 73 of title 42, Code of Federal  
19 Regulations.

20 (10) STATE.—The term “State” means a State, the District of Co-  
21 lumbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands,  
22 Guam, American Samoa, and any other territory (including a posses-  
23 sion) of the United States.

24 (11) TERRORISM.—The term “terrorism” has the meaning that term  
25 has in section 10101 of this title.

26 (12) TRANSPORTATION.—The term “transportation”, as used with  
27 respect to an over-the-road bus, means the movement of passengers or  
28 property by an over-the-road bus—

29 (A) in the jurisdiction of the United States between a place in  
30 a State and a place outside the State (including a place outside  
31 the United States); or

32 (B) in a State that affects trade, traffic, and transportation de-  
33 scribed in subparagraph (A).

34 (13) UNITED STATES.—The term “United States” means the States,  
35 the District of Columbia, Puerto Rico, the Northern Mariana Islands,  
36 the Virgin Islands, Guam, American Samoa, and any other territory  
37 (including a possession) of the United States.

### 38 **§ 40702. Oversight and grant procedures**

39 (a) SECRETARIAL OVERSIGHT.—The Secretary, in coordination with the  
40 Secretary of Transportation for grants awarded to Amtrak, shall establish  
41 necessary procedures, including monitoring and audits, to ensure that

1 grants made under this chapter are expended in accordance with the pur-  
2 poses of this chapter and the priorities and other criteria developed by the  
3 Secretary.

4 (b) ADDITIONAL AUDITS AND REVIEWS.—The Secretary, and the Sec-  
5 retary of Transportation for grants awarded to Amtrak, may award con-  
6 tracts to undertake additional audits and reviews of the safety, security,  
7 procurement, management, and financial compliance of a recipient of  
8 amounts under this chapter.

9 (c) PROCEDURES FOR GRANT AWARD.—The Secretary shall prescribe  
10 procedures and schedules for the awarding of grants under this chapter, in-  
11 cluding application and qualification procedures, and a record of decision on  
12 applicant eligibility. The procedures shall include the execution of a grant  
13 agreement between the grant recipient and the Secretary and shall be con-  
14 sistent, to the extent practicable, with the grant procedures established  
15 under section 70107(i) and (j) of title 46.

16 (d) ADDITIONAL AUTHORITY.—

17 (1) ISSUANCE.—The Secretary may issue non-binding letters of in-  
18 tent to recipients of a grant under this chapter, to commit funding  
19 from future budget authority of an amount, not more than the Federal  
20 Government's share of the project's cost, for a capital improvement  
21 project.

22 (2) SCHEDULE.—The letter of intent under this subsection shall es-  
23 tablish a schedule under which the Secretary will reimburse the recipi-  
24 ent for the Government's share of the project's costs, as amounts be-  
25 come available, if the recipient, after the Secretary issues that letter,  
26 carries out the project without receiving amounts under a grant issued  
27 under this chapter.

28 (3) NOTICE TO SECRETARY.—A recipient that has been issued a let-  
29 ter of intent under this section shall notify the Secretary of the recipi-  
30 ent's intent to carry out a project before the project begins.

31 (4) Notice to congress.—The Secretary shall transmit to the appro-  
32 priate congressional committees a written notification at least 5 days  
33 before the issuance of a letter of intent under this subsection.

34 (5) Limitations.—A letter of intent issued under this subsection is  
35 not an obligation of the Federal Government under section 1501 of  
36 title 31, and the letter is not deemed to be an administrative commit-  
37 ment for financing. An obligation or administrative commitment may  
38 be made only as amounts are provided in authorization and appropri-  
39 ations laws.

40 (e) RETURN OF MISSPENT GRANT FUNDS.—As part of the grant agree-  
41 ment under subsection (c), the Secretary shall require grant applicants to

1 return misspent grant funds received under this chapter that the Secretary  
2 considers to have been spent for a purpose other than those specified in the  
3 grant award. The Secretary shall take all necessary actions to recover those  
4 funds.

5 (f) CONGRESSIONAL NOTIFICATION.—Not later than 5 days before the  
6 award of a grant is made under this chapter, the Secretary shall notify the  
7 appropriate congressional committees of the intent to award the grant.

8 (g) GUIDELINES.—The Secretary shall ensure, to the extent practicable,  
9 that grant recipients under this chapter who use contractors or subcontractors  
10 use small, minority, women-owned, or disadvantaged business concerns  
11 as contractors or subcontractors when appropriate.

## 12 **Subchapter II—Railroad Security**

### 13 **§40711. Railroad transportation security risk assessment** 14 **and National Strategy**

15 (a) RISK ASSESSMENT.—The Secretary shall establish a Federal task  
16 force, including the Transportation Security Administration and other agencies  
17 within the Department, the Department of Transportation, and other  
18 appropriate Federal agencies, to complete a nationwide risk assessment of  
19 a terrorist attack on railroad carriers. The assessment shall include—

20 (1) a methodology for conducting the risk assessment, including  
21 timelines, that addresses how the Department will work with the enti-  
22 ties described in subsection (c) and make use of existing Federal exper-  
23 tise within the Department, the Department of Transportation, and  
24 other appropriate agencies;

25 (2) identification and evaluation of critical assets and infrastructure,  
26 including tunnels used by railroad carriers in high-threat urban areas;

27 (3) identification of risks to those assets and infrastructure;

28 (4) identification of risks that are specific to the transportation of  
29 hazardous materials via railroad;

30 (5) identification of risks to passenger and cargo security, transpor-  
31 tation infrastructure protection systems, operations, communications  
32 systems, and any other area identified by the assessment;

33 (6) an assessment of employee training and emergency response  
34 planning;

35 (7) an assessment of public and private operational recovery plans,  
36 taking into account the plans for the maritime sector required under  
37 section 70103 of title 46, to expedite, to the maximum extent prac-  
38 ticable, the return of an adversely affected railroad transportation sys-  
39 tem or facility to its normal performance level after a major terrorist  
40 attack or other security event on that system or facility; and

1 (8) an account of actions taken or planned by both public and pri-  
2 vate entities to address identified railroad security issues and an as-  
3 sessment of the effective integration of the actions.

4 (b) NATIONAL STRATEGY.—

5 (1) REQUIREMENT.—Based upon the assessment conducted under  
6 subsection (a), the Secretary, consistent with and as required by sec-  
7 tion 11314 of this title, shall develop and implement the modal plan  
8 for railroad transportation, entitled the “National Strategy for Rail-  
9 road Transportation Security”.

10 (2) CONTENTS.—The modal plan shall include prioritized goals, ac-  
11 tions, objectives, policies, mechanisms, and schedules for, at a mini-  
12 mum—

13 (A) improving the security of railroad tunnels, railroad bridges,  
14 railroad switching and car storage areas, other railroad infrastruc-  
15 ture and facilities, information systems, and other areas identified  
16 by the Secretary as posing significant railroad-related risks to  
17 public safety and the movement of interstate commerce, taking  
18 into account the impact that a proposed security measure might  
19 have on the provision of railroad service or on operations served  
20 or otherwise affected by railroad service;

21 (B) deploying equipment and personnel to detect security  
22 threats, including those posed by explosives and hazardous chemi-  
23 cal, biological, and radioactive substances, and appropriate coun-  
24 termeasures;

25 (C) consistent with section 40716 of this title, training railroad  
26 employees in terrorism prevention, preparedness, passenger evacu-  
27 ation, and response activities;

28 (D) conducting public outreach campaigns for railroads regard-  
29 ing security, including educational initiatives designed to inform  
30 the public on how to prevent, prepare for, respond to, and recover  
31 from a terrorist attack on railroad transportation;

32 (E) providing additional railroad security support for railroads  
33 at high or severe threat levels of alert;

34 (F) ensuring, in coordination with freight and intercity and  
35 commuter passenger railroads, the continued movement of freight  
36 and passengers in the event of an attack affecting the railroad sys-  
37 tem, including the possibility of rerouting traffic due to the loss  
38 of critical infrastructure, such as a bridge, tunnel, yard, or station;

39 (G) coordinating existing and planned railroad security initia-  
40 tives undertaken by the public and private sectors;

41 (H) assessing

- 1 (i) the usefulness of covert testing of railroad security sys-  
2 tems;
- 3 (ii) the ability to integrate security into infrastructure de-  
4 sign; and
- 5 (iii) the implementation of random searches of passengers  
6 and baggage; and
- 7 (I) identifying the immediate and long-term costs of measures  
8 that may be required to address those risks and public and pri-  
9 vate-sector sources to fund the measures.
- 10 (3) RESPONSIBILITIES.—The Secretary shall include in the modal  
11 plan a description of the roles, responsibilities, and authorities of Fed-  
12 eral, State, and local agencies, government-sponsored entities, tribal  
13 governments, and appropriate stakeholders described in subsection (c).  
14 The plan also shall include—
- 15 (A) the identification of, and a plan to address, gaps and unnec-  
16 essary overlaps in the roles, responsibilities, and authorities de-  
17 scribed in this paragraph;
- 18 (B) a methodology for how the Department will work with the  
19 entities described in subsection (c), and make use of existing Fed-  
20 eral expertise within the Department, the Department of Trans-  
21 portation, and other appropriate agencies;
- 22 (C) a process for facilitating security clearances for the purpose  
23 of intelligence and information sharing with the entities described  
24 in subsection (c), as appropriate;
- 25 (D) a strategy and timeline, coordinated with the research and  
26 development program established under section 40717 of this title,  
27 for the Department, the Department of Transportation, other ap-  
28 propriate Federal agencies and private entities to research and de-  
29 velop new technologies for securing railroad systems; and
- 30 (E) a process for coordinating existing or future security strate-  
31 gies and plans for railroad transportation, including
- 32 (i) the National Infrastructure Protection Plan required by  
33 Homeland Security Presidential Directive 7;
- 34 (ii) Executive Order No. 13416: “Strengthening Surface  
35 Transportation Security” dated December 5, 2006 (71 Fed.  
36 Reg. 71033);
- 37 (iii) the Memorandum of Understanding between the De-  
38 partment and the Department of Transportation on Roles  
39 and Responsibilities dated September 28, 2004, subsequent  
40 annexes to this Memorandum of Understanding, and other  
41 relevant agreements between the two Departments.

1 (c) CONSULTATION WITH STAKEHOLDERS.—In developing the National  
2 Strategy required under this section, the Secretary shall consult with rail-  
3 road management, nonprofit employee organizations representing railroad  
4 employees, owners or lessors of railroad cars used to transport hazardous  
5 materials, emergency responders, offerors of security-sensitive materials,  
6 public safety officials, and other relevant parties.

7 (d) ADEQUACY OF EXISTING PLANS AND STRATEGIES.—In developing  
8 the risk assessment and National Strategy required under this section, the  
9 Secretary shall utilize relevant existing plans, strategies, and risk assess-  
10 ments developed by the Department or other Federal agencies, including  
11 those developed or implemented under section 11314 of this title, or Home-  
12 land Security Presidential Directive 7, and, as appropriate, assessments de-  
13 veloped by other public and private stakeholders.

14 (e) REPORT.—

15 (1) CONTENTS.—The Secretary shall transmit to the appropriate  
16 congressional committees a report containing

17 (A) the assessment and the National Strategy required by this  
18 section; and

19 (B) an estimate of the cost to implement the National Strategy.

20 (2) FORMAT.—The Secretary may submit the report in both classi-  
21 fied and redacted formats if the Secretary determines that it is appro-  
22 priate or necessary.

23 (f) ANNUAL UPDATES.—Consistent with the requirements of section  
24 11314 of this title, the Secretary shall update the assessment and National  
25 Strategy each year and transmit a report, which may be submitted in both  
26 classified and redacted formats, to the appropriate congressional committees  
27 containing the updated assessment and recommendations.

28 **§ 40712. Railroad carrier assessments and plans**

29 (a) IN GENERAL.—The Secretary shall issue regulations that—

30 (1) require each railroad carrier assigned to a high-risk tier under  
31 this section to—

32 (A) conduct a vulnerability assessment under subsections (c)  
33 and (d); and

34 (B) prepare, submit to the Secretary for approval, and imple-  
35 ment a security plan under this section that addresses security  
36 performance requirements; and

37 (2) establish standards and guidelines, based on and consistent with  
38 the risk assessment and National Strategy for Railroad Transportation  
39 Security developed under section 40711 of this title, for developing and  
40 implementing the vulnerability assessments and security plans for rail-  
41 road carriers assigned to high-risk tiers.



1 (b) NON HIGH-RISK PROGRAMS.—The Secretary may establish a security  
2 program for railroad carriers not assigned to a high-risk tier, including

3 (1) guidance for the carriers in conducting vulnerability assessments  
4 and preparing and implementing security plans, as determined appro-  
5 priate by the Secretary; and

6 (2) a process to review and approve the assessments and plans, as  
7 appropriate.

8 (c) SUBMISSION OF ASSESSMENTS AND SECURITY PLANS.—The vulner-  
9 ability assessments and security plans required by the regulations for rail-  
10 road carriers assigned to a high-risk tier shall be completed and submitted  
11 to the Secretary for review and approval.

12 (d) VULNERABILITY ASSESSMENTS.—

13 (1) REQUIREMENTS.—The Secretary shall provide technical assist-  
14 ance and guidance to railroad carriers in conducting vulnerability as-  
15 sessments under this section and shall require that each vulnerability  
16 assessment of a railroad carrier assigned to a high-risk tier under this  
17 section, include, as applicable—

18 (A) identification and evaluation of critical railroad carrier as-  
19 sets and infrastructure, including platforms, stations, intermodal  
20 terminals, tunnels, bridges, switching and storage areas, and infor-  
21 mation systems as appropriate;

22 (B) identification of the vulnerabilities to those assets and infra-  
23 structure;

24 (C) identification of strengths and weaknesses in—

25 (i) physical security;

26 (ii) passenger and cargo security, including the security of  
27 security-sensitive materials being transported by railroad or  
28 stored on railroad property;

29 (iii) programmable electronic devices, computers, or other  
30 automated systems which are used in providing the transpor-  
31 tation;

32 (iv) alarms, cameras, and other protection systems;

33 (v) communications systems and utilities needed for rail-  
34 road security purposes, including dispatching and notification  
35 systems;

36 (vi) emergency response planning;

37 (vii) employee training; and

38 (viii) other matters the Secretary determines appropriate;

39 and

40 (D) identification of redundant and backup systems required to  
41 ensure the continued operation of critical elements of a railroad

1 carrier's system in the event of an attack or other incident, includ-  
2 ing disruption of commercial electric power or communications  
3 network.

4 (2) THREAT INFORMATION.—The Secretary shall provide in a timely  
5 manner to the appropriate employees of a railroad carrier, as des-  
6 ignated by the railroad carrier, threat information that is relevant to  
7 the carrier when preparing and submitting a vulnerability assessment  
8 and security plan, including an assessment of the most likely methods  
9 that could be used by terrorists to exploit weaknesses in railroad secu-  
10 rity.

11 (e) SECURITY PLANS.—

12 (1) REQUIREMENTS.—The Secretary shall provide technical as-  
13 sistance and guidance to railroad carriers in preparing and imple-  
14 menting security plans under this section, and shall require that  
15 each security plan of a railroad carrier assigned to a high-risk tier  
16 under this section include, as applicable—

17 (A) identification of a security coordinator having authority

18 (i) to implement security actions under the plan;

19 (ii) to coordinate security improvements; and

20 (iii) to receive immediate communications from appropriate  
21 Federal officials regarding railroad security;

22 (B) a list of needed capital and operational improvements;

23 (C) procedures to be implemented or used by the railroad car-  
24 rier in response to a terrorist attack, including evacuation and  
25 passenger communication plans that include individuals with dis-  
26 abilities as appropriate;

27 (D) identification of steps taken with State and local law en-  
28 forcement agencies, emergency responders, and Federal officials to  
29 coordinate security measures and plans for response to a terrorist  
30 attack;

31 (E) a strategy and timeline for conducting training under sec-  
32 tion 40716 of this title;

33 (F) enhanced security measures to be taken by the railroad car-  
34 rier when the Secretary declares a period of heightened security  
35 risk;

36 (G) plans for providing redundant and backup systems required  
37 to ensure the continued operation of critical elements of the rail-  
38 road carrier's system in the event of a terrorist attack or other  
39 incident;

40 (H) a strategy for implementing enhanced security for ship-  
41 ments of security-sensitive materials, including plans for quickly

1            locating and securing the shipments in the event of a terrorist at-  
2            tack or security incident; and

3            (I) other actions or procedures the Secretary determines are ap-  
4            propriate to address the security of railroad carriers.

5            (2) SECURITY COORDINATOR REQUIREMENTS.—The Secretary shall  
6            require that the individual serving as the security coordinator identified  
7            in paragraph (1)(A) is a citizen of the United States. The Secretary  
8            may waive this requirement with respect to an individual if the Sec-  
9            retary determines that it is appropriate to do so based on a background  
10           check of the individual and a review of the consolidated terrorist watch-  
11           list.

12           (3) CONSISTENCY WITH OTHER PLANS.—The Secretary shall ensure  
13           that the security plans developed by railroad carriers under this section  
14           are consistent with the risk assessment and National Strategy for Rail-  
15           road Transportation Security developed under section 40711 of this  
16           title.

17           (f) DEADLINE FOR REVIEW PROCESS.—Not later than 6 months after re-  
18           ceiving the assessments and plans required under this section, the Secretary  
19           shall—

20           (1) review each vulnerability assessment and security plan submitted  
21           to the Secretary under subsection (c);

22           (2) require amendments to a security plan that does not meet the  
23           requirements of this section; and

24           (3) approve a vulnerability assessment or security plan that meets  
25           the requirements of this section.

26           (g) TIER ASSIGNMENT.—

27           (1) IN GENERAL.—Utilizing the risk assessment and National Strat-  
28           egy for Railroad Transportation Security required under section 40711  
29           of this title, the Secretary shall assign each railroad carrier to a risk-  
30           based tier established by the Secretary.

31           (2) PROVIDING INFORMATION.—The Secretary may request, and a  
32           railroad carrier shall provide, information necessary for the Secretary  
33           to assign a railroad carrier to the appropriate tier under this sub-  
34           section.

35           (3) NOTIFICATION.—Not later than 60 days after the date a railroad  
36           carrier is assigned to a tier under this subsection, the Secretary shall  
37           notify the railroad carrier of the tier to which it is assigned and the  
38           reasons for the assignment.

39           (4) HIGH-RISK TIERS.—At least one of the tiers established by the  
40           Secretary under this subsection shall be designated a tier for high-risk  
41           railroad carriers.

1           (5) REASSIGNMENT.—The Secretary may reassign a railroad carrier  
2           to another tier, as appropriate, in response to changes in risk. The Sec-  
3           retary shall notify the railroad carrier not later than 60 days after the  
4           reassignment and provide the railroad carrier with the reasons for the  
5           reassignment.

6           (h) NONDISCLOSURE OF INFORMATION.—

7           (1) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this  
8           section shall be construed as authorizing the withholding of information  
9           from Congress.

10          (2) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—  
11          Nothing in this section shall be construed as affecting the authority or  
12          obligation of a Federal agency to disclose a record or information that  
13          the Federal agency obtains from a railroad carrier under another Fed-  
14          eral law.

15          (i) EXISTING PROCEDURES, PROTOCOLS AND STANDARDS.—

16          (1) DETERMINATION.—In response to a petition by a railroad carrier  
17          or at the discretion of the Secretary, the Secretary may determine that  
18          existing procedures, protocols, and standards meet all or part of the  
19          requirements of this section, including regulations issued under sub-  
20          section (a), regarding vulnerability assessments and security plans.

21          (2) ELECTION.—Upon review and written determination by the Sec-  
22          retary that existing procedures, protocols, or standards of a railroad  
23          carrier satisfy the requirements of this section, the railroad carrier may  
24          elect to comply with those procedures, protocols, or standards instead  
25          of the requirements of this section.

26          (3) PARTIAL APPROVAL.—If the Secretary determines that the exist-  
27          ing procedures, protocols, or standards of a railroad carrier satisfy only  
28          part of the requirements of this section, the Secretary may accept the  
29          submission, but shall require submission by the railroad carrier of addi-  
30          tional information relevant to the vulnerability assessment and security  
31          plan of the railroad carrier to ensure that the remaining requirements  
32          of this section are fulfilled.

33          (4) NOTIFICATION.—If the Secretary determines that particular ex-  
34          isting procedures, protocols, or standards of a railroad carrier under  
35          this subsection do not satisfy the requirements of this section, the Sec-  
36          retary shall provide to the railroad carrier a written notification that  
37          includes an explanation of the determination.

38          (5) REVIEW.—Nothing in this subsection shall relieve the Secretary  
39          of the obligation—

40                  (A) to review the vulnerability assessment and security plan  
41                  submitted by a railroad carrier under this section; and

1 (B) to approve or disapprove each submission on an individual  
2 basis.

3 (j) PERIODIC EVALUATION BY RAILROAD CARRIERS REQUIRED.—

4 (1) SUBMISSION.—Not later than 3 years after the date on which  
5 a vulnerability assessment or security plan required to be submitted to  
6 the Secretary under subsection (c) is approved, and at least once every  
7 5 years after the approval (or on another schedule the Secretary may  
8 establish by regulation), a railroad carrier who submitted a vulner-  
9 ability assessment and security plan and who is still assigned to the  
10 high-risk tier must submit to the Secretary an evaluation of the ade-  
11 quacy of the vulnerability assessment and security plan that includes  
12 a description of material changes made to the vulnerability assessment  
13 or security plan.

14 (2) REVIEW.—Not later than 180 days after the date on which an  
15 evaluation is submitted, the Secretary shall review the evaluation and  
16 notify the railroad carrier submitting the evaluation of the Secretary's  
17 approval or disapproval of the evaluation.

18 (k) SHARED FACILITIES.—The Secretary may permit under this section  
19 the development and implementation of coordinated vulnerability assess-  
20 ments and security plans to the extent that a railroad carrier shares faci-  
21 ties with, or is co-located with, other transportation entities or providers  
22 that are required to develop vulnerability assessments and security plans  
23 under Federal law.

24 (l) CONSULTATION.—In carrying out this section, the Secretary shall con-  
25 sult with railroad carriers, nonprofit employee labor organizations represen-  
26 tation railroad employees, and public safety and law enforcement officials.

27 **§ 40713.**RAILROAD SECURITY ASSISTANCE

28 (a) SECURITY IMPROVEMENT GRANTS.—

29 (1) IN GENERAL.—The Secretary, in consultation with the Adminis-  
30 trator of the Transportation Security Administration and other appro-  
31 priate agencies or officials, may make grants to railroad carriers, the  
32 Alaska Railroad, security-sensitive materials offerors who ship by rail-  
33 road, owners of railroad cars used in the transportation of security-sen-  
34 sitive materials, State and local governments (for railroad passenger fa-  
35 cilities and infrastructure not owned by Amtrak), and Amtrak for  
36 intercity passenger railroad and freight railroad security improvements  
37 described in subsection (b) as approved by the Secretary.

38 (2) GRANT ELIGIBILITY.—A railroad carrier is eligible for a grant  
39 under this section if the carrier has completed a vulnerability assess-  
40 ment and developed a security plan that the Secretary has approved  
41 under section 40712 of this title.

1           (3) USE OF GRANTS.—A recipient of a grant under this section may  
2 use grant funds only for permissible uses under subsection (b) to fur-  
3 ther a railroad security plan that meets the requirements of paragraph  
4 (2).

5           (4) GRANTS FOR ASSESSMENTS AND PLANS.—Notwithstanding the  
6 requirement for eligibility and uses of funds in paragraphs (2) and (3),  
7 a railroad carrier is eligible for a grant under this section if the carrier  
8 uses the funds solely for the development of assessments or security  
9 plans under section 40712.

10          (b) USES OF FUNDS.—A recipient of a grant under this section shall use  
11 the grant funds for one or more of the following:

12           (1) SECURITY AND REDUNDANCY FOR CRITICAL COMMUNICATIONS,  
13 COMPUTER, AND TRAIN CONTROL SYSTEMS ESSENTIAL FOR SECURE  
14 RAILROAD OPERATIONS.

15           (2) ACCOMMODATION OF RAILROAD CARGO OR PASSENGER SECURITY  
16 INSPECTION FACILITIES, RELATED INFRASTRUCTURE, AND OPER-  
17 ATIONS AT OR NEAR UNITED STATES INTERNATIONAL BORDERS OR  
18 OTHER PORTS OF ENTRY.

19           (3) THE SECURITY OF SECURITY-SENSITIVE MATERIALS TRANSPOR-  
20 TATION BY RAILROAD.

21           (4) CHEMICAL, BIOLOGICAL, RADIOLOGICAL, OR EXPLOSIVE DETEC-  
22 TION, INCLUDING CANINE PATROLS FOR DETECTION.

23           (5) THE SECURITY OF INTERCITY PASSENGER RAILROAD STATIONS,  
24 TRAINS, AND INFRASTRUCTURE, INCLUDING SECURITY CAPITAL IM-  
25 PROVEMENT PROJECTS THAT THE SECRETARY DETERMINES ENHANCE  
26 RAILROAD STATION SECURITY.

27           (6) TECHNOLOGIES TO REDUCE THE VULNERABILITIES OF RAIL-  
28 ROAD CARS, INCLUDING STRUCTURAL MODIFICATION OF RAILROAD  
29 CARS TRANSPORTING SECURITY-SENSITIVE MATERIALS TO IMPROVE  
30 THEIR RESISTANCE TO ACTS OF TERRORISM.

31           (7) THE SHARING OF INTELLIGENCE AND INFORMATION ABOUT SE-  
32 CURITY THREATS.

33           (8) TO OBTAIN TRAIN TRACKING AND COMMUNICATIONS EQUIPMENT,  
34 INCLUDING EQUIPMENT THAT IS INTEROPERABLE WITH FEDERAL,  
35 STATE, AND LOCAL AGENCIES AND TRIBAL GOVERNMENTS.

36           (9) TO HIRE, TRAIN, AND EMPLOY POLICE AND SECURITY OFFICERS,  
37 INCLUDING CANINE UNITS, ASSIGNED TO FULL-TIME SECURITY OR  
38 COUNTERTERRORISM DUTIES RELATED TO RAILROAD TRANSPOR-  
39 TATION.

40           (10) OVERTIME REIMBURSEMENT, INCLUDING REIMBURSEMENT OF  
41 STATE, LOCAL, AND TRIBAL GOVERNMENTS FOR COSTS, FOR EN-

1 HANCED SECURITY PERSONNEL ASSIGNED TO DUTIES RELATED TO  
2 RAILROAD SECURITY DURING PERIODS OF HIGH OR SEVERE THREAT  
3 LEVELS AND NATIONAL SPECIAL SECURITY EVENTS OR OTHER PERI-  
4 ODS OF HEIGHTENED SECURITY AS DETERMINED BY THE SECRETARY.

5 (11) PERIMETER PROTECTION SYSTEMS, INCLUDING ACCESS CON-  
6 TROL, INSTALLATION OF IMPROVED LIGHTING, FENCING, AND BARRI-  
7 CADES AT RAILROAD FACILITIES.

8 (12) TUNNEL PROTECTION SYSTEMS.

9 (13) PASSENGER EVACUATION AND EVACUATION-RELATED CAPITAL  
10 IMPROVEMENTS.

11 (14) RAILROAD SECURITY INSPECTION TECHNOLOGIES, INCLUDING  
12 VERIFIED VISUAL INSPECTION TECHNOLOGIES USING HAND-HELD  
13 READERS.

14 (15) SURVEILLANCE EQUIPMENT.

15 (16) CARGO OR PASSENGER SCREENING EQUIPMENT.

16 (17) EMERGENCY RESPONSE EQUIPMENT, INCLUDING FIRE SUP-  
17 PPRESSION AND DECONTAMINATION EQUIPMENT, PERSONAL PROTEC-  
18 TIVE EQUIPMENT, AND DEFIBRILLATORS.

19 (18) OPERATING AND CAPITAL COSTS ASSOCIATED WITH SECURITY  
20 AWARENESS, PREPAREDNESS, AND RESPONSE TRAINING, INCLUDING  
21 TRAINING UNDER SECTION 40716 OF THIS TITLE, AND TRAINING DE-  
22 VELOPED BY UNIVERSITIES, INSTITUTIONS OF HIGHER EDUCATION,  
23 AND NONPROFIT EMPLOYEE LABOR ORGANIZATIONS, FOR RAILROAD  
24 EMPLOYEES, INCLUDING FRONTLINE EMPLOYEES.

25 (19) LIVE OR SIMULATED EXERCISES, INCLUDING EXERCISES DE-  
26 SCRIBED IN SECTION 40715 OF THIS TITLE.

27 (20) PUBLIC AWARENESS CAMPAIGNS FOR ENHANCED RAILROAD SE-  
28 CURITY.

29 (21) DEVELOPMENT OF ASSESSMENTS OR SECURITY PLANS UNDER  
30 SECTION 40712 OF THIS TITLE.

31 (22) OTHER SECURITY IMPROVEMENTS—

32 (A) identified, required, or recommended under sections 40711  
33 and 40712 of this title, including infrastructure, facilities, and  
34 equipment upgrades; or

35 (B) that the Secretary considers appropriate.

36 (c) DEPARTMENTAL RESPONSIBILITIES.—In carrying out the responsibil-  
37 ities under subsection (a), the Secretary shall—

38 (1) determine the requirements for recipients of grants;

39 (2) establish priorities for uses of funds for grant recipients;

1 (3) award the funds authorized by this section based on risk, as  
2 identified by the plans required under sections 40711 and 40712 of  
3 this title;

4 (4) take into account whether stations or facilities are used by com-  
5 muter railroad passengers as well as intercity railroad passengers in re-  
6 viewing grant applications;

7 (5) encourage non-Federal financial participation in projects funded  
8 by grants; and

9 (6) not later than 5 business days after awarding a grant to Amtrak  
10 under this section, transfer grant funds to the Secretary of Transpor-  
11 tation to be disbursed to Amtrak.

12 (d) MULTIYEAR AWARDS.—Grant funds awarded under this section may  
13 be awarded for projects that span multiple years.

14 (e) LIMITATION ON USES OF FUNDS.—A grant made under this section  
15 may not be used to make a State or local government cost-sharing contribu-  
16 tion under any other Federal law.

17 (f) ANNUAL REPORTS.—Each recipient of a grant under this section shall  
18 report annually to the Secretary on the use of grant funds.

19 (g)

20 Subject to Certain Standards.—A recipient of a grant under this section  
21 and section 40714 of this title shall be required to comply with the stand-  
22 ards of section 24312 of title 49, as in effect on January 1, 2007, with re-  
23 spect to the project, in the same manner as Amtrak is required to comply  
24 with the standards for construction work financed under an agreement  
25 made under section 24308(a) of title 49.

26 **§ 40714. Systemwide Amtrak security upgrades**

27 (a) IN GENERAL.—

28 (1) GRANTS.—Subject to subsection (b), the Secretary, in consulta-  
29 tion with the Administrator of the Transportation Security Administra-  
30 tion, may make grants to Amtrak under this section.

31 (2) GENERAL PURPOSES.—The Secretary may make grants for the  
32 purposes of—

33 (A) protecting underwater and underground assets and systems;

34 (B) protecting high-risk and high-consequence assets identified  
35 through system-wide risk assessments;

36 (C) providing counterterrorism or security training;

37 (D) providing both visible and unpredictable deterrence; and

38 (E) conducting emergency preparedness drills and exercises.

39 (3) SPECIFIC PROJECTS.—The Secretary shall make grants—

40 (A) to secure major tunnel access points and ensure tunnel in-  
41 tegrity in New York, New Jersey, Maryland, and Washington, DC;



- 1 (B) to secure Amtrak trains;
- 2 (C) to secure Amtrak stations;
- 3 (D) to obtain a watchlist identification system approved by the  
4 Secretary;
- 5 (E) to obtain train tracking and interoperable communications  
6 systems that are coordinated with Federal, State, and local agen-  
7 cies and tribal governments to the maximum extent possible;
- 8 (F) to hire, train, and employ police and security officers, in-  
9 cluding canine units, assigned to full-time security or counter-  
10 terrorism duties related to railroad transportation;
- 11 (G) for operating and capital costs associated with security  
12 awareness, preparedness, and response training, including training  
13 under section 40716 of this title, and training developed by univer-  
14 sities, institutions of higher education, and nonprofit employee  
15 labor organizations, for railroad employees, including frontline em-  
16 ployees; and
- 17 (H) for live or simulated exercises, including exercises described  
18 in section 40715 of this title.

19 (b) CONDITIONS.—The Secretary shall award grants to Amtrak under  
20 this section for projects contained in a system-wide security plan approved  
21 by the Secretary developed under section 40712 of this title. Not later than  
22 5 business days after awarding a grant to Amtrak under this section, the  
23 Secretary shall transfer the grant funds to the Secretary of Transportation  
24 to be disbursed to Amtrak.

25 (c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Secretary shall ensure  
26 that, subject to meeting the highest security needs on Amtrak's entire sys-  
27 tem and consistent with the risk assessment required under section 40711  
28 of this title and Amtrak's vulnerability assessment and security plan devel-  
29 oped under section 40712 of this title, stations and facilities located outside  
30 of the Northeast Corridor receive an equitable share of the security funds  
31 authorized by this section.

32 **§ 40715. Railroad carrier exercises**

33 (a) IN GENERAL.—The Secretary shall establish a program for conduct-  
34 ing security exercises for railroad carriers for the purpose of assessing and  
35 improving the capabilities of entities described in subsection (b) to prevent,  
36 prepare for, mitigate, respond to, and recover from acts of terrorism.

37 (b) COVERED ENTITIES.—Entities to be assessed under the program in-  
38 clude—

- 39 (1) Federal, State, and local agencies and tribal governments;
- 40 (2) railroad carriers;

1 (3) governmental and nongovernmental emergency response provid-  
2 ers, law enforcement agencies, and railroad and transit police, as ap-  
3 propriate; and

4 (4) any other organization or entity that the Secretary determines  
5 appropriate.

6 (c) REQUIREMENTS.—The Secretary shall ensure that the program—

7 (1) consolidates existing security exercises for railroad carriers ad-  
8 ministered by the Department and the Department of Transportation,  
9 as jointly determined by the Secretary and the Secretary of Transpor-  
10 tation, unless the Secretary waives this consolidation requirement as  
11 appropriate;

12 (2) consists of exercises that are—

13 (A) scaled and tailored to the needs of the carrier, including ad-  
14 dressing the needs of the elderly and individuals with disabilities;

15 (B) live, in the case of the most at-risk facilities to a terrorist  
16 attack;

17 (C) coordinated with appropriate officials;

18 (D) as realistic as practicable and based on current risk assess-  
19 ments, including credible threats, vulnerabilities, and conse-  
20 quences;

21 (E) inclusive, as appropriate, of railroad frontline employees;  
22 and

23 (F) consistent with the National Incident Management System,  
24 the National Response Plan, the National Infrastructure Protec-  
25 tion Plan, the National Preparedness Guidance, the National Pre-  
26 paredness Goal, and other national initiatives of this type;

27 (3) provides that exercises described in paragraph (2) will be—

28 (A) evaluated by the Secretary against clear and consistent per-  
29 formance measures;

30 (B) assessed by the Secretary to identify best practices, which  
31 shall be shared, as appropriate, with railroad carriers, nonprofit  
32 employee organizations that represent railroad carrier employees,  
33 Federal, State, local, and tribal officials, governmental and non-  
34 governmental emergency response providers, law enforcement per-  
35 sonnel, including railroad carrier and transit police, and other  
36 stakeholders; and

37 (C) used to develop recommendations, as appropriate, from the  
38 Secretary to railroad carriers on remedial action to be taken in re-  
39 sponse to lessons learned;

40 (4) allows for proper advanced notification of communities and local  
41 governments in which exercises are held, as appropriate; and

1 (5) assists State, local, and tribal governments and railroad carriers  
2 in designing, implementing, and evaluating additional exercises that  
3 conform to the requirements of paragraph (1).

4 (d) NATIONAL EXERCISE PROGRAM.—The Secretary shall ensure that the  
5 exercise program developed under subsection (c) is a component of the Na-  
6 tional Exercise Program established under section 20508 of this title.

7 **§ 40716. Railroad security training program**

8 (a) IN GENERAL.—The Secretary shall develop and issue regulations for  
9 a training program to prepare railroad frontline employees for potential se-  
10 curity threats and conditions. The regulations shall take into consideration  
11 current security training requirements or best practices.

12 (b) CONSULTATION.—The Secretary shall develop the regulations under  
13 subsection (a) in consultation with—

14 (1) appropriate law enforcement, fire service, emergency response,  
15 security, and terrorism experts;

16 (2) railroad carriers;

17 (3) railroad shippers; and

18 (4) nonprofit employee labor organizations representing railroad em-  
19 ployees or emergency response personnel.

20 (c) PROGRAM ELEMENTS.—The regulations developed under subsection  
21 (a) shall require security training programs described in subsection (a) to  
22 include, at a minimum, elements to address the following, as applicable:

23 (1) Determination of the seriousness of an occurrence or threat.

24 (2) Crew and passenger communication and coordination.

25 (3) Appropriate responses to defend or protect oneself.

26 (4) Use of personal and other protective equipment.

27 (5) Evacuation procedures for passengers and railroad employees, in-  
28 cluding individuals with disabilities and the elderly.

29 (6) Psychology, behavior, and methods of terrorists, including obser-  
30 vation and analysis.

31 (7) Training related to psychological responses to terrorist incidents,  
32 including the ability to cope with hijacker behavior and passenger re-  
33 sponses.

34 (8) Live situational training exercises regarding various threat condi-  
35 tions, including tunnel evacuation procedures.

36 (9) Recognition and reporting of dangerous substances, suspicious  
37 packages, and situations.

38 (10) Understanding security incident procedures, including proce-  
39 dures for communicating with governmental and nongovernmental  
40 emergency response providers and for on-scene interaction with emer-  
41 gency response providers.

1 (11) Operation and maintenance of security equipment and systems.

2 (12) Other security training activities that the Secretary considers  
3 appropriate.

4 (d) SUBMITTING PROGRAM TO SECRETARY FOR APPROVAL.—Each rail-  
5 road carrier shall develop a security training program under this section and  
6 submit the program to the Secretary for approval. Not later than 60 days  
7 after receiving a security training program proposal under this subsection,  
8 the Secretary shall approve the program or require the railroad carrier that  
9 developed the program to make revisions to the program that the Secretary  
10 considers necessary for the program to meet the requirements of this sec-  
11 tion. A railroad carrier shall respond to the Secretary's comments within 30  
12 days after receiving them.

13 (e) TRAINING.—Not later than 1 year after the Secretary approves a se-  
14 curity training program under subsection (d), the railroad carrier that devel-  
15 oped the program shall complete the training of all railroad frontline em-  
16 ployees who were hired by a carrier more than 30 days preceding the ap-  
17 proval date. For employees employed less than 30 days by a carrier preced-  
18 ing the approval date, training shall be completed within the first 60 days  
19 of employment.

20 (f) UPDATES OF REGULATIONS AND PROGRAM REVISIONS.—The Sec-  
21 retary periodically shall review and update as appropriate the training regu-  
22 lations issued under subsection (a) to reflect new or changing security  
23 threats. Each railroad carrier shall revise its training program accordingly  
24 and provide additional training as necessary to its frontline employees with-  
25 in a reasonable time after the regulations are updated.

26 (g) PROGRAM COMPONENT OF NATIONAL TRAINING PROGRAM.—The  
27 Secretary shall ensure that the training program developed under subsection  
28 (a) is a component of the National Training Program established under sec-  
29 tion 20508 of this title.

30 (h) OTHER EMPLOYEES.—The Secretary shall issue guidance and best  
31 practices for a railroad shipper employee security program containing the  
32 elements listed under subsection (e).

### 33 **§ 40717. Railroad security research and development**

34 (a) ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.—The  
35 Secretary, acting through the Under Secretary for Science and Technology  
36 and the Administrator of the Transportation Security Administration, shall  
37 carry out a research and development program for the purpose of improving  
38 the security of railroad transportation systems.

39 (b) ELIGIBLE PROJECTS.—The research and development program may  
40 include projects—

1 (1) to reduce the vulnerability of passenger trains, stations, and  
2 equipment to explosives and hazardous chemical, biological, and radio-  
3 active substances, including the development of technology to screen  
4 passengers in large numbers at peak commuting times with minimal in-  
5 terference and disruption;

6 (2) to test new emergency response and recovery techniques and  
7 technologies, including those used at international borders;

8 (3) to develop improved railroad security technologies, including—

9 (A) technologies for sealing or modifying railroad tank cars;

10 (B) automatic inspection of railroad cars;

11 (C) communication-based train control systems;

12 (D) emergency response training, including training in a tunnel  
13 environment;

14 (E) security and redundancy for critical communications, elec-  
15 trical power, computer, and train control systems; and

16 (F) technologies for securing bridges and tunnels;

17 (4) to test wayside detectors that can detect tampering;

18 (5) to support enhanced security for the transportation of security-  
19 sensitive materials by railroad;

20 (6) to mitigate damages in the event of a cyberattack; and

21 (7) to address other vulnerabilities and risks identified by the Sec-  
22 retary.

23 (c) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Sec-  
24 retary—

25 (1) shall ensure that the research and development program is con-  
26 sistent with the National Strategy for Railroad Transportation Security  
27 developed under section 40711 of this title and other transportation se-  
28 curity research and development programs required by this subtitle;

29 (2) shall, to the extent practicable, coordinate the research and de-  
30 velopment activities of the Department with other ongoing research and  
31 development security-related initiatives, including research being con-  
32 ducted by—

33 (A) the Department of Transportation, including University  
34 Transportation Centers and other institutes, centers, and simula-  
35 tors funded by the Department of Transportation;

36 (B) the National Academy of Sciences;

37 (C) the Technical Support Working Group;

38 (D) other Federal departments and agencies; and

39 (E) other Federal and private research laboratories, research  
40 entities, and universities and institutions of higher education, in-  
41 cluding Historically Black Colleges and Universities, Hispanic

1           Serving Institutions, or Indian Tribally Controlled Colleges and  
2           Universities;

3           (3) shall carry out a research and development project authorized by  
4           this section through a reimbursable agreement with an appropriate  
5           Federal agency, if the agency—

6                 (A) is currently sponsoring a research and development project  
7                 in a similar area; or

8                 (B) has a unique facility or capability that would be useful in  
9                 carrying out the project;

10           (4) may award grants to, or enter into cooperative agreements, con-  
11           tracts, other transactions, or reimbursable agreements with, the entities  
12           described in paragraph (2) and eligible grant recipients under section  
13           40713 of this title; and

14           (5) shall make reasonable efforts to enter into memoranda of under-  
15           standing, contracts, grants, cooperative agreements, or other trans-  
16           actions with railroad carriers willing to contribute both physical space  
17           and other resources.

18           (d) **PRIVACY AND CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES.—**

19                 (1) **CONSULTATION.**—In carrying out research and development  
20                 projects under this section, the Secretary shall consult with the Chief  
21                 Privacy Officer of the Department and the Officer for Civil Rights and  
22                 Civil Liberties of the Department as appropriate and under section  
23                 10532 of this title.

24                 (2) **PRIVACY IMPACT ASSESSMENTS.**—In accordance with sections  
25                 10532 and 11505 of this title, the Chief Privacy Officer shall conduct  
26                 privacy impact assessments and the Officer for Civil Rights and Civil  
27                 Liberties shall conduct reviews, as appropriate, for research and devel-  
28                 opment initiatives developed under this section that the Secretary de-  
29                 termines could have an impact on privacy, civil rights, or civil liberties.

30           **§ 40718. Railroad tank car security testing**

31           (a) **Vulnerability Assessment.**—

32                 (1) **LIKELY METHODS AND SUCCESS.**—The Secretary shall assess the  
33                 likely methods of a deliberate terrorist attack against a railroad tank  
34                 car used to transport toxic-inhalation-hazard materials, and for each  
35                 method assessed, the degree to which it may be successful in causing  
36                 death, injury, or serious adverse effects to human health, the environ-  
37                 ment, critical infrastructure, national security, the national economy, or  
38                 public welfare.

39                 (2) **THREATS.**—In carrying out paragraph (1), the Secretary shall  
40                 consider the most current threat information as to likely methods of

1 a successful terrorist attack on a railroad tank car transporting toxic-  
2 inhalation-hazard materials, and may consider the following:

3 (A) Explosive devices placed along the tracks or attached to a  
4 railroad tank car.

5 (B) The use of missiles, grenades, rockets, mortars, or other  
6 high-caliber weapons against a railroad tank car.

7 (3) PHYSICAL TESTING.—In developing the assessment required  
8 under paragraph (1), the Secretary shall conduct physical testing of the  
9 vulnerability of railroad tank cars used to transport toxic-inhalation-  
10 hazard materials to different methods of a deliberate attack, using  
11 technical information and criteria to evaluate the structural integrity  
12 of railroad tank cars.

13 (b) DISPERSION MODELING.—

14 (1) IN GENERAL.—The Secretary, acting through the National Infra-  
15 structure Simulation and Analysis Center, shall conduct an air disper-  
16 sion modeling analysis of release scenarios of toxic-inhalation-hazard  
17 materials resulting from a terrorist attack on a loaded railroad tank  
18 car carrying these materials in urban and rural environments.

19 (2) CONSIDERATIONS.—The analysis under this subsection shall take  
20 into account the following considerations:

21 (A) The most likely means of attack and the resulting dispersal  
22 rate.

23 (B) Different times of day, to account for differences in cloud  
24 coverage and other atmospheric conditions in the environment  
25 being modeled.

26 (C) Differences in population size and density.

27 (D) Historically accurate wind speeds, temperatures, and wind  
28 directions.

29 (E) Differences in dispersal rates or other relevant factors relat-  
30 ed to whether a railroad tank car is in motion or stationary.

31 (F) Emergency response procedures by local officials.

32 (G) Other considerations the Secretary believes would develop  
33 an accurate, plausible dispersion model for toxic-inhalation-hazard  
34 materials released from a railroad tank car as a result of a terror-  
35 ist act.

36 (3) CONSULTATION.—In conducting the dispersion modeling under  
37 paragraph (1), the Secretary shall consult with the Secretary of Trans-  
38 portation, hazardous materials experts, railroad carriers, nonprofit em-  
39 ployee labor organizations representing railroad employees, appropriate  
40 State, local, and tribal officials, and other Federal agencies, as appro-  
41 priate.

1           (4) INFORMATION SHARING.—Upon completion of the analysis re-  
2           quired under paragraph (1), the Secretary shall share the information  
3           developed with the appropriate stakeholders, given appropriate informa-  
4           tion protection provisions as may be required by the Secretary.

5   **§ 40719. Security background checks of covered individuals**

6           (a) DEFINITIONS.—In this section:

7           (1) COVERED INDIVIDUAL.—The term “covered individual” means  
8           an employee of a railroad carrier or a contractor or subcontractor of  
9           a railroad carrier.

10          (2) SECURITY BACKGROUND CHECK.—The term “security back-  
11          ground check” means for the purpose of identifying individuals who  
12          may pose a threat to transportation security or national security, or of  
13          terrorism—

14                (A) relevant criminal history databases;

15                (B) in the case of an alien (as defined in the Immigration and  
16                Nationality Act (8 U.S.C. 1101(a)(3)), the relevant databases to  
17                determine the status of the alien under the immigration laws of  
18                the United States; and

19                (C) other relevant information or databases, as determined by  
20                the Secretary.

21          (b) GUIDANCE.—

22                (1) IN GENERAL.—Guidance, recommendations, suggested action  
23                items, and other widely disseminated voluntary action items issued by  
24                the Secretary to a railroad carrier or a contractor or subcontractor of  
25                a railroad carrier relating to performing a security background check  
26                of a covered individual shall contain recommendations on the appro-  
27                priate scope and application of a security background check, including  
28                the time period covered, the types of disqualifying offenses, and a re-  
29                dress process for adversely impacted covered individuals consistent with  
30                subsections (c) and (d).

31                (2) UPDATE OF EXISTING GUIDANCE.—Guidance, recommendations,  
32                suggested action items, and other widely disseminated voluntary action  
33                items issued by the Secretary prior to August, 3, 2007, to a railroad  
34                carrier or a contractor or subcontractor of a railroad carrier relating  
35                to performing a security background check of a covered individual shall  
36                be updated in compliance with paragraph (1).

37                (3) NECESSARY REDRESS PROCEDURE.—If a railroad carrier or a  
38                contractor or subcontractor of a railroad carrier performs a security  
39                background check on a covered individual to fulfill guidance issued by  
40                the Secretary under paragraph (1) or (2), the Secretary shall not con-



1           sider the guidance fulfilled unless an adequate redress process as de-  
2           scribed in subsection (d) is provided to covered individuals.

3           (c) REQUIREMENTS.—If the Secretary issues a rule, regulation, or direc-  
4           tive requiring a railroad carrier or contractor or subcontractor of a railroad  
5           carrier to perform a security background check of a covered individual, the  
6           Secretary shall prohibit the railroad carrier or contractor or subcontractor  
7           of a railroad carrier from making an adverse employment decision, including  
8           removal or suspension of the covered individual, due to the rule, regulation,  
9           or directive with respect to a covered individual unless the railroad carrier  
10          or contractor or subcontractor of a railroad carrier determines that the cov-  
11          ered individual—

12           (1) has been convicted of, has been found not guilty by reason of  
13           insanity, or is under want, warrant, or indictment for a permanent dis-  
14           qualifying criminal offense listed in part 1572 of title 49, Code of Fed-  
15           eral Regulations;

16           (2) was convicted of or found not guilty by reason of insanity of an  
17           interim disqualifying criminal offense listed in part 1572 of title 49,  
18           Code of Federal Regulations, within 7 years of the date that the rail-  
19           road carrier or contractor or subcontractor of a railroad carrier per-  
20           forms the security background check; or

21           (3) was incarcerated for an interim disqualifying criminal offense  
22           listed in part 1572 of title 49, Code of Federal Regulations, and re-  
23           leased from incarceration within 5 years of the date that the railroad  
24           carrier or contractor or subcontractor of a railroad carrier performs the  
25           security background check.

26           (d) REDRESS PROCESS.—If the Secretary issues a rule, regulation, or di-  
27           rective requiring a railroad carrier or contractor or subcontractor of a rail-  
28           road carrier to perform a security background check of a covered individual,  
29           the Secretary shall—

30           (1) provide an adequate redress process for a covered individual sub-  
31           jected to an adverse employment decision, including removal or suspen-  
32           sion of the employee, due to the rule, regulation, or directive that is  
33           consistent with the appeals and waiver process established for appli-  
34           cants for commercial motor vehicle hazardous materials endorsements  
35           and transportation employees at ports, as required by section 70105(c)  
36           of title 46; and

37           (2) have the authority to order an appropriate remedy, including re-  
38           instatement of the covered individual, should the Secretary determine  
39           that a railroad carrier or contractor or subcontractor of a railroad car-  
40           rier wrongfully made an adverse employment decision regarding a cov-  
41           ered individual pursuant to the rule, regulation, or directive.

1 (e) FALSE STATEMENTS.—A railroad carrier or a contractor or sub-  
2 contractor of a railroad carrier may not knowingly misrepresent to an em-  
3 ployee or other relevant person, including an arbiter involved in a labor arbi-  
4 tration, the scope, application, or meaning of rules, regulations, directives,  
5 or guidance issued by the Secretary related to security background check  
6 requirements for covered individuals when conducting a security background  
7 check. The Secretary shall issue a regulation that prohibits a railroad car-  
8 rier or a contractor or subcontractor of a railroad carrier from knowingly  
9 misrepresenting to an employee or other relevant person, including an arbi-  
10 ter involved in a labor arbitration, the scope, application, or meaning of  
11 rules, regulations, directives, or guidance issued by the Secretary related to  
12 security background check requirements for covered individuals when con-  
13 ducting a security background check.

14 (f) RIGHTS AND RESPONSIBILITIES.—Nothing in this section shall be  
15 construed to abridge a railroad carrier’s or a contractor or subcontractor  
16 of a railroad carrier’s rights or responsibilities to make adverse employment  
17 decisions permitted by other Federal, State, or local laws. Nothing in the  
18 section shall be construed to abridge rights and responsibilities of covered  
19 individuals, a railroad carrier, or a contractor or subcontractor of a railroad  
20 carrier, under other Federal, State, or local laws or under a collective bar-  
21 gaining agreement.

22 (g) NO PREEMPTION OF FEDERAL OR STATE LAW.—Nothing in this sec-  
23 tion shall be construed to preempt a Federal, State, or local law that re-  
24 quires criminal history background checks, immigration status checks, or  
25 other background checks, of covered individuals.

26 (h) PROCESS FOR REVIEW NOT AFFECTED.—NOTHING IN THIS SECTION  
27 SHALL BE CONSTRUED TO AFFECT THE PROCESS FOR REVIEW ESTAB-  
28 LISHED UNDER SECTION 70105(C) OF TITLE 46, INCLUDING REGULATIONS IS-  
29 SUED UNDER THAT SECTION.

30 **§ 40720. International railroad security program**

31 (a) DEFINITIONS.—In this section:

32 (1) INSPECTION.—The term “inspection” means the comprehensive  
33 process used by the Bureau of Customs and Border Protection to as-  
34 sess goods entering the United States to appraise them for duty pur-  
35 poses, to detect the presence of restricted or prohibited items, and to  
36 ensure compliance with all applicable laws.

37 (2) INTERNATIONAL SUPPLY CHAIN.—The term “international sup-  
38 ply chain” means the end-to-end process for shipping goods to or from  
39 the United States, beginning at the point of origin (including manufac-  
40 turer, supplier, or vendor) through a point of distribution to the des-  
41 tination.

1           (3) Radiation detection equipment.—The term “radiation detection  
2           equipment” means technology that is capable of detecting or identifying  
3           nuclear and radiological material or nuclear and radiological explosive  
4           devices.

5           (b) IN GENERAL.—

6           (1) DETECTION SYSTEM.—The Secretary shall develop a system to  
7           detect both undeclared passengers and contraband, with a primary  
8           focus on the detection of nuclear and radiological materials entering  
9           the United States by railroad.

10          (2) SYSTEM REQUIREMENTS.—In developing the system under para-  
11          graph (1), the Secretary may, in consultation with the Domestic Nu-  
12          clear Detection Office, Bureau of Customs and Border Protection, and  
13          Transportation Security Administration—

14                (A) deploy radiation detection equipment and nonintrusive im-  
15                aging equipment at locations where railroad shipments cross an  
16                international border to enter the United States;

17                (B) consider the integration of radiation detection technologies  
18                with other nonintrusive inspection technologies where feasible;

19                (C) ensure appropriate training, operations, and response proto-  
20                cols are established for Federal, State, and local personnel;

21                (D) implement alternative procedures to check railroad ship-  
22                ments at locations where the deployment of nonintrusive inspection  
23                imaging equipment is determined to not be practicable;

24                (E) ensure, to the extent practicable, that the technologies de-  
25                ployed can detect terrorists or weapons, including weapons of mass  
26                destruction; and

27                (F) take other actions, as appropriate, to develop the system.

28          (c) ADDITIONAL INFORMATION.—The Secretary shall—

29                (1) identify and seek the submission of additional data elements for  
30                improved high-risk targeting related to the movement of cargo through  
31                the international supply chain utilizing a railroad prior to importation  
32                into the United States;

33                (2) utilize data collected and maintained by the Secretary of Trans-  
34                portation in the targeting of high-risk cargo identified under paragraph  
35                (1); and

36                (3) analyze the data provided in this subsection to identify high-risk  
37                cargo for inspection.

### 38                               **Subchapter III—Over-the-Road Bus Security**

#### 39                   **§ 40731. Assessments and plans**

40          (a) IN GENERAL.—The Secretary shall issue regulations that—

1 (1) require each over-the-road bus operator assigned to a high-risk  
2 tier under this section—

3 (A) to conduct a vulnerability assessment under subsections (c)  
4 and (d); and

5 (B) to prepare, submit to the Secretary for approval, and imple-  
6 ment a security plan under subsection (e); and

7 (2) establish standards and guidelines for developing and implement-  
8 ing the vulnerability assessments and security plans for carriers as-  
9 signed to high-risk tiers consistent with this section.

10 (b) NON HIGH-RISK PROGRAMS.—The Secretary may establish a security  
11 program for over-the-road bus operators not assigned to a high-risk tier, in-  
12 cluding

13 (1) guidance for operators in conducting vulnerability assessments  
14 and preparing and implementing security plans, as determined appro-  
15 priate by the Secretary; and

16 (2) a process to review and approve the assessments and plans, as  
17 appropriate.

18 (c) SUBMISSION OF ASSESSMENTS AND SECURITY PLANS.—The vulner-  
19 ability assessments and security plans required by the regulations for over-  
20 the-road bus operators assigned to a high-risk tier shall be completed and  
21 submitted to the Secretary for review and approval.

22 (d) Vulnerability Assessments.—

23 (1) REQUIREMENTS.—The Secretary shall provide technical assist-  
24 ance and guidance to over-the-road bus operators in conducting vulner-  
25 ability assessments under this section and shall require that each vul-  
26 nerability assessment of an operator assigned to a high-risk tier under  
27 this section includes, as appropriate

28 (A) identification and evaluation of critical assets and infra-  
29 structure, including platforms, stations, terminals, and information  
30 systems;

31 (B) identification of the vulnerabilities to those assets and infra-  
32 structure; and

33 (C) identification of weaknesses in—

34 (i) physical security;

35 (ii) passenger and cargo security;

36 (iii) the security of programmable electronic devices, com-  
37 puters, or other automated systems which are used in provid-  
38 ing over-the-road bus transportation;

39 (iv) alarms, cameras, and other protection systems;

40 (v) communications systems and utilities needed for over-  
41 the-road bus security purposes, including dispatching systems;

- 1 (vi) emergency response planning
- 2 (vii) employee training; and
- 3 (viii) Other matters the Secretary determines appropriate.

4 (2) THREAT INFORMATION.—The Secretary shall provide in a timely  
5 manner to the appropriate employees of an over-the-road bus operator,  
6 as designated by the over-the-road bus operator, threat information  
7 that is relevant to the operator when preparing and submitting a vul-  
8 nerability assessment and security plan, including an assessment of the  
9 most likely methods that could be used by terrorists to exploit weak-  
10 nesses in over-the-road bus security.

11 (e) SECURITY PLANS.—

12 (1) REQUIREMENTS.—The Secretary shall provide technical assist-  
13 ance and guidance to over-the-road bus operators in preparing and im-  
14 plementing security plans under this section and shall require that each  
15 security plan of an over-the-road bus operator assigned to a high-risk  
16 tier under this section includes, as appropriate

17 (A) the identification of a security coordinator having authority

18 (i) to implement security actions under the plan;

19 (ii) to coordinate security improvements; and

20 (iii) to receive communications from appropriate Federal  
21 officials regarding over-the-road bus security;

22 (B) a list of needed capital and operational improvements;

23 (C) procedures to be implemented or used by the over-the-road  
24 bus operator in response to a terrorist attack, including evacuation  
25 and passenger communication plans that include individuals with  
26 disabilities, as appropriate;

27 (D) the identification of steps taken with State and local law  
28 enforcement agencies, emergency responders, and Federal officials  
29 to coordinate security measures and plans for response to a terror-  
30 ist attack;

31 (E) a strategy and timeline for conducting training under sec-  
32 tion 40734 of this title;

33 (F) enhanced security measures to be taken by the over-the-  
34 road bus operator when the Secretary declares a period of height-  
35 ened security risk;

36 (G) plans for providing redundant and backup systems required  
37 to ensure the continued operation of critical elements of the over-  
38 the-road bus operator's system in the event of a terrorist attack  
39 or other incident; and

40 (H) other actions or procedures the Secretary determines are  
41 appropriate to address the security of over-the-road bus operators.

1           (2) SECURITY COORDINATOR REQUIREMENTS.—The Secretary shall  
2           require that the individual serving as the security coordinator identified  
3           in paragraph (1)(A) is a citizen of the United States. The Secretary  
4           may waive this requirement with respect to an individual if the Sec-  
5           retary determines that it is appropriate to do so based on a background  
6           check of the individual and a review of the consolidated terrorist watch-  
7           list.

8           (f) DEADLINE FOR REVIEW PROCESS.—Not later than 6 months after re-  
9           ceiving the assessments and plans required under this section, the Secretary  
10          shall—

11           (1) review each vulnerability assessment and security plan submitted  
12           to the Secretary under subsection (c);

13           (2) require amendments to a security plan that does not meet the  
14           requirements of this section; and

15           (3) approve a vulnerability assessment or security plan that meets  
16           the requirements of this section.

17          (g) TIER ASSIGNMENT.—The Secretary shall assign each over-the-road  
18          bus operator to a risk-based tier established by the Secretary:

19           (1) PROVIDING INFORMATION.—The Secretary may request, and an  
20           over-the-road bus operator shall provide, information necessary for the  
21           Secretary to assign an over-the-road bus operator to the appropriate  
22           tier under this subsection.

23           (2) NOTIFICATION.—Not later than 60 days after the date an over-  
24           the-road bus operator is assigned to a tier under this section, the Sec-  
25           retary shall notify the operator of the tier to which it is assigned and  
26           the reasons for the assignment.

27           (3) HIGH-RISK TIERS.—At least one of the tiers established by the  
28           Secretary under this section shall be a tier designated for high-risk  
29           over-the-road bus operators.

30           (4) REASSIGNMENT.—The Secretary may reassign an over-the-road  
31           bus operator to another tier, as appropriate, in response to changes in  
32           risk and the Secretary shall notify the over-the-road bus operator with-  
33           in 60 days after the reassignment and provide the operator with the  
34           reasons for the reassignment.

35          (h) Existing Procedures, Protocols, and Standards.—

36           (1) DETERMINATION.—In response to a petition by an over-the-road  
37           bus operator or at the discretion of the Secretary, the Secretary may  
38           determine that existing procedures, protocols, and standards meet all  
39           or part of the requirements of this section regarding vulnerability as-  
40           sessments and security plans.

1           (2) ELECTION.—On review and written determination by the Sec-  
2           retary that existing procedures, protocols, or standards of an over-the-  
3           road bus operator satisfy the requirements of this section, the over-the-  
4           road bus operator may elect to comply with those procedures, protocols,  
5           or standards instead of the requirements of this section.

6           (3) PARTIAL APPROVAL.—If the Secretary determines that the exist-  
7           ing procedures, protocols, or standards of an over-the-road bus opera-  
8           tor satisfy only part of the requirements of this section, the Secretary  
9           may accept a submission, but shall require submission by the operator  
10          of additional information relevant to the vulnerability assessment and  
11          security plan of the operator to ensure that the remaining requirements  
12          of this section are fulfilled.

13          (4) NOTIFICATION.—If the Secretary determines that particular ex-  
14          isting procedures, protocols, or standards of an over-the-road bus oper-  
15          ator under this subsection do not satisfy the requirements of this sec-  
16          tion, the Secretary shall provide to the operator a written notification  
17          that includes an explanation of the reasons for non-acceptance.

18          (5) REVIEW.—Nothing in this subsection shall relieve the Secretary  
19          of the obligation—

20                (A) to review the vulnerability assessment and security plan  
21                submitted by an over-the-road bus operator under this section; and

22                (B) to approve or disapprove each submission on an individual  
23                basis.

24          (i) PERIODIC EVALUATION BY OVER-THE-ROAD BUS PROVIDER RE-  
25          QUIRED.—

26                (1) SUBMISSION.—Not later than 3 years after the date on which  
27                a vulnerability assessment or security plan required to be submitted to  
28                the Secretary under subsection (c) is approved, and at least once every  
29                5 years thereafter (or on another schedule the Secretary may establish  
30                by regulation), an over-the-road bus operator who submitted a vulner-  
31                ability assessment and security plan and who is still assigned to the  
32                high-risk tier shall also submit to the Secretary an evaluation of the  
33                adequacy of the vulnerability assessment and security plan that in-  
34                cludes a description of material changes made to the vulnerability as-  
35                sessment or security plan.

36                (2) REVIEW.—Not later than 180 days after the date on which an  
37                evaluation is submitted, the Secretary shall review the evaluation and  
38                notify the over-the-road bus operator submitting the evaluation of the  
39                Secretary's approval or disapproval of the evaluation.

40          (j) SHARED FACILITIES.—The Secretary may permit under this section  
41          the development and implementation of coordinated vulnerability assess-

1     ments and security plans to the extent that an over-the-road bus operator  
2     shares facilities with, or is co-located with, other transportation entities or  
3     providers that are required to develop vulnerability assessments and security  
4     plans under Federal law.

5     (k) Nondisclosure of Information.—

6         (1) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this  
7         section shall be construed as authorizing the withholding of information  
8         from Congress.

9         (2) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—  
10        Nothing in this section shall be construed as affecting the authority or  
11        obligation of a Federal agency to disclose a record or information that  
12        the Federal agency obtains from an over-the-road bus operator under  
13        any other Federal law.

14     **§ 40732. Assistance**

15     (a) IN GENERAL.—The Secretary shall establish a program for making  
16     grants to eligible private operators providing transportation by an over-the-  
17     road bus for security improvements described in subsection (b).

18     (b) USES OF FUNDS.—A recipient of a grant received under subsection  
19     (a) shall use the grant funds for one or more of the following:

20         (1) Constructing and modifying terminals, garages, and facilities, in-  
21         cluding terminals and other over-the-road bus facilities owned by State  
22         or local governments, to increase their security.

23         (2) Modifying over-the-road buses to increase their security.

24         (3) Protecting or isolating the driver of an over-the-road bus.

25         (4) Acquiring, upgrading, installing, or operating equipment, soft-  
26         ware, or accessorial services for collection, storage, or exchange of pas-  
27         senger and driver information through ticketing systems or other  
28         means and for information links with government agencies, for security  
29         purposes.

30         (5) Installing cameras and video surveillance equipment on over-the-  
31         road buses and at terminals, garages, and over-the-road bus facilities.

32         (6) Establishing and improving an emergency communications sys-  
33         tem linking drivers and over-the-road buses to the recipient's oper-  
34         ations center or linking the operations center to law enforcement and  
35         emergency personnel.

36         (7) Implementing and operating passenger screening programs for  
37         weapons and explosives.

38         (8) Public awareness campaigns for enhanced over-the-road bus se-  
39         curity.

40         (9) Operating and capital costs associated with over-the-road bus se-  
41         curity awareness, preparedness, and response training, including train-



1 ing under section 40734 of this title and training developed by institu-  
2 tions of higher education and by nonprofit employee labor organiza-  
3 tions, for over-the-road bus employees, including frontline employees.

4 (10) Chemical, biological, radiological, or explosive detection, includ-  
5 ing canine patrols for detection.

6 (11) Overtime reimbursement, including reimbursement of State,  
7 local, and tribal governments for costs, for enhanced security personnel  
8 assigned to duties related to over-the-road bus security during periods  
9 of high or severe threat levels, National Special Security Events, or  
10 other periods of heightened security as determined by the Secretary.

11 (12) Live or simulated exercises, including those described in section  
12 40733 of this title.

13 (13) Operational costs to hire, train, and employ police and security  
14 officers, including canine units, assigned to full-time security or  
15 counterterrorism duties related to over-the-road bus transportation, in-  
16 cluding reimbursement of State, local, and tribal government costs for  
17 the personnel.

18 (14) Development of assessments or security plans under section  
19 40731 of this title.

20 (15) Other improvements the Secretary considers appropriate.

21 (e) DUE CONSIDERATION.—In making grants under this section, the Sec-  
22 retary shall prioritize grant funding based on security risks to bus pas-  
23 sengers and the ability of a project to reduce, or enhance response to, that  
24 risk, and shall not penalize private operators of over-the-road buses that  
25 took measures to enhance over-the-road bus transportation security prior to  
26 September 11, 2001.

27 (d) DEPARTMENT RESPONSIBILITIES.—In carrying out the responsibil-  
28 ities under subsection (a), the Secretary shall—

29 (1) determine the requirements for recipients of grants under this  
30 section, including application requirements;

31 (2) select grant recipients;

32 (3) award the funds authorized by this section based on risk, as  
33 identified by the plans required under section 40731 of this title or as-  
34 sessment or plan described in subsection (f)(2); and

35 (4) under subsection (c), establish priorities for the use of funds for  
36 grant recipients.

37 (e) DISTRIBUTION OF GRANTS.—The Secretary and the Secretary of  
38 Transportation shall determine the most effective and efficient way to dis-  
39 tribute grant funds to the recipients of grants determined by the Secretary  
40 under subsection (a). Subject to the determination made by the Secretaries,

1 the Secretary may transfer funds to the Secretary of Transportation for the  
2 purposes of disbursing funds to the grant recipient.

3 (f) ELIGIBILITY.—

4 (1) IN GENERAL.—A private operator providing transportation by an  
5 over-the-road bus is eligible for a grant under this section if the opera-  
6 tor has completed a vulnerability assessment and developed a security  
7 plan that the Secretary has approved under section 40731 of this title.  
8 Grant funds may only be used for permissible uses under subsection  
9 (b) to further an over-the-road bus security plan.

10 (2) INTERIM ELIGIBILITY.—Notwithstanding the requirements for  
11 eligibility and uses in paragraph (1), the Secretary may award grants  
12 under this section for over-the-road bus security improvements listed  
13 under subsection (b) based on over-the-road bus vulnerability assess-  
14 ments and security plans that the Secretary considers sufficient for the  
15 purposes of this section but have not been approved by the Secretary  
16 under section 40731 of this title

17 (g) GRANT TERMS AND CONDITIONS.—Except as otherwise specifically  
18 provided in this section, a grant made under this section shall be subject  
19 to the terms and conditions applicable to subrecipients who provide over-  
20 the-road bus transportation under 5311(f) of title 49 and other terms and  
21 conditions the Secretary determines are necessary.

22 (h) LIMITATION ON USES OF FUNDS.—A grant made under this section  
23 may not be used to make a State or local government cost-sharing contribu-  
24 tion under any other Federal law.

25 (i) ANNUAL REPORTS.—Each recipient of a grant under this section shall  
26 report annually to the Secretary on the use of the grant funds.

27 (j) CONSULTATION.—In carrying out this section, the Secretary shall con-  
28 sult with over-the-road bus operators and nonprofit employee labor organi-  
29 zations representing over-the-road bus employees, public safety and law en-  
30 forcement officials.

31 **§ 40733. Exercises**

32 (a) IN GENERAL.—The Secretary shall establish a program for conduct-  
33 ing security exercises for over-the-road bus transportation for the purpose  
34 of assessing and improving the capabilities of entities described in sub-  
35 section (b) to prevent, prepare for, mitigate, respond to, and recover from  
36 acts of terrorism.

37 (b) COVERED ENTITIES.—Entities to be assessed under the program in-  
38 clude—

39 (1) Federal, State, and local agencies and tribal governments;

40 (2) over-the-road bus operators and over-the-road bus terminal own-  
41 ers and operators;

- 1 (3) governmental and nongovernmental emergency response provid-  
2 ers and law enforcement agencies; and
- 3 (4) other organizations or entities that the Secretary determines ap-  
4 propriate.
- 5 (c) Requirements.—The Secretary shall ensure that the program—
- 6 (1) consolidates existing security exercises for over-the-road bus op-  
7 erators and terminals administered by the Department and the Depart-  
8 ment of Transportation, as jointly determined by the Secretary and the  
9 Secretary of Transportation, unless the Secretary waives this consolida-  
10 tion requirement, as appropriate;
- 11 (2) consists of exercises that are—
- 12 (A) scaled and tailored to the needs of the over-the-road bus op-  
13 erators and terminals, including addressing the needs of the elder-  
14 ly and individuals with disabilities;
- 15 (B) live, in the case of the most at-risk facilities to a terrorist  
16 attack;
- 17 (C) coordinated with appropriate officials;
- 18 (D) as realistic as practicable and based on current risk assess-  
19 ments, including credible threats, vulnerabilities, and conse-  
20 quences;
- 21 (E) inclusive, as appropriate, of over-the-road bus frontline em-  
22 ployees; and
- 23 (F) consistent with the National Incident Management System,  
24 the National Response Plan, the National Infrastructure Protec-  
25 tion Plan, the National Preparedness Guidance, the National Pre-  
26 paredness Goal, and other such national initiatives;
- 27 (3) provides that exercises described in paragraph (2) will be—
- 28 (A) evaluated by the Secretary against clear and consistent per-  
29 formance measures;
- 30 (B) assessed by the Secretary to identify best practices, which  
31 shall be shared, as appropriate, with operators providing over-the-  
32 road bus transportation, nonprofit employee organizations that  
33 represent over-the-road bus employees, Federal, State, local, and  
34 tribal officials, governmental and nongovernmental emergency re-  
35 sponse providers, and law enforcement personnel; and
- 36 (C) used to develop recommendations, as appropriate, provided  
37 to over-the-road bus operators and terminal owners and operators  
38 on remedial action to be taken in response to lessons learned;
- 39 (4) allows for proper advanced notification of communities and local  
40 governments in which exercises are held, as appropriate; and

1 (5) assists State, local, and tribal governments and over-the-road bus  
2 operators and terminal owners and operators in designing, implement-  
3 ing, and evaluating additional exercises that conform to the require-  
4 ments of paragraph (2).

5 (d) CONSISTENT WITH NATIONAL EXERCISE PROGRAM.—The Secretary  
6 shall ensure that the exercise program developed under subsection (c) is  
7 consistent with the National Exercise Program established under section  
8 20508 of this title.

9 **§ 40734. Training program**

10 (a) IN GENERAL.—The Secretary shall develop and issue regulations for  
11 an over-the-road bus training program to prepare over-the-road bus front-  
12 line employees for potential security threats and conditions. The regulations  
13 shall take into consideration current security training requirements or best  
14 practices.

15 (b) CONSULTATION.—The Secretary shall develop regulations under sub-  
16 section (a) in consultation with—

17 (1) appropriate law enforcement, fire service, emergency response,  
18 security, and terrorism experts;

19 (2) operators providing over-the-road bus transportation; and

20 (3) nonprofit employee labor organizations representing over-the-road  
21 bus employees and emergency response personnel.

22 (c) PROGRAM ELEMENTS.—The regulations developed under subsection  
23 (a) shall require security training programs, to include, at a minimum, ele-  
24 ments to address the following, as applicable:

25 (1) Determination of the seriousness of an occurrence or threat.

26 (2) Driver and passenger communication and coordination.

27 (3) Appropriate responses to defend or protect oneself.

28 (4) Use of personal and other protective equipment.

29 (5) Evacuation procedures for passengers and over-the-road bus em-  
30 ployees, including individuals with disabilities and the elderly.

31 (6) Psychology, behavior, and methods of terrorists, including obser-  
32 vation and analysis.

33 (7) Training related to psychological responses to terrorist incidents,  
34 including the ability to cope with hijacker behavior and passenger re-  
35 sponses.

36 (8) Live situational training exercises regarding various threat condi-  
37 tions, including tunnel evacuation procedures.

38 (9) Recognition and reporting of dangerous substances, suspicious  
39 packages, and situations.

1           (10) Understanding security incident procedures, including proce-  
2           dures for communicating with emergency response providers and for  
3           on-scene interaction with emergency response providers.

4           (11) Operation and maintenance of security equipment and systems.

5           (12) Other security training activities that the Secretary considers  
6           appropriate.

7       (d) REQUIRED PROGRAMS.—

8           (1) DEVELOPMENT AND SUBMISSION TO SECRETARY.—Not later  
9           than 90 days after the Secretary issues the regulations under sub-  
10          section (a), each over-the-road bus operator shall develop a security  
11          training program in accordance with the regulations and submit the  
12          program to the Secretary for approval.

13          (2) APPROVAL.—Not later than 60 days after receiving a security  
14          training program proposal under this subsection, the Secretary shall  
15          approve the program or require the over-the-road bus operator that de-  
16          veloped the program to make revisions to the program that the Sec-  
17          retary considers necessary for the program to meet the requirements  
18          of the regulations. An over-the-road bus operator shall respond to the  
19          Secretary's comments not later than 30 days after receiving them.

20          (3) TRAINING.—Not later than 1 year after the Secretary approves  
21          a security training program under this subsection, the over-the-road  
22          bus operator that developed the program shall complete the training of  
23          all over-the-road bus frontline employees who were hired by the opera-  
24          tor more than 30 days preceding the approval date. For employees em-  
25          ployed less than 30 days by an operator preceding the approval date,  
26          training shall be completed within the first 60 days of employment.

27          (4) UPDATES OF REGULATIONS AND PROGRAM REVISIONS.—The  
28          Secretary shall periodically review and update, as appropriate, the  
29          training regulations issued under subsection (a) to reflect new or  
30          changing security threats. Each over-the-road bus operator shall revise  
31          its training program accordingly and provide additional training as nec-  
32          essary to its employees within a reasonable time after the regulations  
33          are updated.

34       (e) NATIONAL TRAINING PROGRAM.—The Secretary shall ensure that the  
35       training program developed under subsection (a) is a component of the Na-  
36       tional Training Program established under section 20508 of this title.

37       **§ 40735. Research and development**

38       (a) IN GENERAL.—The Secretary, acting through the Under Secretary  
39       for Science and Technology and the Administrator of the Transportation  
40       Security Administration, shall carry out a research and development pro-  
41       gram for the purpose of improving the security of over-the-road buses.

1 (b) ELIGIBLE PROJECTS.—The research and development program may  
2 include projects—

3 (1) to reduce the vulnerability of over-the-road buses, stations, termi-  
4 nals, and equipment to explosives and hazardous chemical, biological,  
5 and radioactive substances, including the development of technology to  
6 screen passengers in large numbers with minimal interference and dis-  
7 ruption;

8 (2) to test new emergency response and recovery techniques and  
9 technologies, including those used at international borders;

10 (3) to develop improved technologies, including those for—

11 (A) emergency response training, including training in a tunnel  
12 environment, if appropriate; and

13 (B) security and redundancy for critical communications, elec-  
14 trical power, computer, and over-the-road bus control systems; and

15 (4) to address other vulnerabilities and risks identified by the Sec-  
16 retary.

17 (c) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Sec-  
18 retary—

19 (1) shall ensure that the research and development program is con-  
20 sistent with the other transportation security research and development  
21 programs required by this subtitle;

22 (2) shall, to the extent practicable, coordinate the research and de-  
23 velopment activities of the Department with other ongoing research and  
24 development security-related initiatives, including research being con-  
25 ducted by—

26 (A) the Department of Transportation, including University  
27 Transportation Centers and other institutes, centers, and simula-  
28 tors funded by the Department of Transportation;

29 (B) the National Academy of Sciences;

30 (C) the Technical Support Working Group;

31 (D) other Federal departments and agencies; and

32 (E) other Federal and private research laboratories, research  
33 entities, and institutions of higher education, including Historically  
34 Black Colleges and Universities, Hispanic Serving Institutions,  
35 and Indian Tribally Controlled Colleges and Universities;

36 (3) shall carry out a research and development project authorized by  
37 this section through a reimbursable agreement with an appropriate  
38 Federal agency, if the agency

39 (A) is currently sponsoring a research and development project  
40 in a similar area; or

1 (B) has a unique facility or capability that would be useful in  
2 carrying out the project;

3 (4) may award grants and enter into cooperative agreements, con-  
4 tracts, other transactions, or reimbursable agreements to the entities  
5 described in paragraph (2) and eligible recipients under section 40732  
6 of this title; and

7 (5) shall make reasonable efforts to enter into memoranda of under-  
8 standing, contracts, grants, cooperative agreements, or other trans-  
9 actions with private operators providing over-the-road bus transpor-  
10 tation willing to contribute assets, physical space, and other resources.

11 (d) PRIVACY AND CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES.—

12 (1) Consultation.—In carrying out research and development  
13 projects under this section, the Secretary shall consult with the Chief  
14 Privacy Officer of the Department and the Officer for Civil Rights and  
15 Civil Liberties of the Department as appropriate and under section  
16 10532 of this title.

17 (2) Privacy impact assessments.—In accordance with sections 10532  
18 and 11505 of this title, the Chief Privacy Officer shall conduct privacy  
19 impact assessments and the Officer for Civil Rights and Civil Liberties  
20 shall conduct reviews, as appropriate, for research and development ini-  
21 tiatives developed under this section that the Secretary determines  
22 could have an impact on privacy, civil rights, or civil liberties.

23 **Subchapter IV—Hazardous Material and Pipeline Security**  
24 **§ 40741. Railroad routing of security-sensitive materials**

25 (a) DEFINITIONS.—In this section:

26 (1) HIGH-CONSEQUENCE TARGET.—The term “high-consequence tar-  
27 get” means a property, natural resource, location, area, or other target  
28 designated by the Secretary that is a viable terrorist target of national  
29 significance, which may include a facility or specific critical infrastruc-  
30 ture, the attack of which by railroad could result in—

31 (A) catastrophic loss of life;

32 (B) significant damage to national security or defense capabili-  
33 ties; or

34 (C) national economic harm.

35 (2) ROUTE.—The term “route” includes storage facilities and track-  
36 age used by railroad cars in transportation in commerce.

37 (b) SECURITY-SENSITIVE MATERIALS COMMODITY DATA.—The Secretary  
38 of Transportation shall, by regulation, require each railroad carrier trans-  
39 porting security-sensitive materials in commerce to, no later than 90 days  
40 after the end of each calendar year, compile security-sensitive materials  
41 commodity data. The data must be collected by route, line segment, or se-

1 ries of line segments, as aggregated by the railroad carrier. Within the rail-  
2 road carrier selected route, the commodity data must identify the geo-  
3 graphic location of the route and the total number of shipments by the  
4 United Nations identification number for the security-sensitive materials.

5 (c) RAILROAD TRANSPORTATION ROUTE ANALYSIS FOR SECURITY-SEN-  
6 SITIVE MATERIALS.—The Secretary of Transportation shall ensure that the  
7 regulation issued under this section requires each railroad carrier transport-  
8 ing security-sensitive materials in commerce to, for each calendar year, pro-  
9 vide a written analysis of the safety and security risks for the transportation  
10 routes identified in the security-sensitive materials commodity data collected  
11 as required by subsection (b). The safety and security risks present shall  
12 be analyzed for the route, railroad facilities, railroad storage facilities, and  
13 high-consequence targets along or in proximity to the route.

14 (d) ALTERNATIVE ROUTE ANALYSIS FOR SECURITY-SENSITIVE MATE-  
15 RIALS.—The Secretary of Transportation shall ensure that the regulation is-  
16 sued under this section requires each railroad carrier transporting security-  
17 sensitive materials in commerce to—

18 (1) for each calendar year—

19 (A) identify practicable alternative routes over which the rail-  
20 road carrier has authority to operate as compared to the current  
21 route for a shipment analyzed under subsection (c); and

22 (B) perform a safety and security risk assessment of the alter-  
23 native route for comparison to the route analysis specified in sub-  
24 section (c);

25 (2) ensure that the analysis under paragraph (1) includes—

26 (A) identification of safety and security risks for an alternative  
27 route;

28 (B) comparison of those risks identified under subparagraph  
29 (A) to the primary railroad transportation route, including the risk  
30 of a catastrophic release from a shipment traveling along the alter-  
31 nate route compared to the primary route;

32 (C) remediation or mitigation measures implemented on the pri-  
33 mary or alternative route; and

34 (D) potential economic effects of using an alternative route; and

35 (3) consider when determining the practicable alternative routes  
36 under paragraph (1)(A) the use of interchange agreements with other  
37 railroad carriers.

38 (e) ALTERNATIVE ROUTE SELECTION FOR SECURITY-SENSITIVE MATE-  
39 RIALS.—The Secretary of Transportation shall ensure that the regulation is-  
40 sued under this section requires each railroad carrier transporting security-  
41 sensitive materials in commerce to use the analysis required by subsections



1 (c) and (d) to select the safest and most secure route to be used in trans-  
2 porting security-sensitive materials.

3 (f) REVIEW.—The Secretary of Transportation shall ensure that the regu-  
4 lation issued under this section requires each railroad carrier transporting  
5 security-sensitive materials in commerce to annually review and select the  
6 practicable route posing the least overall safety and security risk under this  
7 section. The railroad carrier must retain in writing all route review and se-  
8 lection decision documentation and restrict the distribution, disclosure, and  
9 availability of information contained in the route analysis to appropriate  
10 persons. This documentation should include, but is not limited to, compar-  
11 ative analyses, charts, graphics, or railroad system maps.

12 (g) RETROSPECTIVE ANALYSIS.—The Secretary of Transportation shall  
13 ensure that the regulation issued under this section requires each railroad  
14 carrier transporting security-sensitive materials in commerce to, not less  
15 than once every 3 years, analyze the route selection determinations required  
16 under this section. The analysis shall include a comprehensive, system-wide  
17 review of all operational changes, infrastructure modifications, traffic ad-  
18 justments, changes in the nature of high-consequence targets located along  
19 or in proximity to the route, or other changes affecting the safety and secu-  
20 rity of the movements of security-sensitive materials that were implemented  
21 since the previous analysis was completed.

22 (h) CONSULTATION.—In carrying out subsection (c), railroad carriers  
23 transporting security-sensitive materials in commerce shall seek relevant in-  
24 formation from State, local, and tribal officials, as appropriate, regarding  
25 security risks to high-consequence targets along or in proximity to a route  
26 used by a railroad carrier to transport security-sensitive materials.

27 **§ 40742. Railroad security-sensitive material tracking**

28 (a) IN GENERAL.— In conjunction with the research and development  
29 program established under section 40717 of this title and consistent with  
30 the results of research relating to wireless and other tracking technologies,  
31 the Secretary, in consultation with the Administrator of the Transportation  
32 Security Administration, shall develop a program that will encourage the  
33 equipping of railroad cars transporting security-sensitive materials, as de-  
34 fined in section 40701 of this title, with technology that provides—

- 35 (1) car position location and tracking capabilities; and  
36 (2) notification of railroad car depressurization, breach, unsafe tem-  
37 perature, or release of hazardous materials, as appropriate.

38 (b) COORDINATION.—IN DEVELOPING THE PROGRAM REQUIRED BY SUB-  
39 SECTION (A), THE SECRETARY SHALL—

1 (1) consult with the Secretary of Transportation to coordinate the  
2 program with ongoing or planned efforts for railroad car tracking at  
3 the Department of Transportation; and

4 (2) ensure that the program is consistent with recommendations and  
5 findings of the Department of Homeland Security's hazardous material  
6 railroad tank car tracking pilot programs.

7 **§ 40743. Motor carrier security-sensitive material tracking**

8 (a) COMMUNICATIONS.—

9 (1) IN GENERAL.—Consistent with the findings of the Transpor-  
10 tation Security Administration's hazardous materials truck security  
11 pilot program, the Secretary, through the Administrator of the Trans-  
12 portation Security Administration and in consultation with the Sec-  
13 retary of Transportation, shall develop a program to facilitate the  
14 tracking of motor carrier shipments of security-sensitive materials and  
15 to equip vehicles used in the shipments with technology that provides—

16 (A) frequent or continuous communications;

17 (B) vehicle position location and tracking capabilities; and

18 (C) a feature that allows a driver of the vehicles to broadcast  
19 an emergency distress signal.

20 (2) Considerations.—In developing the program required by para-  
21 graph (1), the Secretary shall—

22 (A) consult with the Secretary of Transportation to coordinate  
23 the program with ongoing or planned efforts for motor carrier or  
24 security-sensitive materials tracking at the Department of Trans-  
25 portation;

26 (B) take into consideration the recommendations and findings  
27 of the report on the hazardous material safety and security oper-  
28 ational field test released by the Federal Motor Carrier Safety Ad-  
29 ministration on November 11, 2004; and

30 (C) evaluate

31 (i) new information related to the costs and benefits of de-  
32 ploying, equipping, and utilizing tracking technology, includ-  
33 ing portable tracking technology, for motor carriers transport-  
34 ing security-sensitive materials not included in the hazardous  
35 material safety and security operational field test report re-  
36 leased by the Federal Motor Carrier Safety Administration on  
37 November 11, 2004;

38 (ii) the ability of tracking technology to resist tampering  
39 and disabling;

1 (iii) the capability of tracking technology to collect, display,  
2 and store information regarding the movement of shipments  
3 of security-sensitive materials by commercial motor vehicles;

4 (iv) the appropriate range of contact intervals between the  
5 tracking technology and a commercial motor vehicle trans-  
6 porting security-sensitive materials;

7 (v) technology that allows the installation by a motor car-  
8 rier of concealed electronic devices on commercial motor vehi-  
9 cles that can be activated by law enforcement authorities to  
10 disable the vehicle or alert emergency response resources to  
11 locate and recover security-sensitive materials in the event of  
12 loss or theft of the materials;

13 (vi) whether installation of the technology described in  
14 clause (v) should be incorporated into the program under  
15 paragraph (1);

16 (vii) the costs, benefits, and practicality of the technology  
17 described in clause (v) in the context of the overall benefit to  
18 national security, including commerce in transportation; and

19 (viii) other systems and information the Secretary deter-  
20 mines appropriate.

21 (b) LIMITATION.—The Secretary may not mandate the installation or uti-  
22 lization of a technology described under this section without additional con-  
23 gressional authority provided after August 3, 2007.

24 **§ 40744. Use of transportation security card in hazmat li-**  
25 **censing**

26 (a) BACKGROUND CHECK.—An individual who has a valid transportation  
27 employee identification card issued by the Secretary under section 70105 of  
28 title 46, is deemed to have met the background records check required  
29 under section 5103a of title 49.

30 (b) STATE REVIEW.—Nothing in this subsection prevents or preempts a  
31 State from conducting a criminal records check of an individual that has  
32 applied for a license to operate a motor vehicle transporting in commerce  
33 a hazardous material.

34 **§ 40745. Pipeline security inspections and enforcement**

35 (a) IN GENERAL.—Consistent with the Annex to the Memorandum of  
36 Understanding executed on August 9, 2006, between the Department of  
37 Transportation and the Department, the Secretary, in consultation with the  
38 Secretary of Transportation, shall establish a program for reviewing pipeline  
39 operator adoption of recommendations of the September 5, 2002, Depart-  
40 ment of Transportation Research and Special Programs Administration's

1 Pipeline Security Information Circular, including the review of pipeline secu-  
2 rity plans and critical facility inspections.

3 (b) REVIEW AND INSPECTION.—The Secretary and the Secretary of  
4 Transportation shall develop and implement a plan for reviewing the pipe-  
5 line security plans and an inspection of the critical facilities of the 100 most  
6 critical pipeline operators covered by the September 5, 2002, circular, where  
7 the facilities have not been inspected for security purposes since September  
8 5, 2002, by either the Department or the Department of Transportation.

9 (c) COMPLIANCE REVIEW METHODOLOGY.—In reviewing pipeline opera-  
10 tor compliance under subsections (a) and (b), risk assessment methodologies  
11 shall be used to prioritize risks and to target inspection and enforcement  
12 actions to the highest risk pipeline assets.

13 (d) REGULATIONS.—The Secretary and the Secretary of Transportation  
14 shall develop and transmit to pipeline operators security recommendations  
15 for natural gas and hazardous liquid pipelines and pipeline facilities. If the  
16 Secretary determines that regulations are appropriate, the Secretary shall  
17 consult with the Secretary of Transportation on the extent of risk and ap-  
18 propriate mitigation measures, and the Secretary or the Secretary of Trans-  
19 portation, consistent with the Annex to the Memorandum of Understanding  
20 executed on August 9, 2006, shall promulgate regulations and carry out  
21 necessary inspection and enforcement actions. Regulations shall incorporate  
22 the guidance provided to pipeline operators by the September 5, 2002, De-  
23 partment of Transportation Research and Special Programs Administra-  
24 tion's Pipeline Security Information Circular and contain additional require-  
25 ments as necessary based upon the results of the inspections performed  
26 under subsection (b). The regulations shall include the imposition of civil  
27 penalties for noncompliance.

28 **§ 40746. Pipeline security and incident recovery plan**

29 (a) IN GENERAL.—The Secretary, in consultation with the Secretary of  
30 Transportation and the Administrator of the Pipeline and Hazardous Mate-  
31 rials Safety Administration, and in accordance with the Annex to the Memo-  
32 randum of Understanding executed on August 9, 2006, the National Strat-  
33 egy for Transportation Security, and Homeland Security Presidential Direc-  
34 tive 7, shall develop a pipeline security and incident recovery protocols plan.  
35 The plan shall include—

36 (1) for the Government to provide increased security support to the  
37 most critical interstate and intrastate natural gas and hazardous liquid  
38 transmission pipeline infrastructure and operations as determined  
39 under section 40745 of this title when—

40 (A) under severe security threat levels of alert; or

1 (B) under specific security threat information relating to the  
2 pipeline infrastructure or operations exists; and

3 (2) an incident recovery protocol plan, developed in conjunction with  
4 interstate and intrastate transmission and distribution pipeline opera-  
5 tors and terminals and facilities operators connected to pipelines, to de-  
6 velop protocols to ensure the continued transportation of natural gas  
7 and hazardous liquids to essential markets and for essential public  
8 health or national defense uses in the event of an incident affecting the  
9 interstate and intrastate natural gas and hazardous liquid transmission  
10 and distribution pipeline system, including protocols for restoring es-  
11 sential services supporting pipelines and granting access to pipeline op-  
12 erators for pipeline infrastructure repair, replacement, or bypass follow-  
13 ing an incident.

14 (b) EXISTING PRIVATE AND PUBLIC SECTOR EFFORTS.—The plan shall  
15 take into account actions taken or planned by both private and public enti-  
16 ties to address identified pipeline security issues and assess the effective in-  
17 tegration of the actions.

18 (c) CONSULTATION.—In developing the plan under subsection (a), the  
19 Secretary shall consult with the Secretary of Transportation, interstate and  
20 intrastate transmission and distribution pipeline operators, nonprofit em-  
21 ployee organizations representing pipeline employees, emergency responders,  
22 offerors, State pipeline safety agencies, public safety officials, and other rel-  
23 evant parties.

## 24 **Chapter 409—Air Transportation Security**

Sec.

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#### **Subchapter I—Title 49 Definitions**

##### **§ 40901. Use of title 49 definitions.**

Unless otherwise specifically provided, the definitions in section 40102 of title 49 apply to this chapter.

#### **Subchapter II—Requirements**

##### **§ 40911. Screening passengers and property**

(a) IN GENERAL.—The Secretary, acting through the Administrator of the Transportation Security Administration, shall provide for the screening of all passengers and property, including United States mail, cargo, carry-

1 on and checked baggage, and other articles, that will be carried aboard a  
2 passenger aircraft operated by an air carrier or foreign air carrier in air  
3 transportation or intrastate air transportation. In the case of flights and  
4 flight segments originating in the United States, the screening shall take  
5 place before boarding and shall be carried out by a Federal Government em-  
6 ployee (as defined in section 2105 of title 5), except as otherwise provided  
7 in section 40930 of this title and except for identifying passengers and bag-  
8 gage for screening under the CAPPs and known shipper programs and con-  
9 ducting positive bag-match programs.

10 (b) SUPERVISION OF SCREENING.—All screening of passengers and prop-  
11 erty at airports in the United States where screening is required under this  
12 section shall be supervised by uniformed Federal personnel of the Transpor-  
13 tation Security, who shall have the power to order the dismissal of an indi-  
14 vidual performing screening.

15 (c) CHECKED BAGGAGE DEADLINE.—A system must be in operation to  
16 screen all checked baggage at all airports in the United States as soon as  
17 practicable.

18 (d) EXPLOSIVES DETECTION SYSTEMS.—

19 (1) IN GENERAL.—The Secretary shall take all necessary action to  
20 ensure that—

21 (A) explosives detection systems are deployed as soon as pos-  
22 sible to ensure that all United States airports described in section  
23 40913(c) of this title have sufficient explosives detection systems  
24 to screen all checked baggage and that as soon as the systems are  
25 in place at an airport, all checked baggage at the airport is  
26 screened by those systems;

27 (B) all systems deployed under subparagraph (A) are fully uti-  
28 lized; and

29 (C) if explosives detection equipment at an airport is unavail-  
30 able, all checked baggage is screened by an alternative means.

31 (2) PRECLEARANCE AIRPORTS.—

32 (A) DEFINITIONS.—In this paragraph:

33 (i) ASSISTANT SECRETARY.—The term “Assistant Sec-  
34 retary” means the Assistant Secretary (Transportation Secu-  
35 rity Administration).

36 (ii) AVIATION SECURITY PRECLEARANCE AGREEMENT.—  
37 The term “aviation security preclearance agreement” means  
38 an agreement that delineates and implements security stand-  
39 ards and protocols that are determined by the Assistant Sec-  
40 retary, in coordination with the Bureau of Customs and Bor-  
41 der Protection, to be comparable to those of the United

1 States and therefore sufficiently effective to enable passengers  
2 to deplane into sterile areas of airports in the United States.

3 (B) IN GENERAL.—For a flight or flight segment originating at an  
4 airport outside the United States and traveling to the United States  
5 with respect to which checked baggage has been screened in accordance  
6 with an aviation security preclearance agreement between the United  
7 States and the country in which the airport is located, the Assistant  
8 Secretary may, in coordination with the Bureau of Customs and Border  
9 Protection, determine whether the baggage must be re-screened in the  
10 United States by an explosives detection system before the baggage  
11 continues on any additional flight or flight segment.

12 (C) REPORT.—The Assistant Secretary shall submit to the  
13 Committee on Homeland Security of the House of Representatives,  
14 the Committee on Commerce, Science, and Transportation of the  
15 Senate, and the Committee on Homeland Security and Govern-  
16 mental Affairs of the Senate an annual report on the re-screening  
17 of baggage under this paragraph. Each report shall include the  
18 following for the year covered by the report:

19 (i) A list of airports outside the United States from which  
20 a flight or flight segment traveled to the United States for  
21 which the Assistant Secretary determined, in accordance with  
22 the authority under subparagraph (B), that checked baggage  
23 was not required to be re-screened in the United States by  
24 an explosives detection system before the baggage continued  
25 on an additional flight or flight segment.

26 (ii) The amount of Federal savings generated from the ex-  
27 ercise of the authority.

28 (e) CARGO DEADLINE.—A system must be in operation to screen, inspect,  
29 or otherwise ensure the security of all cargo that is to be transported in  
30 all-cargo aircraft in air transportation and intrastate air transportation as  
31 soon as practicable.

32 (f) AIR CARGO ON PASSENGER AIRCRAFT.—

33 (1) DEFINITION.—In this subsection, the term “screening” means a  
34 physical examination or non-intrusive methods of assessing whether  
35 cargo poses a threat to transportation security, including x-ray sys-  
36 tems, explosives detection systems, explosives trace detection, explosives  
37 detection canine teams certified by the Administration, or a physical  
38 search together with manifest verification.

39 (2) IN GENERAL.—The Secretary shall establish a system to screen  
40 100 percent of cargo transported on passenger aircraft operated by an  
41 air carrier or foreign air carrier in air transportation or intrastate air



1 transportation to ensure the security of all passenger aircraft carrying  
2 cargo.

3 (3) MINIMUM STANDARDS.—The system referred to in paragraph (2)  
4 shall require, at a minimum, that equipment, technology, procedures,  
5 personnel, or other methods approved by the Secretary, are used to  
6 screen cargo carried on passenger aircraft described in paragraph (2)  
7 to provide a level of security commensurate with the level of security  
8 for the screening of passenger checked baggage.

9 (4) ADDITIONAL CARGO SCREENING METHODS.—

10 (A) IN GENERAL.—The Secretary may approve additional meth-  
11 ods to ensure that the cargo does not pose a threat to transpor-  
12 tation security and to assist in meeting the requirements of this  
13 subsection.

14 (B) MINIMUM REQUIREMENTS.—The additional cargo screening  
15 methods shall not include solely performing a review of informa-  
16 tion about the contents of cargo or verifying the identity of a ship-  
17 per of the cargo that is not performed in conjunction with other  
18 security methods authorized under this subsection, including  
19 whether a known shipper is registered in the known shipper data-  
20 base.

21 (C) CERTIFICATION PROGRAM.—The additional cargo screening  
22 methods may include a program to certify the security methods  
23 used by shippers under paragraphs (2) and (3) and alternative  
24 screening methods pursuant to exemptions referred to in sub-  
25 section (b) of section 1602 of the Implementing Recommendations  
26 of the 9/11 Commission Act of 2007 (Public Law 110–53, 121  
27 Stat. 479).

28 (5) REGULATIONS.—The Secretary shall, by regulation, implement  
29 this subsection in accordance with the provisions of chapter 5 of title  
30 5.

31 (g) DEPLOYMENT OF ARMED LAW ENFORCEMENT PERSONNEL.—

32 (1) IN GENERAL.—The Secretary shall order the deployment of law  
33 enforcement personnel authorized to carry firearms at each airport se-  
34 curity screening location to ensure passenger safety and national secu-  
35 rity.

36 (2) MINIMUM REQUIREMENTS.—Except at airports required to enter  
37 into agreements under subsection (c), the Secretary shall order the de-  
38 ployment of at least one law enforcement officer at each airport secu-  
39 rity screening location. At the 100 largest airports in the United  
40 States, in terms of annual passenger enplanements for the most recent  
41 calendar year for which data are available, the Secretary shall order

1 the deployment of additional law enforcement personnel at airport secu-  
2 rity screening locations if the Secretary determines that the additional  
3 deployment is necessary to ensure passenger safety and national secu-  
4 rity.

5 (h) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Sec-  
6 retary—

7 (1) may exempt from this section air transportation operations, ex-  
8 cept scheduled passenger operations of an air carrier providing air  
9 transportation under a certificate issued under section 41102 of title  
10 49 or a permit issued under section 41302 of that title; and

11 (2) shall advise Congress of a regulation to be prescribed under this  
12 section at least 30 days before the effective date of the regulation, un-  
13 less the Secretary decides an emergency exists requiring the regulation  
14 to become effective in fewer than 30 days and notifies Congress of that  
15 decision.

16 (i) BLAST-RESISTANT CARGO CONTAINERS.—

17 (1) IN GENERAL.—The Secretary shall—

18 (A) evaluate the results of the blast-resistant cargo container  
19 pilot program that was initiated before August 3, 2007; and

20 (B) prepare and distribute through the Aviation Security Advi-  
21 sory Committee to the appropriate Committees of Congress and  
22 air carriers a report on that evaluation which may contain non-  
23 classified and classified sections.

24 (2) Acquisition, maintenance, and replacement.—Upon completion  
25 and consistent with the results of the evaluation that paragraph (1)(A)  
26 requires, the Secretary shall—

27 (A) develop and implement a program, as the Secretary deter-  
28 mines appropriate, to acquire, maintain, and replace blast-resist-  
29 ant cargo containers;

30 (B) pay for the program; and

31 (C) make available blast-resistant cargo containers to air car-  
32 riers under paragraph (3).

33 (3) DISTRIBUTION TO AIR CARRIERS.—The Secretary shall make  
34 available blast-resistant cargo containers to air carriers for use on a  
35 risk managed basis as determined by the Secretary.

36 (j) GENERAL AVIATION AIRPORT SECURITY PROGRAM.—

37 (1) IN GENERAL.—The Secretary shall—

38 (A) develop a standardized threat and vulnerability assessment  
39 program for general aviation airports (as defined in section  
40 47134(m) of title 49); and

1 (B) implement a program to perform the assessments on a risk-  
2 managed basis at general aviation airports.

3 (2) GRANT PROGRAM.—The Secretary shall complete a study of the  
4 feasibility of a program, based on a risk-managed approach, to provide  
5 grants to operators of general aviation airports (as defined in section  
6 47134(m) of title 49) for projects to upgrade security at the airports.  
7 If the Secretary determines that a program is feasible, the Secretary  
8 shall establish a program.

9 (3) REQUIRED SUBMISSIONS BY GENERAL AVIATION AIRCRAFT.—The  
10 Secretary shall develop a risk-based system under which—

11 (A) general aviation aircraft, as identified by the Secretary, in  
12 coordination with the Administrator of the Federal Aviation Ad-  
13 ministration, are required to submit passenger information and  
14 advance notification requirements for U. S. Customs and Border  
15 Protection before entering United States airspace; and

16 (B) the information is checked against appropriate databases.

17 (4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
18 be appropriated to the Secretary such sums as may be necessary to  
19 carry out paragraphs (2) and (3).

20 (k) LIMITATIONS ON USE OF ADVANCED IMAGING TECHNOLOGY FOR  
21 SCREENING PASSENGERS.—

22 (1) DEFINITIONS.—In this subsection:

23 (A) ADVANCED IMAGING TECHNOLOGY.—The term “advanced  
24 imaging technology”—

25 (i) means a device used in the screening of passengers that  
26 creates a visual image of an individual showing the surface  
27 of the skin and revealing other objects on the body; and

28 (ii) may include devices using backscatter x-rays or milli-  
29 meter waves and devices referred to as “whole-body imaging  
30 technology” or “body scanning machines”.

31 (B) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term  
32 “appropriate congressional committees” means—

33 (i) the Committee on Commerce, Science, and Transpor-  
34 tation and the Committee on Homeland Security and Govern-  
35 mental Affairs of the Senate; and

36 (ii) the Committee on Homeland Security of the House of  
37 Representatives.

38 (C) AUTOMATIC TARGET RECOGNITION SOFTWARE.—The term  
39 “automatic target recognition software” means software installed  
40 on an advanced imaging technology that produces a generic image

1 of the individual being screened that is the same as the images  
2 produced for all other screened individuals.

3 (2) USE OF ADVANCED IMAGING TECHNOLOGY.—Beginning June 1,  
4 2012, the Secretary shall ensure that an advanced imaging technology  
5 used for the screening of passengers under this section—

6 (A) is equipped with and employs automatic target recognition  
7 software; and

8 (B) complies with other requirements the Secretary determines  
9 necessary to address privacy considerations.

10 (3) EXTENSION.—

11 (A) IN GENERAL.—The Secretary may extend the deadline spec-  
12 ified in paragraph (2), if the Secretary determines that—

13 (i) an advanced imaging technology equipped with auto-  
14 matic target recognition software is not substantially as effec-  
15 tive at screening passengers as an advanced imaging tech-  
16 nology without the software; or

17 (ii) additional testing of the software is necessary.

18 (B) DURATION OF EXTENSIONS.—THE SECRETARY MAY ISSUE  
19 ONE OR MORE EXTENSIONS UNDER SUBPARAGRAPH (A). THE DU-  
20 RATION OF EACH EXTENSION MAY NOT EXCEED ONE YEAR.

21 (4) REPORTS.—

22 (A) IN GENERAL.—Not later than July 31, 2012, and not later  
23 than 60 days after the date on which the Secretary issues any ex-  
24 tension under paragraph (3), the Secretary shall submit to the ap-  
25 propriate congressional committees a report on the implementation  
26 of this subsection.

27 (B) ELEMENTS.—A report submitted under subparagraph (A)  
28 shall include the following:

29 (i) A description of all matters the Secretary considers rel-  
30 evant to the implementation of the requirements of this sub-  
31 section.

32 (ii) The status of compliance by the Administration with  
33 such requirements.

34 (iii) If the Administration is not in full compliance with  
35 such requirements—

36 (I) the reasons for the noncompliance; and

37 (II) a timeline depicting when the Secretary expects  
38 the Administration to achieve full compliance.

39 (C) SECURITY CLASSIFICATION.—To the greatest extent prac-  
40 ticable, a report prepared under subparagraph (A) shall be submit-

1           ted in an unclassified format. If necessary, the report may include  
2           a classified annex.

3   **§ 40912. Refusal to transport passengers and property**

4       (a) MANDATORY REFUSAL.—The Secretary, acting through the Adminis-  
5       trator of the Transportation Security Administration, shall prescribe regula-  
6       tions requiring an air carrier, intrastate air carrier, or foreign air carrier  
7       to refuse to transport—

8           (1) a passenger who does not consent to a search under section  
9           40911(a) of this title establishing whether the passenger is carrying  
10          unlawfully a dangerous weapon, explosive, or other destructive sub-  
11          stance; or

12          (2) property of a passenger who does not consent to a search of the  
13          property establishing whether the property unlawfully contains a dan-  
14          gerous weapon, explosive, or other destructive substance.

15       (b) PERMISSIVE REFUSAL.—Subject to regulations of the Secretary, an  
16       air carrier, intrastate air carrier, or foreign air carrier may refuse to trans-  
17       port a passenger or property the carrier decides is, or might be, inimical  
18       to safety.

19       (c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry pas-  
20       sengers or property in air transportation or intrastate air transportation by  
21       an air carrier, intrastate air carrier, or foreign air carrier is deemed to in-  
22       clude an agreement that the passenger or property will not be carried if con-  
23       sent to search the passenger or property for a purpose referred to in this  
24       section is not given.

25   **§ 40913. Air transportation security**

26       (a) DEFINITION.—In this section, “law enforcement personnel” means in-  
27       dividuals—

28           (1) authorized to carry and use firearms;

29           (2) vested with the degree of the police power of arrest the Secretary  
30           considers necessary to carry out this section; and

31           (3) identifiable by appropriate indicia of authority.

32       (b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Secretary, act-  
33       ing through the Administrator of the Transportation Security Administra-  
34       tion, shall prescribe regulations to protect passengers and property on an  
35       aircraft operating in air transportation or intrastate air transportation  
36       against an act of criminal violence or aircraft piracy. When prescribing a  
37       regulation under this subsection, the Secretary shall—

38           (1) consult with the Secretary of Transportation, the Attorney Gen-  
39           eral, the heads of other departments, agencies, and instrumentalities of  
40           the United States Government, and State and local authorities;

41           (2) consider whether a proposed regulation is consistent with—

- 1 (A) protecting passengers; and  
2 (B) the public interest in promoting air transportation and  
3 intrastate air transportation;  
4 (3) to the maximum extent practicable, require a uniform procedure  
5 for searching and detaining passengers and property to ensure  
6 (A) their safety; and  
7 (B) courteous and efficient treatment by an air carrier, an  
8 agent or employee of an air carrier, and Government, State, and  
9 local law enforcement personnel carrying out this section; and  
10 (4) consider the extent to which a proposed regulation will carry out  
11 this section.

12 (c) SECURITY PROGRAMS.—

13 (1) IN GENERAL.—The Secretary shall prescribe regulations under  
14 subsection (b) that require each operator of an airport regularly serving  
15 an air carrier holding a certificate issued by the Secretary of Transporta-  
16 tion to establish an air transportation security program that provides  
17 a law enforcement presence and capability at each of those airports  
18 that is adequate to ensure the safety of passengers. The regulations  
19 shall authorize the operator to use the services of qualified State, local,  
20 and private law enforcement personnel. When the Secretary decides,  
21 after being notified by an operator in the form the Secretary pre-  
22 scribes, that not enough qualified State, local, and private law enforce-  
23 ment personnel are available to carry out subsection (b), the Secretary  
24 may authorize the operator to use, on a reimbursable basis, personnel  
25 employed by the Secretary, or by another department, agency, or in-  
26 strumentality of the Government with the consent of the head of the  
27 department, agency, or instrumentality, to supplement State, local, and  
28 private law enforcement personnel. When deciding whether additional  
29 personnel are needed, the Secretary shall consider the number of pas-  
30 sengers boarded at the airport, the extent of anticipated risk of crimi-  
31 nal violence or aircraft piracy at the airport or to the air carrier air-  
32 craft operations at the airport, and the availability of qualified State  
33 or local law enforcement personnel at the airport.

34 (2) INCLUSION OF AIRPORT TENANT SECURITY PROGRAM.—

35 (A) IN GENERAL.—The Secretary may approve a security pro-  
36 gram of an airport operator, or an amendment in an existing pro-  
37 gram, that incorporates a security program of an airport tenant  
38 (except an air carrier separately complying with part 108 or 129  
39 of title 14, Code of Federal Regulations) having access to a se-  
40 cured area of the airport, if the program or amendment incor-  
41 porates

1 (i) the measures the tenant will use, within the tenant's  
2 leased areas or areas designated for the tenant's exclusive use  
3 under an agreement with the airport operator, to carry out  
4 the security requirements imposed by the Secretary on the  
5 airport operator under the access control system requirements  
6 of section 107.14 of title 14, Code of Federal Regulations, or  
7 under other requirements of part 107 of title 14; and

8 (ii) the methods the airport operator will use to monitor  
9 and audit the tenant's compliance with the security require-  
10 ments and provides that the tenant will be required to pay  
11 monetary penalties to the airport operator if the tenant fails  
12 to carry out a security requirement under a contractual provi-  
13 sion or requirement imposed by the airport operator.

14 (B) OPERATOR NOT IN VIOLATION.—If the Secretary approves  
15 a program or amendment described in subparagraph (A) of this  
16 paragraph, the airport operator may not be found to be in viola-  
17 tion of a requirement of this subsection or subsection (b) when the  
18 airport operator demonstrates that the tenant or an employee, per-  
19 mittee, or invitee of the tenant is responsible for the violation and  
20 that the airport operator has complied with all measures in its se-  
21 curity program for securing compliance with its security program  
22 by the tenant.

23 (C) MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DE-  
24TECTION EQUIPMENT.—The Secretary may require airports to  
25 maximize the use of technology and equipment that is designed to  
26 detect or neutralize potential chemical or biological weapons.

27 (3) PILOT PROGRAMS.—The Secretary shall establish pilot programs  
28 in no fewer than 20 airports to test and evaluate new and emerging  
29 technology for providing access control and other security protections  
30 for closed or secure areas of the airports. The technology may include  
31 biometric or other technology that ensures only authorized access to se-  
32 cure areas.

33 (d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE AR-  
34RESTS.—With the approval of the Attorney General and the Secretary of  
35 State, the Secretary may authorize an individual who carries out air trans-  
36 portation security duties—

37 (1) to carry firearms; and

38 (2) to make arrests without warrant for an offense against the  
39 United States committed in the presence of the individual or for a fel-  
40 ony under the laws of the United States, if the individual reasonably

1 believes the individual to be arrested has committed or is committing  
2 a felony.

3 (e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Sec-  
4 retary has the exclusive responsibility to direct law enforcement activity re-  
5 lated to the safety of passengers on an aircraft involved in an offense under  
6 section 46502 of title 49 from the moment all external doors of the aircraft  
7 are closed following boarding until those doors are opened to allow pas-  
8 sengers to leave the aircraft. When requested by the Secretary, other de-  
9 partments, agencies, and instrumentalities of the Government shall provide  
10 assistance necessary to carry out this subsection.

11 (f) GOVERNMENT AND INDUSTRY CONSORTIA.—The Secretary may estab-  
12 lish at airports consortia of government and aviation industry representa-  
13 tives to provide advice on matters related to aviation security and safety.  
14 The consortia shall not be considered Federal advisory committees for pur-  
15 poses of the Federal Advisory Committee Act (5 U.S.C. App.).

16 (g) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—

17 (1) EMPLOYEE SANCTIONS.—

18 (A) PUBLICATION.—The Secretary shall publish in the Federal  
19 Register a list of sanctions for use as guidelines in the discipline  
20 of employees for infractions of airport access control requirements.

21 (B) DISCIPLINARY APPROACH.—The guidelines shall incorporate  
22 a progressive disciplinary approach that relates proposed sanctions  
23 to the severity or recurring nature of the infraction and shall in-  
24 clude measures such as remedial training, suspension from secu-  
25 rity-related duties, suspension from all duties without pay, and  
26 termination of employment.

27 (C) USE.—Each airport operator, air carrier, and security  
28 screening company shall include the list of sanctions published by  
29 the Secretary in its security program. The security program shall  
30 include a process for taking prompt disciplinary action against an  
31 employee who commits an infraction of airport access control re-  
32 quirements.

33 (2) ACTIONS TO IMPROVE ACCESS CONTROL.—The Secretary shall—

34 (A) work with airport operators and air carriers to implement  
35 and strengthen existing controls to eliminate airport access control  
36 weaknesses;

37 (B) require airport operators and air carriers to develop and im-  
38 plement comprehensive and recurring training programs that  
39 teach employees their roles in airport security, the importance of  
40 their participation, how their performance will be evaluated, and  
41 what action will be taken if they fail to perform;



1 (C) require airport operators and air carriers to develop and im-  
2 plement programs that foster and reward compliance with airport  
3 access control requirements and discourage and penalize non-  
4 compliance in accordance with guidelines issued by the Secretary  
5 to measure employee compliance;

6 (D) on an ongoing basis, assess and test for compliance with  
7 access control requirements, report annually findings of the assess-  
8 ments, and assess the effectiveness of penalties in ensuring compli-  
9 ance with security procedures and take other appropriate enforce-  
10 ment actions when noncompliance is found;

11 (E) improve and better administer the Secretary's security data-  
12 base to ensure its efficiency, reliability, and usefulness for identi-  
13 fication of systemic problems and allocation of resources;

14 (F) improve the execution of the Secretary's quality control pro-  
15 gram; and

16 (G) work with airport operators to strengthen access control  
17 points in secured areas (including air traffic control operations  
18 areas, maintenance areas, crew lounges, baggage handling areas,  
19 concessions, and catering delivery areas) to ensure the security of  
20 passengers and aircraft and consider the deployment of biometric  
21 or similar technologies that identify individuals based on unique  
22 personal characteristics.

23 (h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

24 (1) DEFINITIONS.—In this subsection:

25 (A) BIOMETRIC IDENTIFIER.—The term “biometric identifier”  
26 means a technology that enables the automated identification, or  
27 verification of the identity, of an individual based on biometric in-  
28 formation.

29 (B) Biometric identifier information.—The term “biometric  
30 identifier information” means the distinct physical or behavioral  
31 characteristics of an individual that are used for unique identifica-  
32 tion, or verification of the identity, of an individual.

33 (C) FAILURE TO ENROLL.—The term “failure to enroll” means  
34 the inability of an individual to enroll in a biometric identifier sys-  
35 tem due to an insufficiently distinctive biometric sample, the lack  
36 of a body part necessary to provide the biometric sample, a system  
37 design that makes it difficult to provide consistent biometric iden-  
38 tifier information, or other factors.

39 (D) FALSE MATCH.—The term “false match” means the incor-  
40 rect matching of one individual's biometric identifier information

1 to another individual's biometric identifier information by a bio-  
2 metric identifier system.

3 (E) FALSE NON-MATCH.—The term “false non-match” means  
4 the rejection of a valid identity by a biometric identifier system.

5 (F) SECURE AREA OF AN AIRPORT.—The term “secure area of  
6 an airport” means the sterile area and the Secure Identification  
7 Display Area of an airport (as the terms are defined in section  
8 1540.5 of title 49, Code of Federal Regulations, or a successor  
9 regulation to that section).

10 (2) IN GENERAL.—The Secretary, in consultation with the airport  
11 operator and law enforcement authorities, may order the deployment of  
12 necessary personnel at a secure area of the airport to counter the risk  
13 of criminal violence, the risk of aircraft piracy at the airport, the risk  
14 to air carrier aircraft operations at the airport, or to meet national se-  
15 curity concerns.

16 (3) CONSIDERATION OF SECURITY OF AIRCRAFT AND GROUND AC-  
17 CESS TO SECURE AREAS.—In determining where to deploy the person-  
18 nel, the Secretary shall consider the physical security needs of air traf-  
19 fic control facilities, parked aircraft, aircraft servicing equipment, air-  
20 craft supplies (including fuel), automobile parking facilities within air-  
21 port perimeters or adjacent to secured facilities, and access and transi-  
22 tion areas at airports served by other means of ground or water trans-  
23 portation.

24 (4) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—  
25 The Secretary may enter into a memorandum of understanding or  
26 other agreement with the Attorney General or the head of another ap-  
27 propriate Federal law enforcement agency to deploy Federal law en-  
28 forcement personnel at an airport in order to meet aviation safety and  
29 security concerns.

30 (5) AIRPORT PERIMETER SCREENING.—The Secretary shall—

31 (A) require screening or inspection of all individuals, goods,  
32 property, vehicles, and other equipment before entry into a secured  
33 area of an airport in the United States described in subsection (e);

34 (B) prescribe specific requirements for the screening and inspec-  
35 tion that will assure at least the same level of protection as will  
36 result from screening of passengers and their baggage;

37 (C) establish procedures to ensure the safety and integrity of—

38 (i) all persons providing services with respect to aircraft  
39 providing passenger air transportation or intrastate air trans-  
40 portation and facilities of those persons at an airport in the  
41 United States described in subsection (e);

1 (ii) all supplies, including catering and passenger amen-  
2 ities, placed aboard the aircraft, including the sealing of sup-  
3 plies to ensure easy visual detection of tampering; and

4 (iii) all persons providing the supplies and facilities of those  
5 persons;

6 (D) require vendors having direct access to the airfield and air-  
7 craft to develop security programs; and

8 (E) issue guidance for the use of biometric or other technology  
9 that positively verifies the identity of each employee and law en-  
10 forcement officer who enters a secure area of an airport.

11 (6) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL  
12 SYSTEMS.—In issuing guidance under paragraph (5)(E), the Secretary  
13 in consultation with representatives of the aviation industry, the bio-  
14 metric identifier industry, and the National Institute of Standards and  
15 Technology, shall establish, at a minimum

16 (A) comprehensive technical and operational system require-  
17 ments and performance standards for the use of biometric identi-  
18 fier technology in airport access control systems (including airport  
19 perimeter access control systems) to ensure that the biometric  
20 identifier systems are effective, reliable, and secure;

21 (B) a list of products and vendors that meet the requirements  
22 and standards set forth in subparagraph (A);

23 (C) procedures for implementing biometric identifier systems—

24 (i) to ensure that individuals do not use an assumed iden-  
25 tity to enroll in a biometric identifier system; and

26 (ii) to resolve failures to enroll, false matches, and false  
27 non-matches; and

28 (D) best practices for incorporating biometric identifier tech-  
29 nology into airport access control systems in the most effective  
30 manner, including a process to best utilize existing airport access  
31 control systems, facilities, and equipment and existing data net-  
32 works connecting airports.

33 (7) USE OF BIOMETRIC TECHNOLOGY FOR ARMED LAW ENFORCE-  
34 MENT TRAVEL.—

35 (A) IN GENERAL.—The Secretary, in consultation with the At-  
36 torney General, shall—

37 (i) implement this section by publication in the Federal  
38 Register; and

39 (ii) establish a national registered armed law enforcement  
40 program, that shall be federally managed, for law enforce-

1                   ment officers needing to be armed when traveling by commer-  
2                   cial aircraft.

3 (B) PROGRAM REQUIREMENTS.—The program shall—

4                   (i) establish a credential or a system that incorporates bio-  
5                   metric technology and other applicable technologies;

6                   (ii) establish a system for law enforcement officers who  
7                   need to be armed when traveling by commercial aircraft on  
8                   a regular basis and for those who need to be armed during  
9                   temporary travel assignments;

10                  (iii) comply with other uniform credentialing initiatives, in-  
11                  cluding the Homeland Security Presidential Directive 12;

12                  (iv) apply to all Federal, State, local, tribal, and territorial  
13                  government law enforcement agencies; and

14                  (v) establish a process by which the travel credential or sys-  
15                  tem may be used to verify the identity, using biometric tech-  
16                  nology, of a Federal, State, local, tribal, or territorial law en-  
17                  forcement officer seeking to carry a weapon on board a com-  
18                  mercial aircraft, without unnecessarily disclosing to the public  
19                  that the individual is a law enforcement officer.

20 (C) PROCEDURES.—In establishing the program, the Secretary  
21 shall develop procedures—

22                  (i) to ensure that a law enforcement officer of a Federal,  
23                  State, local, tribal, or territorial government flying armed has  
24                  a specific reason for flying armed and the reason is within  
25                  the scope of the duties of the officer;

26                  (ii) to preserve the anonymity of the armed law enforce-  
27                  ment officer;

28                  (iii) to resolve failures to enroll, false matches, and false  
29                  nonmatches relating to the use of the law enforcement travel  
30                  credential or system;

31                  (iv) to determine the method of issuance of the biometric  
32                  credential to law enforcement officers needing to be armed  
33                  when traveling by commercial aircraft;

34                  (v) to invalidate a law enforcement travel credential or sys-  
35                  tem that is lost, stolen, or no longer authorized for use;

36                  (vi) to coordinate the program with the Federal Air Mar-  
37                  shal Service, including the force multiplier program of the  
38                  Service; and

39                  (vii) to implement a phased approach to launching the pro-  
40                  gram, addressing the immediate needs of the relevant Federal

1 agent population before expanding to other law enforcement  
2 populations.

3 (i) AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL  
4 WEAPONS.—

5 (1) IN GENERAL.—If the Secretary, after receiving the recommenda-  
6 tions of the National Institute of Justice, determines, with the approval  
7 of the Attorney General and the Secretary of State, that it is appro-  
8 priate and necessary and would effectively serve the public interest in  
9 avoiding air piracy, the Secretary may authorize members of the flight  
10 deck crew on an aircraft providing air transportation or intrastate air  
11 transportation to carry a less-than-lethal weapon while the aircraft is  
12 engaged in providing the transportation.

13 (2) USAGE.—If the Secretary grants authority under paragraph (1)  
14 for flight deck crew members to carry a less-than-lethal weapon while  
15 engaged in providing air transportation or intrastate air transportation,  
16 the Secretary shall—

17 (A) prescribe rules requiring that the crew member be trained  
18 in the proper use of the weapon; and

19 (B) prescribe guidelines setting forth the circumstances under  
20 which weapons may be used.

21 (3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAP-  
22 ONS.—If the Secretary receives a request from an air carrier for au-  
23 thorization to allow pilots of the air carrier to carry less-than-lethal  
24 weapons, the Secretary shall respond to that request within 90 days.

25 (j) SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECU-  
26 RITY TECHNOLOGIES AND PROCEDURES.—

27 (1) DEFINITION.—In this subsection, the term “secure area of an  
28 airport” means the sterile area and the Secure Identification Display  
29 Area of an airport (as the terms are defined in section 1540.5 of title  
30 49, Code of Federal Regulations, or a successor regulation to that sec-  
31 tion).

32 (2) IN GENERAL.—The Secretary shall recommend to airport opera-  
33 tors commercially available measures or procedures to prevent access  
34 to secure airport areas by unauthorized persons. As part of a 6-month  
35 assessment, the Secretary shall—

36 (A) review the effectiveness of biometrics systems currently in  
37 use at several United States airports, including San Francisco  
38 International;

39 (B) review the effectiveness of increased surveillance at access  
40 points;

1 (C) review the effectiveness of card- or keypad-based access sys-  
2 tems;

3 (D) review the effectiveness of airport emergency exit systems  
4 and determine whether those that lead to secure areas of the air-  
5 port should be monitored or how breaches can be swiftly re-  
6 sponded to; and

7 (E) specifically target the elimination of the “piggy-backing”  
8 phenomenon, where another person follows an authorized person  
9 through the access point.

10 (3) DEPLOYMENT STRATEGY FOR AVAILABLE TECHNOLOGY; REVIEW  
11 OF REDUCTIONS IN UNAUTHORIZED ACCESS.—The 6-month assessment  
12 shall include a 12-month deployment strategy for currently available  
13 technology at all category X airports, as defined in the Federal Avia-  
14 tion Administration approved air carrier security programs required  
15 under part 108 of title 14, Code of Federal Regulations. After the as-  
16 sessment, the Secretary of Transportation shall conduct a review of re-  
17 ductions in unauthorized access at these airports.

18 (4) COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM.—

19 (A) IN GENERAL.—The Secretary shall ensure that the Com-  
20 puter-Assisted Passenger Prescreening System, or a successor sys-  
21 tem—

22 (i) is used to evaluate all passengers before they board an  
23 aircraft; and

24 (ii) includes procedures to ensure that individuals selected  
25 by the system and their carry-on and checked baggage are  
26 adequately screened.

27 (B) MODIFICATIONS.—The Secretary may modify a requirement  
28 under the Computer-Assisted Passenger Prescreening System for  
29 flights that originate and terminate within the same State, if the  
30 Secretary determines that—

31 (i) the State has extraordinary air transportation needs or  
32 concerns due to its isolation and dependence on air transpor-  
33 tation; and

34 (ii) the routine characteristics of passengers, given the na-  
35 ture of the market, regularly triggers primary selectee status.

36 (C) ADVANCED AIRLINE PASSENGER PRESCREENING.—

37 (i) The Secretary, or the designee of the Secretary, shall  
38 commence testing of an advanced passenger prescreening sys-  
39 tem that will allow the Department to assume the perform-  
40 ance of comparing passenger information, as defined by the  
41 Secretary, to the automatic selectee and no fly lists, utilizing

1 all appropriate records in the consolidated and integrated ter-  
2 rorist watchlist maintained by the Federal Government.

3 (ii) After completion of testing under clause (i), the Sec-  
4 retary, or the designee of the Secretary, shall begin to assume  
5 the performance of the passenger prescreening function of  
6 comparing passenger information to the automatic selectee  
7 and no fly lists and utilize all appropriate records in the con-  
8 solidated and integrated terrorist watchlist maintained by the  
9 Federal Government in performing that function.

10 (iii) In assuming performance of the function under clause  
11 (ii), the Secretary shall—

12 (I) establish a procedure to enable airline passengers,  
13 who are delayed or prohibited from boarding a flight be-  
14 cause the advanced passenger prescreening system deter-  
15 mined that they might pose a security threat, to appeal  
16 a determination and correct information contained in the  
17 system;

18 (II) ensure that Federal Government databases that  
19 will be used to establish the identity of a passenger  
20 under the system will not produce a large number of  
21 false positives;

22 (III) establish an internal oversight board to oversee  
23 and monitor the manner in which the system is being  
24 implemented;

25 (IV) establish sufficient operational safeguards to re-  
26 duce the opportunities for abuse;

27 (V) implement substantial security measures to pro-  
28 tect the system from unauthorized access;

29 (VI) adopt policies establishing effective oversight of  
30 the use and operation of the system; and

31 (VII) ensure that there are no specific privacy con-  
32 cerns with the technological architecture of the system.

33 (iv) After the completion of the testing of the advanced  
34 passenger prescreening system, the Secretary, by order or in-  
35 terim final rule—

36 (I) shall require air carriers to supply to the Secretary  
37 the passenger information needed to begin implementing  
38 the advanced passenger prescreening system; and

39 (II) shall require entities that provide systems and  
40 services to air carriers in the operation of air carrier res-  
41 ervations systems to provide to air carriers passenger in-

1                   formation in possession of the entities, but only to the  
2                   extent necessary to comply with subclause (I).

3                   (v) The Secretary, in coordination with the Terrorist  
4                   Screening Center, shall include on the No Fly List an individ-  
5                   ual who was a detainee held at the Naval Station, Guanta-  
6                   namo Bay, Cuba, unless the President certifies in writing to  
7                   Congress that the detainee poses no threat to the United  
8                   States, its citizens, or its allies. For purposes of this clause,  
9                   the term “detainee” means an individual in the custody or  
10                  under the physical control of the United States as a result  
11                  of armed conflict.

12                  (D) SCREENING OF EMPLOYEES AGAINST WATCHLIST.—The  
13                  Secretary in coordination with the Secretary of Transportation  
14                  and the Administrator of the Federal Aviation Administration,  
15                  shall ensure that individuals are screened against all appropriate  
16                  records in the consolidated and integrated terrorist watchlist main-  
17                  tained by the Federal Government before—

18                  (i) being certificated by the Federal Aviation Administra-  
19                  tion;

20                  (ii) being granted unescorted access to the secure area of  
21                  an airport; or

22                  (iii) being granted unescorted access to the air operations  
23                  area (as defined in section 1540.5 of title 49, Code of Federal  
24                  Regulations, or a successor regulation to that section) of an  
25                  airport.

26                  (E) AIRCRAFT CHARTER CUSTOMER AND LESSEE PRE-  
27                  SCREENING.—

28                  (i) The Secretary shall establish a process by which opera-  
29                  tors of aircraft to be used in charter air transportation with  
30                  a maximum takeoff weight greater than 12,500 pounds and  
31                  lessors of aircraft with a maximum takeoff weight greater  
32                  than 12,500 pounds may—

33                  (I) request the Department to use the advanced pas-  
34                  senger pre-screening system to compare information  
35                  about an individual seeking to charter an aircraft with  
36                  a maximum takeoff weight greater than 12,500 pounds,  
37                  a passenger proposed to be transported aboard the air-  
38                  craft, and an individual seeking to lease an aircraft with  
39                  a maximum takeoff weight greater than 12,500 pounds  
40                  to the automatic selectee and no fly lists, utilizing all ap-  
41                  propriate records in the consolidated and integrated ter-



1                   rorist watchlist maintained by the Federal Government;  
2                   and

3                   (II) refuse to charter or lease an aircraft with a maxi-  
4                   mum takeoff weight greater than 12,500 pounds to or  
5                   transport aboard the aircraft persons identified on the  
6                   watch list.

7                   (ii) The requirements of subparagraph (C)(iii) shall apply  
8                   to this subparagraph.

9                   (iii) The Secretary, in consultation with the Terrorist  
10                  Screening Center, shall design and review, as necessary,  
11                  guidelines, policies, and operating procedures for the collec-  
12                  tion, removal, and updating of data maintained, or to be  
13                  maintained, in the no fly and automatic selectee lists.

14                  (F) APPLICABILITY.—Section 607 of the Vision 100—Century  
15                  of Aviation Reauthorization Act (Public Law 108–176, 117 Stat.  
16                  2568) does not apply to the advanced passenger prescreening sys-  
17                  tem established under subparagraph (C).

18                  (G) APPEAL PROCEDURES.—

19                  (i) ESTABLISHMENT.—The Secretary shall establish a  
20                  timely and fair process for individuals identified as a threat  
21                  under one or more of subparagraphs (C), (D), and (E) to ap-  
22                  peal to the Transportation Security Administration the deter-  
23                  mination and correct erroneous information.

24                  (ii) MAINTENANCE OF RECORD OF MISIDENTIFIED INDIVID-  
25                  UALS.—The process shall include the establishment of a  
26                  method by which the Secretary will be able to maintain a  
27                  record of air passengers and other individuals who have been  
28                  misidentified and have corrected erroneous information. To  
29                  prevent repeated delays of misidentified passengers and other  
30                  individuals, the Transportation Security Administration  
31                  record shall contain information determined by the Secretary  
32                  to authenticate the identity of such a passenger or individual.

33                  (k) LIMITATION ON LIABILITY FOR ACTS TO THWART CRIMINAL VIO-  
34                  LENCE OR AIRCRAFT PIRACY.—AN INDIVIDUAL IS NOT LIABLE FOR DAMAGES  
35                  IN AN ACTION BROUGHT IN A FEDERAL OR STATE COURT ARISING OUT OF  
36                  THE ACTS OF THE INDIVIDUAL IN ATTEMPTING TO THWART AN ACT OF  
37                  CRIMINAL VIOLENCE OR PIRACY ON AN AIRCRAFT IF THAT INDIVIDUAL REA-  
38                  SONABLY BELIEVED THAT AN ACT OF CRIMINAL VIOLENCE OR PIRACY WAS  
39                  OCCURRING OR WAS ABOUT TO OCCUR.

40                  (l) AIR CHARTER PROGRAM.—

1 (1) IN GENERAL.—The Secretary shall implement an aviation secu-  
2 rity program for charter air carriers with a maximum certificated take-  
3 off weight of more than 12,500 pounds.

4 (2) EXEMPTION FOR ARMED FORCES CHARTERS.—

5 (A) DEFINITION.—In this paragraph, the term “armed forces”  
6 has the meaning given that term by section 101(a)(4) of title 10.

7 (B) IN GENERAL.—Paragraph (1) and the other requirements  
8 of this chapter do not apply to passengers and property carried  
9 by aircraft when employed to provide charter transportation to  
10 members of the armed forces.

11 (C) SECURITY PROCEDURES.—The Secretary of Defense, in  
12 consultation with the Secretary and the Secretary of Transpor-  
13 tation, shall establish security procedures relating to the operation  
14 of aircraft when employed to provide charter transportation to  
15 members of the armed forces to or from an airport described in  
16 subsection (c).

17 (m) SECURITY SCREENING FOR MEMBERS OF THE ARMED FORCES.—

18 (1) IN GENERAL.—The Secretary, in consultation with the Depart-  
19 ment of Defense, shall develop and implement a plan to provide exped-  
20 ited security screening services for a member of the armed forces,  
21 and, to the extent possible, an accompanying family member, if the  
22 member of the armed forces, while in uniform, presents documentation  
23 indicating official orders for air transportation departing from a pri-  
24 mary airport (as defined in section 47102 of title 49).

25 (2) PROTOCOLS.—In developing the plan, the Secretary shall con-  
26 sider—

27 (A) leveraging existing security screening models used to reduce  
28 passenger wait times;

29 (B) establishing standard guidelines for the screening of mili-  
30 tary uniform items, including combat boots; and

31 (C) incorporating new screening protocols into an existing trust-  
32 ed passenger program, as established under section 109(a)(3) of  
33 the Aviation and Transportation Security Act (49 U.S.C. 114  
34 note), or into the development of a new credential or system that  
35 incorporates biometric technology and other applicable technologies  
36 to verify the identity of individuals traveling in air transportation.

37 (3) RULE OF CONSTRUCTION.—Nothing in this subsection affects the  
38 authority of the Secretary to require additional screening of a member  
39 of the armed forces if intelligence or law enforcement information indi-  
40 cates that additional screening is necessary.

1 (4) REPORT.—The Secretary shall submit to the appropriate com-  
2 mittees of Congress a report on the implementation of the plan.

3 (n) PASSENGER EXIT POINTS FROM STERILE AREA.—

4 (1) DEFINITION.—In this subsection, the term “sterile area” has the  
5 same meaning given that term in section 1540.5 of title 49, Code of  
6 Federal Regulations or any corresponding similar regulation or ruling.

7 (2) IN GENERAL.—The Secretary shall ensure that the Transpor-  
8 tation Security Administration is responsible for monitoring passenger  
9 exit points from the sterile area of airports at which the Transportation  
10 Security Administration provided the monitoring as of December 1,  
11 2013.

12 **§ 40914. Domestic air transportation system security**

13 (a) ASSESSING THREATS.—The Secretary, acting through the Adminis-  
14 trator of the Transportation Security Administration, and the Director of  
15 the Federal Bureau of Investigation jointly shall assess current and poten-  
16 tial threats to the domestic air transportation system. The assessment shall  
17 include consideration of the extent to which there are individuals with the  
18 capability and intent to carry out terrorist or related unlawful acts against  
19 that system and the ways in which those individuals might carry out those  
20 acts. The Secretary and the Director jointly shall decide on and carry out  
21 the most effective method for continuous analysis and monitoring of security  
22 threats to that system.

23 (b) ASSESSING SECURITY.—In coordination with the Director of the Fed-  
24 eral Bureau of Investigation, the Secretary shall carry out periodic threat  
25 and vulnerability assessments on security at each airport that is part of the  
26 domestic air transportation system. Each assessment shall include consider-  
27 ation of—

28 (1) the adequacy of security procedures related to the handling and  
29 transportation of checked baggage and cargo;

30 (2) space requirements for security personnel and equipment;

31 (3) separation of screened and unscreened passengers, baggage, and  
32 cargo;

33 (4) separation of the controlled and uncontrolled areas of airport fa-  
34 cilities; and

35 (5) coordination of the activities of security personnel of the Trans-  
36 portation Security Administration, the Bureau of Customs and Border  
37 Protection, the Bureau of Immigration and Customs Enforcement, and  
38 air carriers, and of other law enforcement personnel.

39 (c) MODAL SECURITY PLAN FOR AVIATION.—In addition to the require-  
40 ments set forth in paragraphs (2) through (6) of section 11314(c) of this

1 title, the modal security plan for aviation prepared under section 11314  
2 shall—

3 (1) establish a damage mitigation and recovery plan for the aviation  
4 system in the event of a terrorist attack; and

5 (2) include a threat matrix document that outlines each threat to the  
6 United States civil aviation system and the corresponding layers of se-  
7 curity in place to address the threat.

8 (d) OPERATIONAL CRITERIA.—The Secretary shall issue operational cri-  
9 teria to protect airport infrastructure and operations against the threats  
10 identified in the plans prepared under 11314(a) of this title and shall ap-  
11 prove best practices guidelines for airport assets.

12 (e) IMPROVING SECURITY.—The Secretary shall take necessary actions to  
13 improve domestic air transportation security by correcting deficiencies in  
14 that security discovered in the assessments, analyses, and monitoring car-  
15 ried out under this section.

16 **§ 40915. Information about threats to civil aviation**

17 (a) PROVIDING INFORMATION.—Under guidelines the Secretary pre-  
18 scribes, an air carrier, airport operator, ticket agent, or individual employed  
19 by an air carrier, airport operator, or ticket agent, receiving information  
20 (except a communication directed by the United States Government) about  
21 a threat to civil aviation shall provide the information promptly to the Sec-  
22 retary.

23 (b) FLIGHT CANCELLATION.—If a decision is made that a particular  
24 threat cannot be addressed in a way adequate to ensure, to the extent fea-  
25 sible, the safety of passengers and crew of a particular flight or series of  
26 flights, the Secretary, acting through the Administrator of the Transpor-  
27 tation Security Administration, shall cancel the flight or series of flights.

28 (c) GUIDELINES ON PUBLIC NOTICE.—

29 (1) IN GENERAL.—The President shall develop guidelines for ensur-  
30 ing that public notice is provided in appropriate cases about threats to  
31 civil aviation. The guidelines shall identify officials responsible for—

32 (A) deciding, on a case-by-case basis, if public notice of a threat  
33 is in the best interest of the United States and the traveling pub-  
34 lic;

35 (B) ensuring that public notice is provided in a timely and effec-  
36 tive way, including the use of a toll-free telephone number; and

37 (C) canceling the departure of a flight or series of flights under  
38 subsection (b).

39 (2) CONTENTS.—The guidelines shall provide for consideration of—

40 (A) the specificity of the threat;

1 (B) the credibility of intelligence information related to the  
2 threat;

3 (C) the ability to counter the threat effectively;

4 (D) the protection of intelligence information sources and meth-  
5 ods;

6 (E) cancellation, by an air carrier or the Secretary, of a flight  
7 or series of flights instead of public notice;

8 (F) the ability of passengers and crew to take steps to reduce  
9 the risk to their safety after receiving public notice of a threat;  
10 and

11 (G) other factors the Secretary considers appropriate.

12 (d) GUIDELINES ON NOTICE TO CREWS.—The Secretary shall develop  
13 guidelines for ensuring that notice in appropriate cases of threats to the se-  
14 curity of an air carrier flight is provided to the flight crew and cabin crew  
15 of that flight.

16 (e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a  
17 threat to civil aviation may be provided to selective potential travelers only  
18 if the threat applies only to those travelers.

19 (f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the de-  
20 partments, agencies, and instrumentalities of the Government that collect,  
21 receive, and analyze intelligence information related to aviation security, the  
22 Secretary shall develop procedures to minimize the number of individuals  
23 who have access to information about threats. However, a restriction on ac-  
24 cess to that information may be imposed only if the restriction does not di-  
25 minish the ability of the Government to carry out its duties and powers re-  
26 lated to aviation security effectively, including providing notice to the public  
27 and flight and cabin crews under this section.

28 (g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this  
29 section shall be distributed for use by appropriate officials of the Depart-  
30 ment of Transportation, the Department of State, the Department of Jus-  
31 tice, and air carriers.

32 **§ 40916. Foreign air carrier security programs**

33 The Secretary, acting through the Administrator of the Transportation  
34 Security Administration, shall continue in effect the requirement of section  
35 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier  
36 must adopt and use a security program approved by the Secretary. The Sec-  
37 retary shall not approve a security program of a foreign air carrier under  
38 section 129.25, or a successor regulation, unless the security program re-  
39 quires the foreign air carrier in its operations to and from airports in the  
40 United States to adhere to the identical security measures that the Sec-  
41 retary requires air carriers serving the same airports to adhere to. The fore-

1 going requirement shall not be interpreted to limit the ability of the Sec-  
2 retary to impose additional security measures on a foreign air carrier or an  
3 air carrier when the Secretary determines that a specific threat warrants  
4 additional measures. The Secretary shall prescribe regulations to carry out  
5 this section.

6 **§ 40917. Security standards at foreign airports**

7 (a) ASSESSMENT.—

8 (1) IN GENERAL.—At intervals the Secretary considers necessary,  
9 the Secretary shall assess the effectiveness of the security measures  
10 maintained at—

11 (A) a foreign airport—

12 (i) served by an air carrier;

13 (ii) from which a foreign air carrier serves the United  
14 States; or

15 (iii) that poses a high risk of introducing danger to inter-  
16 national air travel; and

17 (B) other foreign airports the Secretary considers appropriate.

18 (2) MEANS OF ASSESSMENT.—The Secretary shall conduct an as-  
19 sessment under paragraph (1)—

20 (A) in consultation with appropriate aeronautic authorities of  
21 the government of a foreign country concerned and each air car-  
22 rier serving the foreign airport for which the Secretary is conduct-  
23 ing the assessment;

24 (B) to establish the extent to which a foreign airport effectively  
25 maintains and carries out security measures; and

26 (C) by using a standard that will result in an analysis of the  
27 security measures at the airport based at least on the standards  
28 and appropriate recommended practices contained in Annex 17 to  
29 the Convention on International Civil Aviation in effect on the  
30 date of the assessment.

31 (3) REPORT.—Each report to Congress required under section  
32 40956(b) of this title shall contain a summary of the assessments con-  
33 ducted under this subsection.

34 (b) CONSULTATION.—In carrying out subsection (a), the Secretary shall  
35 consult with the Secretary of State—

36 (1) on the terrorist threat that exists in each country; and

37 (2) to establish which foreign airports are not under the de facto  
38 control of the government of the foreign country in which they are lo-  
39 cated and pose a high risk of introducing danger to international air  
40 travel.

1 (c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary, after con-  
2 ducting an assessment under subsection (a) , decides that an airport does  
3 not maintain and carry out effective security measures, the Secretary, after  
4 advising the Secretary of State, shall notify the appropriate authorities of  
5 the government of the foreign country of the decision and recommend the  
6 steps necessary to bring the security measures in use at the airport up to  
7 the standard used by the Secretary in making the assessment.

8 (d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT  
9 EFFECTIVE SECURITY MEASURES.—

10 (1) IDENTIFICATION OF AIRPORT.—When the Secretary decides  
11 under this section that an airport does not maintain and carry out ef-  
12 fective security measures—

13 (A) the Secretary shall—

14 (i) publish the identity of the airport in the Federal Reg-  
15 ister;

16 (ii) have the identity of the airport posted and displayed  
17 prominently at all United States airports at which scheduled  
18 air carrier operations are provided regularly; and

19 (iii) notify the news media of the identity of the airport;

20 (B) each air carrier and foreign air carrier providing transpor-  
21 tation between the United States and the airport shall provide  
22 written notice of the decision, on or with the ticket, to each pas-  
23 senger buying a ticket for transportation between the United  
24 States and the airport;

25 (C) notwithstanding section 40105(b) of title 49, the Secretary  
26 of Transportation, after consulting with the appropriate aeronautic  
27 authorities of the foreign country concerned and each air carrier  
28 serving the airport and with the approval of the Secretary of  
29 State, may withhold, revoke, or prescribe conditions on the operat-  
30 ing authority of an air carrier or foreign air carrier that uses that  
31 airport to provide foreign air transportation; and

32 (D) the President may prohibit an air carrier or foreign air car-  
33 rier from providing transportation between the United States and  
34 any other foreign airport that is served by aircraft flying to or  
35 from the airport with respect to which a decision is made under  
36 this section.

37 (2) EFFECTIVENESS.—

38 (A) IN GENERAL.—Paragraph (1) becomes effective

39 (i) 90 days after the government of a foreign country is no-  
40 tified under subsection (c) if the Secretary finds that the gov-  
41 ernment has not brought the security measures at the airport

1 up to the standard the Secretary used in making an assess-  
2 ment under subsection (a); or

3 (ii) immediately on the decision of the Secretary under sub-  
4 section (c) if the Secretary decides, after consulting with the  
5 Secretary of State, that a condition exists that threatens the  
6 safety or security of passengers, aircraft, or crew traveling to  
7 or from the airport.

8 (B) STATE DEPARTMENT NOTICE.—The Secretary immediately  
9 shall notify the Secretary of State of a decision under subpara-  
10 graph (A)(ii) of this paragraph so that the Secretary of State may  
11 issue a travel advisory required under section 40918(a) of this  
12 title.

13 (3) REPORT TO CONGRESS.—The Secretary promptly shall submit to  
14 Congress a report (and classified annex if necessary) on action taken  
15 under paragraph (1) or (2), including information on attempts made  
16 to obtain the cooperation of the government of a foreign country in  
17 meeting the standard the Secretary used in assessing the airport under  
18 subsection (a).

19 (4) TERMINATION OF ACTION.—An action required under paragraph  
20 (1)(A) and (B) is no longer required only if the Secretary, in consulta-  
21 tion with the Secretary of State, decides that effective security meas-  
22 ures are maintained and carried out at the airport. The Secretary shall  
23 notify Congress when the action is no longer required to be taken.

24 (e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of  
25 title 49, the Secretary of Transportation, with the approval of the Secretary  
26 of State and without notice or a hearing, shall suspend the right of an air  
27 carrier or foreign air carrier to provide foreign air transportation, and the  
28 right of a person to operate aircraft in foreign air commerce, to or from  
29 a foreign airport when the Secretary of Homeland Security decides that—

30 (1) a condition exists that threatens the safety or security of pas-  
31 sengers, aircraft, or crew traveling to or from that airport; and

32 (2) the public interest requires an immediate suspension of transpor-  
33 tation between the United States and that airport.

34 (f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to  
35 authority the Secretary of Transportation grants under part A of subtitle  
36 VII of title 49 to an air carrier or foreign air carrier.

37 **§ 40918. Travel advisory and suspension of foreign assist-**  
38 **ance**

39 (a) TRAVEL ADVISORIES.—On being notified by the Secretary that the  
40 Secretary has decided under section 40917(d)(2)(A)(ii) of this title that a  
41 condition exists that threatens the safety or security of passengers, aircraft,



1 or crew traveling to or from a foreign airport that the Secretary has decided  
2 under section 40917 does not maintain and carry out effective security  
3 measures, the Secretary of State—

- 4 (1) immediately shall issue a travel advisory for that airport; and
- 5 (2) shall publicize the advisory widely.

6 (b) **SUSPENDING ASSISTANCE.**—The President shall suspend assistance  
7 provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.)  
8 or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in  
9 which is located an airport with respect to which section 40917(d)(1) be-  
10 comes effective if the Secretary of State decides the country is a high terror-  
11 ist threat country. The President may waive this subsection if the President  
12 decides, and reports to Congress, that the waiver is required because of na-  
13 tional security interests or a humanitarian emergency.

14 (c) **ACTIONS NO LONGER REQUIRED.**—An action required under this sec-  
15 tion is no longer required only if the Secretary has made a decision as pro-  
16 vided under section 40917(d)(4) of this title. The Secretary shall notify  
17 Congress when the action is no longer required to be taken.

18 **§ 40919. Passenger manifests**

19 (a) **AIR CARRIER REQUIREMENTS.**—

20 (1) **IN GENERAL.**—The Secretary shall require each air carrier to  
21 provide a passenger manifest for a flight to an appropriate representa-  
22 tive of the Secretary of State—

- 23 (A) not later than one hour after that carrier is notified of an  
24 aviation disaster outside the United States involving that flight; or
- 25 (B) if it is not technologically feasible or reasonable to comply  
26 with clause (A) of this paragraph, then as expeditiously as possi-  
27 ble, but not later than 3 hours after the carrier is so notified.

28 (2) **CONTENTS.**—The passenger manifest should include the follow-  
29 ing information:

- 30 (A) The full name of each passenger.
- 31 (B) The passport number of each passenger, if required for  
32 travel.
- 33 (C) The name and telephone number of a contact for each pas-  
34 senger.

35 (3) **CONSIDERATION OF REQUIREMENT TO COLLECT INFORMA-**  
36 **TION.**—In carrying out this subsection, the Secretary shall consider the  
37 necessity and feasibility of requiring air carriers to collect passenger  
38 manifest information as a condition for passengers boarding a flight of  
39 the carrier.

1 (b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary shall con-  
2 sider imposing a requirement on foreign air carriers comparable to that im-  
3 posed on air carriers under subsection (a)(1) and (2).

4 (c) FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED  
5 STATES.—

6 (1) IN GENERAL.—Each air carrier and foreign air carrier operating  
7 a passenger flight in foreign air transportation to the United States  
8 shall provide to the Commissioner of Customs and Border Protection  
9 by electronic transmission a passenger and crew manifest containing  
10 the information specified in paragraph (2). Carriers may use the ad-  
11 vanced passenger information system established under section 431 of  
12 the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information  
13 required by the preceding sentence.

14 (2) CONTENTS.—A passenger and crew manifest for a flight required  
15 under paragraph (1) shall contain the following information:

16 (A) The full name of each passenger and crew member.

17 (B) The date of birth and citizenship of each passenger and  
18 crew member.

19 (C) The sex of each passenger and crew member.

20 (D) The passport number and country of issuance of each pas-  
21 senger and crew member if required for travel.

22 (E) The United States visa number or resident alien card num-  
23 ber of each passenger and crew member, as applicable.

24 (F) Other information the Secretary, acting through the Admin-  
25 istrator of the Transportation Security Administration in consulta-  
26 tion with the Commissioner of Customs and Bureau Protection,  
27 determines is reasonably necessary to ensure aviation safety.

28 (3) PASSENGER NAME RECORDS.—The carriers shall make passenger  
29 name record information available to the Bureau of Customs and Bor-  
30 der Protection on request.

31 (4) Transmission of manifest.—Subject to paragraphs (5) and (6),  
32 a passenger and crew manifest required for a flight under paragraph  
33 (1) shall be transmitted to the Bureau of Customs and Border Protec-  
34 tion in advance of the aircraft landing in the United States in the man-  
35 ner, time, and form the Bureau prescribes.

36 (5) TRANSMISSION OF MANIFESTS TO OTHER FEDERAL AGEN-  
37 CIES.—On request, information provided to the Secretary or the  
38 Bureau of Customs and Border Protection under this subsection  
39 may be shared with other Federal agencies for the purpose of pro-  
40 tecting national security

41 (6) PRESCREENING INTERNATIONAL PASSENGERS.—

1 (A) IN GENERAL.—The Secretary, or the designee of the Sec-  
2 retary, shall issue a notice of proposed rulemaking that will allow  
3 the Department to compare passenger information for an inter-  
4 national flight to or from the United States against the consoli-  
5 dated and integrated terrorist watchlist maintained by the Federal  
6 Government before departure of the flight.

7 (B) APPEAL PROCEDURES.—

8 (i) The Secretary shall establish a timely and fair process  
9 for individuals identified as a threat under subparagraph (A)  
10 to appeal to the Department the determination and correct  
11 erroneous information.

12 (ii) The process shall include the establishment of a method  
13 by which the Secretary will be able to maintain a record of  
14 air passengers and other individuals who have been  
15 misidentified and have corrected erroneous information. To  
16 prevent repeated delays of misidentified passengers and other  
17 individuals, the Department record shall contain information  
18 determined by the Secretary to authenticate the identity of  
19 such a passenger or individual.

20 **§ 40920. Agreements on aircraft sabotage, aircraft hijacking,**  
21 **and airport security**

22 The Secretary of State shall seek multilateral and bilateral agreement on  
23 strengthening enforcement measures and standards for compliance related  
24 to aircraft sabotage, aircraft hijacking, and airport security.

25 **§ 40921. Intelligence**

26 (a) DEFINITION.—In this section, “intelligence community” means the in-  
27 telligence and intelligence-related activities of the following units of the  
28 United States Government:

- 29 (1) Department of State.
- 30 (2) Department of Defense.
- 31 (3) Department of the Treasury.
- 32 (4) Department of Energy.
- 33 (5) Departments of the Army, Navy, and Air Force.
- 34 (6) Central Intelligence Agency.
- 35 (7) National Security Agency.
- 36 (8) Defense Intelligence Agency.
- 37 (9) Federal Bureau of Investigation.
- 38 (10) Drug Enforcement Administration.

39 (b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head  
40 of each unit in the intelligence community shall prescribe policies and proce-  
41 dures to ensure that intelligence reports about terrorism are made available,

1 as appropriate, to the heads of other units in the intelligence community,  
2 the Secretary, and the Administrator of the Transportation Security Admin-  
3 istration.

4 (e) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the  
5 units in the intelligence community shall place greater emphasis on strategic  
6 intelligence efforts by establishing a unit for strategic planning on terrorism.

7 (d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the  
8 Secretary, the Director of Central Intelligence shall designate at least one  
9 intelligence officer of the Central Intelligence Agency to serve in a senior  
10 position in the Office of the Secretary.

11 (e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intel-  
12 ligence community, the Secretary, and the Administrator shall review and,  
13 as appropriate, revise written working agreements between the intelligence  
14 community and the Secretary.

15 **§ 40922. Research and development**

16 (a) PROGRAM REQUIREMENT.—

17 (1) IN GENERAL.—The Secretary, acting through the Administrator  
18 of the Transportation Security Administration, shall establish and  
19 carry out a program to accelerate and expand the research, develop-  
20 ment, and implementation of technologies and procedures to counteract  
21 terrorist acts against civil aviation. The program shall provide for de-  
22 veloping and having in place new equipment and procedures necessary  
23 to meet the technological challenges presented by terrorism. The pro-  
24 gram shall include research on, and development of, technological im-  
25 provements and ways to enhance human performance.

26 (2) REQUIRED ACTIONS.—In designing and carrying out the pro-  
27 gram established under this subsection, the Secretary shall—

28 (A) consult and coordinate activities with other departments,  
29 agencies, and instrumentalities of the United States Government  
30 doing similar research;

31 (B) identify departments, agencies, and instrumentalities that  
32 would benefit from that research; and

33 (C) seek cost-sharing agreements with those departments, agen-  
34 cies, and instrumentalities.

35 (3) ANNUAL REPORTS.—In carrying out the program established  
36 under this subsection, the Secretary shall review and consider the an-  
37 nual reports the Secretary of Transportation submits to Congress on  
38 transportation security and intelligence.

39 (4) DESIGNATION OF RESPONSIBLE INDIVIDUAL.—

40 (A) IN GENERAL.—In carrying out the program established  
41 under this subsection, the Secretary shall designate an individual

1 to be responsible for engineering, research, and development with  
2 respect to security technology under the program.

3 (B) DECISION-MAKING.—The individual designated under sub-  
4 paragraph (A) shall use appropriate systems engineering and risk  
5 management models in making decisions regarding the allocation  
6 of funds for engineering, research, and development with respect  
7 to security technology under the program.

8 (C) ANNUAL REPORT.—The individual designated under sub-  
9 paragraph (A) shall, on an annual basis, submit to the Federal  
10 Aviation Administration Research, Engineering and Development  
11 Advisory Committee a report on activities under this paragraph  
12 during the preceding year. Each report shall include, for the year  
13 covered by the report, information on—

14 (i) progress made in engineering, research, and develop-  
15 ment with respect to security technology;

16 (ii) the allocation of funds for engineering, research, and  
17 development with respect to security technology; and

18 (iii) engineering, research, and development with respect to  
19 technologies drawn from other agencies, including the ration-  
20 ale for engineering, research, and development with respect to  
21 the technologies.

22 (5) GRANTS.—The Secretary may—

23 (A) make grants to institutions of higher learning and other ap-  
24 propriate research facilities with demonstrated ability to carry out  
25 research described in paragraph (1), and fix the amounts and  
26 terms of the grants; and

27 (B) make cooperative agreements with governmental authorities  
28 the Secretary decides are appropriate.

29 (b) REVIEW OF THREATS.—

30 (1) IN GENERAL.—The Secretary periodically shall review  
31 threats to civil aviation, with particular focus on—

32 (A) a comprehensive systems analysis (employing vulnerability  
33 analysis, threat attribute definition, and technology roadmaps) of  
34 the civil aviation system, including

35 (i) the destruction, commandeering, or diversion of civil air-  
36 craft or the use of civil aircraft as a weapon; and

37 (ii) the disruption of civil aviation service, including by  
38 cyber attack;

39 (B) explosive material that presents the most significant threat  
40 to civil aircraft;

1 (C) the minimum amounts, configurations, and types of explo-  
2 sive material that can cause, or would reasonably be expected to  
3 cause, catastrophic damage to aircraft in air transportation;

4 (D) the amounts, configurations, and types of explosive material  
5 that can be detected reliably by existing, or reasonably anticipated,  
6 near-term explosive detection technologies;

7 (E) the potential release of chemical, biological, or similar weap-  
8 ons or devices either within an aircraft or within an airport;

9 (F) the feasibility of using various ways to minimize damage  
10 caused by explosive material that cannot be detected reliably by  
11 existing, or reasonably anticipated, near-term explosive detection  
12 technologies;

13 (G) the ability to screen passengers, carry-on baggage, checked  
14 baggage, and cargo; and

15 (H) the technologies that might be used in the future to at-  
16 tempt to destroy or otherwise threaten commercial aircraft and the  
17 way in which those technologies can be countered effectively.

18 (2) PROGRAM FOCUS AND PRIORITIES.—The Secretary shall use the  
19 results of the review under this subsection to develop the focus and pri-  
20 orities of the program established under subsection (a).

21 (c) SCIENTIFIC ADVISORY PANEL.—

22 (1) ESTABLISHMENT.—The Secretary shall establish a scientific ad-  
23 visory panel, as a subcommittee of the Research, Engineering, and De-  
24 velopment Advisory Committee, to review, comment on, advise the  
25 progress of, and recommend modifications in, the program established  
26 under subsection (a), including the need for long-range research pro-  
27 grams to detect and prevent catastrophic damage to commercial air-  
28 craft, commercial aviation facilities, commercial aviation personnel and  
29 passengers, and other components of the commercial aviation system  
30 by the next generation of terrorist weapons.

31 (2) PANEL MEMBERS.—

32 (A) QUALIFICATIONS.—The advisory panel shall consist of indi-  
33 viduals who have scientific and technical expertise in—

34 (i) the development and testing of effective explosive detec-  
35 tion systems;

36 (ii) aircraft structure and experimentation to decide on the  
37 type and minimum weights of explosives that an effective ex-  
38 plosive detection technology must be capable of detecting;

39 (iii) technologies involved in minimizing airframe damage  
40 to aircraft from explosives; and

1 (iv) other scientific and technical areas the Secretary con-  
2 siders appropriate.

3 (B) CONSIDERATIONS.—In appointing individuals to the advi-  
4 sory panel, the Secretary should consider individuals from aca-  
5 demia and the national laboratories, as appropriate.

6 (3) ORGANIZATION AS TEAMS.—The Secretary shall organize the ad-  
7 visory panel into teams capable of undertaking the review of policies  
8 and technologies upon request.

9 (4) BIENNIAL REVIEW.—The Secretary shall review the composition  
10 of the advisory panel every 2 years to ensure that the expertise of the  
11 individuals on the panel is suited to the current and anticipated duties  
12 of the panel.

13 (d) SECURITY AND RESEARCH AND DEVELOPMENT ACTIVITIES.—

14 (1) GENERAL REQUIREMENTS.—The Secretary shall conduct re-  
15 search (including behavioral research) and development activities ap-  
16 propriate to develop, modify, test, and evaluate a system, procedure, fa-  
17 cility, or device to protect passengers and property against acts of  
18 criminal violence, aircraft piracy, and terrorism and to ensure security.

19 (2) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as  
20 otherwise provided by law, the Secretary may not transfer a duty or  
21 power under this subsection to another department, agency, or instru-  
22 mentality of the United States Government.

### 23 **§ 40923. Explosive detection**

24 (a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—

25 (1) IN GENERAL.—A deployment or purchase of explosive detection  
26 equipment under section 108.7(b)(8) or 108.20 of title 14, Code of  
27 Federal Regulations, or similar regulation is required only if the Sec-  
28 retary, acting through the Administrator of the Transportation Secu-  
29 rity Administration, certifies that the equipment alone, or as part of  
30 an integrated system, can detect under realistic air carrier operating  
31 conditions the amounts, configurations, and types of explosive material  
32 that would likely be used to cause catastrophic damage to commercial  
33 aircraft. The Secretary shall base the certification on the results of  
34 tests conducted under protocols developed in consultation with expert  
35 scientists outside of the Transportation Security Administration.

36 (2) FACILITATING DEPLOYMENT.—Until the Secretary determines  
37 that equipment certified under paragraph (1) is commercially available  
38 and has successfully completed operational testing as provided in para-  
39 graph (1), the Secretary shall facilitate the deployment of approved  
40 commercially available explosive detection devices the Secretary deter-  
41 mines will enhance aviation security significantly. The Secretary shall

1           require that equipment deployed under this paragraph be replaced by  
2           equipment certified under paragraph (1) when equipment certified  
3           under paragraph (1) becomes commercially available. The Secretary is  
4           authorized, based on operational considerations at individual airports,  
5           to waive the required installation of commercially available equipment  
6           under paragraph (1) in the interests of aviation security. The Secretary  
7           may permit the requirements of this paragraph to be met at airports  
8           by the deployment of dogs or other appropriate animals to supplement  
9           equipment for screening passengers, baggage, mail, or cargo for explo-  
10          sives or weapons.

11           (3) PURCHASES BY SECRETARY.—This subsection does not prohibit  
12          the Secretary from purchasing or deploying explosive detection equip-  
13          ment described in paragraph (1).

14           (b) GRANTS.—The Secretary may provide grants to continue the Explo-  
15          sive Detection K-9 Team Training Program to detect explosives at airports  
16          and on aircraft.

#### 17       **§ 40924. Airport construction guidelines**

18           In consultation with air carriers, airport authorities, and others the Sec-  
19          retary, acting through the Administrator of the Transportation Security Ad-  
20          ministration, considers appropriate, the Secretary shall develop guidelines  
21          for airport design and construction to allow for maximum security enhance-  
22          ment. In developing the guidelines, the Secretary shall consider the results  
23          of the assessment carried out under section 40914(a) of this title.

#### 24       **§ 40925. Alaska exemptions**

25           The Secretary, acting through the Administrator of the Transportation  
26          Security Administration, may exempt from sections 40911, 40913(a)  
27          through (c) and (e), 40916, 40953, and 40954 of this title airports in Alas-  
28          ka served only by air carriers that—

29           (1) hold certificates issued under section 41102 of title 49;

30           (2) operate aircraft with certificates for a maximum gross takeoff  
31          weight of less than 12,500 pounds; and

32           (3) board passengers, or load property intended to be carried in an  
33          aircraft cabin, that will be screened under section 40911 of this title  
34          at another airport in Alaska before the passengers board, or the prop-  
35          erty is loaded on, an aircraft for a place outside Alaska.

#### 36       **§ 40926. Assessments and evaluations**

37           (a) PERIODIC ASSESSMENTS.—The Secretary, acting through the Admin-  
38          istrator of the Transportation Security Administration, shall require each  
39          air carrier and airport (including the airport owner or operator in coopera-  
40          tion with the air carriers and vendors serving each airport) that provides  
41          for intrastate, interstate, or foreign air transportation to conduct periodic



1 vulnerability assessments of the security systems of that air carrier or air-  
2 port, respectively. The Transportation Security Administration shall perform  
3 periodic audits of the assessments.

4 (b) INVESTIGATIONS.—The Secretary shall conduct periodic and unan-  
5 nounced inspections of security systems of airports and air carriers to deter-  
6 mine the effectiveness and vulnerabilities of the systems. To the extent al-  
7 lowable by law, the Secretary may provide for anonymous tests of those se-  
8 curity systems.

9 **§ 40927. Federal air marshals and training of law enforce-**  
10 **ment personnel**

11 (a) IN GENERAL.—The Secretary, acting through the Administrator of  
12 the Transportation Security Administration and under the authority pro-  
13 vided by section 40913(d) of this title—

14 (1) may provide for deployment of Federal air marshals on every  
15 passenger flight of air carriers in air transportation or intrastate air  
16 transportation;

17 (2) shall provide for deployment of Federal air marshals on every  
18 flight determined by the Secretary to present high security risks;

19 (3) shall provide for appropriate training, supervision, and equip-  
20 ment of Federal air marshals;

21 (4) shall require air carriers providing flights described in paragraph  
22 (1) to provide seating for a Federal air marshal on the flight without  
23 regard to the availability of seats on the flight and at no cost to the  
24 United States Government or the marshal;

25 (5) may require air carriers to provide, on a space-available basis,  
26 to an off-duty Federal air marshal a seat on a flight to the airport  
27 nearest the marshal's home at no cost to the marshal or the United  
28 States Government if the marshal is traveling to that airport after  
29 completing his or her security duties;

30 (6) may enter into agreements with Federal, State, and local agen-  
31 cies under which appropriately-trained law enforcement personnel from  
32 the agencies, when traveling on a flight of an air carrier, will carry a  
33 firearm and be prepared to assist Federal air marshals;

34 (7) shall establish procedures to ensure that Federal air marshals  
35 are made aware of armed or unarmed law enforcement personnel on  
36 board an aircraft; and

37 (8) may appoint as a Federal air marshal, regardless of age (if the  
38 individual otherwise meets the background and fitness qualifications re-  
39 quired for Federal air marshals)—

40 (A) an individual who is a retired law enforcement officer; and

41 (B) an individual who is a retired member of the Armed Forces.

1 (b) LONG DISTANCE FLIGHTS.—In making the determination under sub-  
2 section (a)(2), nonstop, long distance flights, such as those targeted on Sep-  
3 tember 11, 2001, should be a priority.

4 (c) CONTINUATION OF INITIATIVES TO PROTECT ANONYMITY OF FED-  
5 ERAL AIR MARSHALS.—The Director of the Federal Air Marshal Service  
6 shall continue operational initiatives to protect the anonymity of Federal air  
7 marshals.

8 (d) TRAINING FOR FEDERAL AND LOCAL LAW ENFORCEMENT PERSON-  
9 NEL.—

10 (1) AVAILABILITY OF INFORMATION.—The Assistant Secretary for  
11 Immigration and Customs Enforcement and the Director of the Fed-  
12 eral Air Marshal Service shall make available, as practicable, appro-  
13 priate information on in-flight counterterrorism and weapons handling  
14 procedures and tactics training to Federal law enforcement officers who  
15 fly while in possession of a firearm.

16 (2) Identification of Fraudulent Documents.—The Assistant Sec-  
17 retary for Immigration Services and the Director of the Federal Air  
18 Marshal Service, in coordination with the Assistant Secretary (Trans-  
19 portation Security Administration), shall ensure that Transportation  
20 Security Administration screeners and Federal law marshals receive  
21 training in identifying fraudulent identification documents, including  
22 fraudulent or expired visas and passports. The training also shall be  
23 made available to other Federal law enforcement agencies and local law  
24 enforcement agencies located in a State that borders Canada or Mexico.

25 (e) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

26 (1) IN GENERAL.—The Assistant Secretary for Immigration and  
27 Customs Enforcement, after consultation with the Secretary of State,  
28 may direct the Federal Air Marshal Service to provide appropriate air  
29 marshal training to law enforcement personnel of foreign countries.

30 (2) WATCHLIST SCREENING.—The Federal Air Marshal Service may  
31 only provide appropriate air marshal training to law enforcement per-  
32 sonnel of foreign countries after comparing the identifying information  
33 and records of law enforcement personnel of foreign countries against  
34 all appropriate records in the consolidated and integrated terrorist  
35 watchlists maintained by the Federal Government.

36 (3) FEES.—The Assistant Secretary for Immigration and Customs  
37 Enforcement shall establish reasonable fees and charges to pay ex-  
38 penses incurred in carrying out this subsection. Funds collected under  
39 this subsection shall be credited to the account in the Treasury from  
40 which the expenses were incurred and shall be available to the Assis-

1 ant Secretary for purposes for which amounts in the account are avail-  
2 able.

3 **§ 40928. Crew training**

4 (a) BASIC SECURITY TRAINING.—

5 (1) IN GENERAL.—Each air carrier providing scheduled passenger  
6 air transportation shall carry out a training program for flight and  
7 cabin crew members to prepare the crew members for potential threat  
8 conditions.

9 (2) PROGRAM ELEMENTS.—An air carrier training program under  
10 this subsection shall include, at a minimum, elements that address each  
11 of the following:

12 (A) Recognizing suspicious activities and determining the seri-  
13 ousness of an occurrence.

14 (B) Crew communication and coordination.

15 (C) The proper commands to give passengers and attackers.

16 (D) Appropriate responses to defend oneself.

17 (E) Use of protective devices assigned to crew members (to the  
18 extent devices are required by the Secretary, acting through the  
19 Administrator of the Transportation Security Administration).

20 (F) Psychology of terrorists to cope with hijacker behavior and  
21 passenger responses.

22 (G) Situational training exercises regarding various threat con-  
23 ditions.

24 (H) Flight deck procedures or aircraft maneuvers to defend the  
25 aircraft and cabin crew responses to the procedures and maneu-  
26 vers.

27 (I) The proper conduct of a cabin search, including explosive de-  
28 vice recognition.

29 (J) Other subject matter considered appropriate by the Sec-  
30 retary.

31 (3) APPROVAL.—An air carrier training program under this sub-  
32 section shall be subject to approval by the Secretary.

33 (4) MINIMUM STANDARDS.—The Secretary may establish minimum  
34 standards for the training provided under this subsection and for recur-  
35 rent training.

36 (5) PROGRAMS TO CONTINUE IN EFFECT.—Notwithstanding para-  
37 graphs (3) and (4), a training program of an air carrier to prepare  
38 flight and cabin crew members for potential threat conditions that was  
39 approved by the Administrator of the Federal Aviation Administration  
40 or the Secretary before December 12, 2003, may continue in effect  
41 until disapproved or ordered modified by the Secretary.

1           (6) MONITORING.—The Secretary, in consultation with the Adminis-  
2           trator of the Federal Aviation Administration, shall monitor air carrier  
3           training programs under this subsection and periodically shall review  
4           an air carrier’s training program to ensure that the program is ade-  
5           quately preparing crew members for potential threat conditions. In de-  
6           termining when an air carrier’s training program should be reviewed  
7           under this paragraph, the Secretary shall consider complaints from  
8           crew members. The Secretary shall ensure that employees responsible  
9           for monitoring the training programs have the necessary resources and  
10          knowledge.

11          (7) UPDATES.—The Secretary, in consultation with the Adminis-  
12          trator of the Federal Aviation Administration, shall order air carriers  
13          to modify training programs under this subsection to reflect new or dif-  
14          ferent security threats.

15 (b) ADVANCED SELF-DEFENSE TRAINING.—

16          (1) IN GENERAL.—The Secretary shall develop and provide a vol-  
17          untary training program for flight and cabin crew members of air car-  
18          riers providing scheduled passenger air transportation.

19          (2) PROGRAM ELEMENTS.—The training program under this sub-  
20          section shall include both classroom and effective hands-on training in  
21          the following elements of self-defense:

22                  (A) Detering a passenger who might present a threat.

23                  (B) Advanced control, striking, and restraint techniques.

24                  (C) Training to defend oneself against edged or contact weap-  
25                  ons.

26                  (D) Methods to subdue and restrain an attacker.

27                  (E) Use of available items aboard the aircraft for self-defense.

28                  (F) Appropriate and effective responses to defend oneself, in-  
29                  cluding the use of force against an attacker.

30                  (G) Other elements of training that the Secretary considers ap-  
31                  propriate.

32          (3) PARTICIPATION NOT REQUIRED—A CREW MEMBER SHALL NOT  
33          BE REQUIRED TO PARTICIPATE IN THE TRAINING PROGRAM UNDER  
34          THIS SUBSECTION.

35          (4) COMPENSATION.—Neither the Federal Government nor an air  
36          carrier shall be required to compensate a crew member for participat-  
37          ing in the training program under this subsection.

38          (5) FEES.—A crew member is not required to pay a fee for the  
39          training program under this subsection.

40          (6) CONSULTATION.—In developing the training program under this  
41          subsection, the Secretary shall consult with law enforcement personnel

1 and security experts who have expertise in self-defense training, terror-  
2 ism experts, representatives of air carriers, the director of self-defense  
3 training in the Federal Air Marshal Service, flight attendants, labor or-  
4 ganizations representing flight attendants, and educational institutions  
5 offering law enforcement training programs.

6 (7) DESIGNATION OF TRANSPORTATION SECURITY ADMINISTRATION  
7 OFFICIAL.—The Secretary shall designate an official in the Transpor-  
8 tation Security Administration to be responsible for implementing the  
9 training program under this subsection. The official shall consult with  
10 air carriers and labor organizations representing crew members before  
11 implementing the program to ensure that it is appropriate for situa-  
12 tions that may arise on board an aircraft during a flight.

13 (c) LIMITATION.—Actions by crew members under this section shall be  
14 subject to the provisions of section 40913(k) of this title.

15 **§ 40929. Security screening program**

16 (a) IN GENERAL.—An operator of an airport may submit to the Sec-  
17 retary, acting through the Administrator of the Transportation Security Ad-  
18 ministration, an application to have the screening of passengers and prop-  
19 erty at the airport under section 40911 of this title be carried out by the  
20 screening personnel of a qualified private screening company under a con-  
21 tract entered into with the Secretary.

22 (b) APPROVAL OF APPLICATIONS.—

23 (1) IN GENERAL.—Not later than 120 days after the date of receipt  
24 of an application submitted by an airport operator under subsection  
25 (a), the Secretary shall approve or deny the application.

26 (2) STANDARDS.—The Secretary shall approve an application sub-  
27 mitted by an airport operator under subsection (a) if the Secretary de-  
28 termines that the approval would not compromise security or detrimen-  
29 tally affect the cost-efficiency or the effectiveness of the screening of  
30 passengers or property at the airport.

31 (3) REPORTS ON DENIALS OF APPLICATIONS.—

32 (A) IN GENERAL.—If the Secretary denies an application sub-  
33 mitted by an airport operator under subsection (a), the Secretary  
34 shall provide to the airport operator, not later than 60 days follow-  
35 ing the date of the denial, a written report that sets forth—

36 (i) the findings that served as the basis for the denial;

37 (ii) the results of cost or security analysis conducted in  
38 considering the application; and

39 (iii) recommendations on how the airport operator can ad-  
40 dress the reasons for the denial.

1 (B) SUBMISSION TO CONGRESS.—The Secretary shall submit to  
2 the Committee on Commerce, Science, and Transportation of the  
3 Senate and the Committee on Homeland Security of the House of  
4 Representatives a copy of a report provided to an airport operator  
5 under subparagraph (A).

6 (c) QUALIFIED PRIVATE SCREENING COMPANY.—A private screening  
7 company is qualified to provide screening services at an airport under this  
8 section if the company will only employ individuals to provide the services  
9 who meet all the requirements of this chapter applicable to Federal Govern-  
10 ment personnel who perform screening services at airports under this chap-  
11 ter and will provide compensation and other benefits to the individuals that  
12 are not less than the level of compensation and other benefits provided to  
13 the Federal Government personnel in accordance with this chapter.

14 (d) STANDARDS FOR PRIVATE SCREENING COMPANIES.—

15 (1) IN GENERAL.—The Secretary may enter into a contract with a  
16 private screening company to provide screening at an airport under this  
17 section only if the Secretary determines and certifies to Congress  
18 that—

19 (A) the level of screening services and protection provided at the  
20 airport under the contract will be equal to or greater than the level  
21 that would be provided at the airport by Federal Government per-  
22 sonnel under this chapter; and

23 (B) the private screening company is owned and controlled by  
24 a citizen of the United States, to the extent that the Secretary de-  
25 termines that there are private screening companies owned and  
26 controlled by citizens of the United States.

27 (2) WAIVERS.—The Secretary may waive the requirement of para-  
28 graph (1)(B) for a company that is a United States subsidiary with  
29 a parent company that has implemented a foreign ownership, control,  
30 or influence mitigation plan that has been approved by the Defense Se-  
31 curity Service of the Department of Defense prior to the submission  
32 of the application. The Secretary has complete discretion to reject any  
33 application from a private screening company to provide screening serv-  
34 ices at an airport that requires a waiver under this paragraph.

35 (e) SUPERVISION OF SCREENED PERSONNEL.—The Secretary shall pro-  
36 vide Federal Government supervisors to oversee all screening at each airport  
37 at which screening services are provided under this section and provide Fed-  
38 eral Government law enforcement officers at the airport pursuant to this  
39 chapter.

40 (f) TERMINATION OF CONTRACTS.—The Secretary may terminate a con-  
41 tract entered into with a private screening company to provide screening

1 services at an airport under this section if the Secretary finds that the com-  
2 pany has failed repeatedly to comply with a standard, regulation, directive,  
3 order, law, or contract applicable to the hiring or training of personnel to  
4 provide services or to the provision of screening at the airport.

5 (g) OPERATOR NOT LIABLE.—Notwithstanding any other provision of  
6 law, an operator of an airport is not liable for a claim for damages filed  
7 in State or Federal court (including a claim for compensatory, punitive, con-  
8 tributory, or indemnity damages) relating to—

9 (1) the airport operator’s decision—

10 (A) to submit an application to the Secretary under subsection  
11 (a) or section 44919 of title 49 (49 U.S.C. 44919 (2012 ed.)); o

12 (B) not to submit an application; and

13 (2) an act of negligence, gross negligence, or intentional wrongdoing  
14 by—

15 (A) a qualified private screening company or its employees in  
16 a case in which the qualified private screening company is acting  
17 under a contract entered into with the Secretary or the Secretary’s  
18 designee; or

19 (B) employees of the Federal Government providing passenger  
20 and property security screening services at the airport.

21 (h) RECOMMENDATIONS OF AIRPORT OPERATOR.—As part of any sub-  
22 mission of an application for a private screening company to provide screen-  
23 ing services at an airport, the airport operator shall provide to the Secretary  
24 a recommendation as to which company would best serve the security  
25 screening and passenger needs of the airport, along with a statement ex-  
26 plaining the basis of the operator’s recommendation.

27 (i) OPERATOR LIABILITY.—Nothing in this section shall relieve an airport  
28 operator from liability for its own acts or omissions related to its security  
29 responsibilities. Except as may be provided by subchapter IV of chapter 117  
30 of this title, nothing in this section shall relieve a qualified private screening  
31 company or its employees from liability related to its own acts of negligence,  
32 gross negligence, or intentional wrongdoing.

### 33 **§ 40930. Federal flight deck officer program**

34 (a) DEFINITIONS.—In this section:

35 (1) AIR TRANSPORTATION.—The term “air transportation” includes  
36 all-cargo air transportation.

37 (2) PILOT.—The term “pilot” means an individual who has final au-  
38 thority and responsibility for the operation and safety of the flight or  
39 another flight deck crew member.

40 (b) EXEMPTION.—This section does not apply to air carriers operating  
41 under part 135 of title 14, Code of Federal Regulations, and to pilots em-

1     ployed by the carriers to the extent that the carriers and pilots are covered  
2     by section 135.119 of title 14 or a successor to that section.

3     (c) ESTABLISHMENT.—The Secretary, acting through the Administrator  
4     of the Transportation Security Administration, shall establish a program to  
5     deputize volunteer pilots of air carriers providing air transportation or intra-  
6     state air transportation as Federal law enforcement officers to defend the  
7     flight decks of aircraft of air carriers against acts of criminal violence or  
8     air piracy. The officers shall be known as “Federal flight deck officers”.

9     (d) PROCEDURAL REQUIREMENTS.—

10        (1) IN GENERAL.—The Secretary shall establish procedural require-  
11        ments to carry out the program under this section

12        (2) COMMENCEMENT OF PROGRAM.—The Secretary shall undertake  
13        the process of training and deputizing pilots who are qualified to be  
14        Federal flight deck officers as Federal flight deck officers under the  
15        program.

16        (3) ISSUES TO BE ADDRESSED.—The procedural requirements estab-  
17        lished under paragraph (1) shall address the following issues:

18            (A) The type of firearm to be used by a Federal flight deck offi-  
19            cer.

20            (B) The type of ammunition to be used by a Federal flight deck  
21            officer.

22            (C) The standards and training needed to qualify and re-qualify  
23            as a Federal flight deck officer.

24            (D) The placement of the firearm of a Federal flight deck offi-  
25            cer on board the aircraft to ensure both its security and its ease  
26            of retrieval in an emergency.

27            (E) An analysis of the risk of catastrophic failure of an aircraft  
28            as a result of the discharge (including an accidental discharge) of  
29            a firearm to be used in the program into the avionics, electrical  
30            systems, or other sensitive areas of the aircraft.

31            (F) The division of responsibility between pilots in the event of  
32            an act of criminal violence or air piracy if only one pilot is a Fed-  
33            eral flight deck officer and if both pilots are Federal flight deck  
34            officers.

35            (G) Procedures for ensuring that the firearm of a Federal flight  
36            deck officer does not leave the cockpit if there is a disturbance in  
37            the passenger cabin of the aircraft or if the pilot leaves the cockpit  
38            for personal reasons.

39            (H) Interaction between a Federal flight deck officer and a Fed-  
40            eral air marshal on board the aircraft.



1 (I) The process for selection of pilots to participate in the pro-  
2 gram based on their fitness to participate in the program, includ-  
3 ing whether an additional background check should be required be-  
4 yond that required by section 40954(a)(1) of this title.

5 (J) Storage and transportation of firearms between flights, in-  
6 cluding international flights, to ensure the security of the firearms,  
7 focusing particularly on whether security would be enhanced by re-  
8 quiring storage of the firearm at the airport when the pilot leaves  
9 the airport to remain overnight away from the pilot's base airport.

10 (K) Methods for ensuring that security personnel will be able  
11 to identify whether a pilot is authorized to carry a firearm under  
12 the program.

13 (L) Methods for ensuring that pilots (including Federal flight  
14 deck officers) will be able to identify whether a passenger is a law  
15 enforcement officer who is authorized to carry a firearm aboard  
16 the aircraft.

17 (M) Other issues that the Secretary considers necessary.

18 (4) PREFERENCE.—In selecting pilots to participate in the program,  
19 the Secretary shall give preference to pilots who are former military or  
20 law enforcement personnel.

21 (5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title  
22 5 but subject to section 40119 of title 49, information developed under  
23 paragraph (3)(E) shall not be disclosed.

24 (6) NOTICE TO CONGRESS.—The Secretary shall provide notice to  
25 the Committee on Transportation and Infrastructure of the House of  
26 Representatives and the Committee on Commerce, Science, and Trans-  
27 portation of the Senate after completing the analysis required by para-  
28 graph (3)(E).

29 (7) MINIMIZATION OF RISK.—If the Secretary determines as a result  
30 of the analysis under paragraph (3)(E) that there is a significant risk  
31 of the catastrophic failure of an aircraft as a result of the discharge  
32 of a firearm, the Secretary shall take necessary actions to minimize  
33 that risk.

34 (8) REVIEW STANDARD.—The Secretary's decisions regarding the  
35 methods for implementing each of the procedural requirements speci-  
36 fied in paragraph (3) shall be subject to review only for abuse of discre-  
37 tion.

38 (e) TRAINING, SUPERVISION, AND EQUIPMENT.—

39 (1) IN GENERAL.—The Secretary shall only be obligated to provide  
40 the training, supervision, and equipment necessary for a pilot to be a

1 Federal flight deck officer under this section at no expense to the pilot  
2 or the air carrier employing the pilot.

3 (2) TRAINING.—

4 (A) IN GENERAL.—The Secretary shall base the requirements  
5 for the training of Federal flight deck officers under subsection (d)  
6 on the training standards applicable to Federal air marshals; ex-  
7 cept that the Secretary shall take into account the differing roles  
8 and responsibilities of Federal flight deck officers and Federal air  
9 marshals.

10 (B) ELEMENTS.—The training of a Federal flight deck officer  
11 shall include, at a minimum, the following elements:

12 (i) Training to ensure that the officer achieves the level of  
13 proficiency with a firearm required under subparagraph  
14 (C)(i).

15 (ii) Training to ensure that the officer maintains exclusive  
16 control over the officer's firearm at all times, including train-  
17 ing in defensive maneuvers.

18 (iii) Training to assist the officer in determining when it  
19 is appropriate to use the officer's firearm and when it is ap-  
20 propriate to use less than lethal force.

21 (C) TRAINING IN USE OF FIREARMS.—

22 (i) LEVEL OF PROFICIENCY.—To be deputized as a Federal  
23 flight deck officer, a pilot must achieve a level of proficiency  
24 with a firearm that is required by the Secretary. The level  
25 shall be comparable to the level of proficiency required of  
26 Federal air marshals.

27 (ii) TRAINING BY SECRETARY OR FIREARMS TRAINING FA-  
28 CILITY.—The training of a Federal flight deck officer in the  
29 use of a firearm may be conducted by the Secretary or by a  
30 firearms training facility approved by the Secretary.

31 (iii) REQUALIFICATION.—The Secretary shall require a  
32 Federal flight deck officer to re-qualify to carry a firearm  
33 under the program. The requalification shall occur at an in-  
34 terval required by the Secretary.

35 (f) DEPUTIZATION.—

36 (1) IN GENERAL.—The Secretary may deputize, as a Federal flight  
37 deck officer under this section, a pilot who submits to the Secretary  
38 a request to be such an officer and whom the Secretary determines is  
39 qualified to be such an officer.

40 (2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck  
41 officer under this section if—

1 (A) the pilot is employed by an air carrier;

2 (B) the Secretary determines (in the Secretary's discretion) that  
3 the pilot meets the standards established by the Secretary for  
4 being such an officer; and

5 (C) the Secretary determines that the pilot has completed the  
6 training required by the Secretary.

7 (3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Secretary  
8 may request another Federal agency to deputize, as Federal flight deck  
9 officers under this section, those pilots that the Secretary determines  
10 are qualified to be such officers.

11 (4) REVOCATION.—The Secretary may revoke the deputization  
12 of a pilot as a Federal flight deck officer if the Secretary finds  
13 that the pilot is no longer qualified to be such an officer.

14 (g) COMPENSATION.—Pilots participating in the program under this sec-  
15 tion shall not be eligible for compensation from the Federal Government for  
16 services provided as a Federal flight deck officer. The Federal Government  
17 and air carriers shall not be obligated to compensate a pilot for participat-  
18 ing in the program or for the pilot's training or qualification and requali-  
19 fication to carry firearms under the program.

20 (h) AUTHORITY TO CARRY FIREARMS.—

21 (1) IN GENERAL.—The Secretary shall authorize a Federal flight  
22 deck officer to carry a firearm while engaged in providing air transpor-  
23 tation or intrastate air transportation. Notwithstanding subsection  
24 (e)(1), the officer may purchase a firearm and carry that firearm  
25 aboard an aircraft of which the officer is the pilot under this section  
26 if the firearm is of a type that may be used under the program.

27 (2) PREEMPTION.—Notwithstanding any other provision of Federal  
28 or State law, a Federal flight deck officer, whenever necessary to partici-  
29 pate in the program, may carry a firearm in a State and from one  
30 State to another State.

31 (3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation  
32 with the Secretary of State, the Secretary may take necessary action  
33 to ensure that a Federal flight deck officer may carry a firearm in a  
34 foreign country whenever necessary to participate in the program.

35 (i) AUTHORITY TO USE FORCE.—Notwithstanding section 40913(d) of  
36 this title, the Secretary shall prescribe the standards and circumstances  
37 under which a Federal flight deck officer may use, while the program under  
38 this section is in effect, force (including lethal force) against an individual  
39 in the defense of the flight deck of an aircraft in air transportation or intra-  
40 state air transportation.

41 (j) LIMITATION ON LIABILITY.—

1 (1) AIR CARRIERS.—An air carrier is not liable for damages in an  
2 action brought in a Federal or State court arising out of a Federal  
3 flight deck officer's use of or failure to use a firearm.

4 (2) FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck offi-  
5 cer is not liable for damages in an action brought in a Federal or State  
6 court arising out of the acts or omissions of the officer in defending  
7 the flight deck of an aircraft against acts of criminal violence or air  
8 piracy unless the officer is guilty of gross negligence or willful mis-  
9 conduct.

10 (3) FEDERAL GOVERNMENT.—For purposes of an action against the  
11 United States with respect to an act or omission of a Federal flight  
12 deck officer in defending the flight deck of an aircraft, the officer shall  
13 be treated as an employee of the Federal Government under chapter  
14 171 of title 28, relating to tort claims procedure.

15 (k) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an acciden-  
16 tal discharge of a firearm under the pilot program results in the injury or  
17 death of a passenger or crew member on an aircraft, the Secretary—

18 (1) shall revoke the deputization of the Federal flight deck officer  
19 responsible for that firearm if the Secretary determines that the dis-  
20 charge was attributable to the negligence of the officer; and

21 (2) if the Secretary determines that a shortcoming in standards,  
22 training, or procedures was responsible for the accidental discharge, the  
23 Secretary may temporarily suspend the program until the shortcoming  
24 is corrected.

25 (l) 4Limitation on Authority of Air Carriers.—An air carrier may not  
26 prohibit or threaten a retaliatory action against a pilot employed by the air  
27 carrier from/for becoming a Federal flight deck officer under this section.  
28 An air carrier may not—

29 (1) prohibit a Federal flight deck officer from piloting an aircraft op-  
30 erated by the air carrier; or

31 (2) terminate the employment of a Federal flight deck officer, solely  
32 on the basis of his or her volunteering for or participating in the pro-  
33 gram under this section.

34 **§ 40931. Deputation of State and local law enforcement offi-**  
35 **cers**

36 (a) DEPUTATION AUTHORITY.—The Secretary, acting through the Ad-  
37 ministrator of the Transportation Security Administration, may deputize a  
38 State or local law enforcement officer to carry out Federal airport security  
39 duties under this chapter.

40 (b) FULFILLMENT OF REQUIREMENTS.—A State or local law enforcement  
41 officer who is deputized under this section shall be treated as a Federal law

1 enforcement officer for purposes of meeting the requirements of this chapter  
2 and other provisions of law to provide Federal law enforcement officers to  
3 carry out Federal airport security duties.

4 (c) AGREEMENTS.—To deputize a State or local law enforcement officer  
5 under this section, the Secretary shall enter into a voluntary agreement with  
6 the appropriate State or local law enforcement agency that employs the  
7 State or local law enforcement officer.

8 (d) REIMBURSEMENT.—

9 (1) IN GENERAL.—The Secretary shall reimburse a State or local  
10 law enforcement agency for all reasonable, allowable, and allocable  
11 costs incurred by the State or local law enforcement agency with re-  
12 spect to a law enforcement officer deputized under this section.

13 (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
14 be appropriated such sums as may be necessary to carry out this sub-  
15 section.

16 (e) FEDERAL TORT CLAIMS ACT.—A State or local law enforcement offi-  
17 cer who is deputized under this section shall be treated as an “employee  
18 of the Government” for purposes of sections 1346(b), 2401(b), and chapter  
19 171 of title 28, while carrying out Federal airport security duties within the  
20 course and scope of the officer’s employment, subject to Federal supervision  
21 and control, and under the terms of the deputation.

22 (f) STATIONING OF OFFICERS.—The Secretary may allow law en-  
23 forcement personnel to be stationed other than at the airport security  
24 screening location if that would be preferable for law enforcement pur-  
25 poses and if the personnel would still be able to provide prompt respon-  
26 siveness to problems occurring at the screening location.

27 **§ 40932. Airport security improvement projects**

28 (a) DEFINITION.—In this section, the term “sponsor” has the meaning  
29 given that term in section 47102 of title 49.

30 (b) GRANT AUTHORITY.—Subject to the requirements of this section, the  
31 Secretary shall make grants to airport sponsors—

32 (1) for projects to replace baggage conveyer systems related to avia-  
33 tion security;

34 (2) for projects to reconfigure terminal baggage areas as needed to  
35 install explosive detection systems;

36 (3) for projects to enable the Secretary to deploy explosive detection  
37 systems behind the ticket counter, in the baggage sorting area, or in  
38 line with the baggage handling system; and

39 (4) for other airport security capital improvement projects.

1 (c) APPLICATIONS.—A sponsor seeking a grant under this section shall  
2 submit to the Secretary an application in the form and containing the infor-  
3 mation the Secretary prescribes.

4 (d) APPROVAL.—The Secretary, after consultation with the Secretary of  
5 Transportation, may approve an application of a sponsor for a grant under  
6 this section only if the Secretary determines that the project will improve  
7 security at an airport or improve the efficiency of the airport without lessen-  
8 ing security.

9 (e) LETTERS OF INTENT.—

10 (1) ISSUANCE.—The Secretary shall issue a letter of intent to a  
11 sponsor committing to obligate from future budget authority an  
12 amount, not more than the Federal Government's share of the project's  
13 cost, for an airport security improvement project (including interest  
14 costs and costs of formulating the project).

15 (2) SCHEDULE.—A letter of intent under this subsection shall estab-  
16 lish a schedule under which the Secretary will reimburse the sponsor  
17 for the Government's share of the project's costs, as amounts become  
18 available, if the sponsor, after the Secretary issues the letter, carries  
19 out the project without receiving amounts under this section.

20 (3) NOTICE TO SECRETARY.—A sponsor that has been issued a letter  
21 of intent under this subsection shall notify the Secretary of the spon-  
22 sor's intent to carry out a project before the project begins.

23 (4) NOTICE TO CONGRESS.—The Secretary shall transmit to the  
24 Committees on Appropriations and Transportation and Infrastructure  
25 of the House of Representatives and the Committees on Appropriations  
26 and Commerce, Science and Transportation of the Senate a written no-  
27 tification at least 3 days before the issuance of a letter of intent under  
28 this section.

29 (5) LIMITATIONS.—A letter of intent issued under this subsection is  
30 not an obligation of the Government under section 1501 of title 31,  
31 and the letter is not deemed to be an administrative commitment for  
32 financing. An obligation or administrative commitment may be made  
33 only as amounts are provided in authorization and appropriations laws.

34 (6) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be  
35 construed to prohibit the obligation of amounts pursuant to a letter of  
36 intent under this subsection in the same fiscal year as the letter of in-  
37 tent is issued.

38 (f) FEDERAL SHARE.—

39 (1) IN GENERAL.—The Government's share of the cost of a project  
40 under this section shall be 90 percent for a project at a medium or  
41 large hub airport and 95 percent for a project at any other airport.

1           (2) LETTERS OF INTENT ISSUED BEFORE DECEMBER 12, 2003.—The  
2           Secretary shall revise letters of intent issued before December 12,  
3           2003, to reflect the cost share established in this subsection with re-  
4           spect to grants made after September 30, 2003.

5           (g) APPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements  
6           that apply to grants and letters of intent issued under chapter 471 of title  
7           49 (other than section 47102(3)) shall apply to grants and letters of intent  
8           issued under this section.

9           (h) AVIATION SECURITY CAPITAL FUND.—

10           (1) IN GENERAL.—There is established in the Department the Avia-  
11           tion Security Capital Fund. The first \$250,000,000 from fees received  
12           under section 40958(a) of this title in each of fiscal years 2004  
13           through 2028 is available to be deposited in the Fund. The Secretary  
14           shall impose the fee authorized by section 40958(a) so as to collect at  
15           least \$250,000,000 in each of the fiscal years for deposit into the  
16           Fund. Amounts in the Fund are available to the Secretary to make  
17           grants under this section.

18           (2) ALLOCATION.—Of the amount made available under paragraph  
19           (1) for a fiscal year, not less than \$200,000,000 shall be allocated to  
20           fulfill letters of intent issued under subsection (d).

21           (3) DISCRETIONARY GRANTS.—Of the amount made available under  
22           paragraph (1) for a fiscal year, up to \$50,000,000 shall be used to  
23           make discretionary grants, including other transaction agreements for  
24           airport security improvement projects, with priority given to small hub  
25           airports and nonhub airports.

26           (i) LEVERAGED FUNDING.—For purposes of this section, a grant under  
27           subsection (b) to an airport sponsor to service an obligation issued by or  
28           on behalf of that sponsor to fund a project described in subsection (b) is  
29           considered to be a grant for that project.

### 30   **§ 40933. Repair station security**

31           (a) SECURITY REVIEW AND AUDIT.—To ensure the security of mainte-  
32           nance and repair work conducted on air carrier aircraft and components at  
33           foreign repair stations, the Secretary, in consultation with the Administrator  
34           of the Federal Aviation Administration, shall complete a security review and  
35           audit of foreign repair stations that are certified by the Administrator under  
36           part 145 of title 14, Code of Federal Regulations, and that work on air car-  
37           rier aircraft and components. The review shall be completed no later than  
38           6 months after the date on which the Secretary issues regulations under  
39           subsection (f).

40           (b) ADDRESSING SECURITY CONCERNS.—The Secretary shall require a  
41           foreign repair station to address the security issues and vulnerabilities iden-

1     tified in a security audit conducted under subsection (a) within 90 days of  
2     providing notice to the repair station of the security issues and vulnerabili-  
3     ties so identified and shall notify the Administrator of the Federal Aviation  
4     Administration that a deficiency was identified in the security audit.

5     (c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATES.—

6         (1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—If,  
7         after the 90th day on which a notice is provided to a foreign repair  
8         station under subsection (b), the Secretary determines that the foreign  
9         repair station does not maintain and carry out effective security meas-  
10        ures, the Secretary shall notify the Administrator of the Federal Avia-  
11        tion Administration of the determination. On receipt of the determina-  
12        tion, the Administrator shall suspend the certification of the repair sta-  
13        tion until the Secretary determines that the repair station maintains  
14        and carries out effective security measures and transmits the deter-  
15        mination to the Administrator.

16        (2) IMMEDIATE SECURITY RISK.—If the Secretary determines that a  
17        foreign repair station poses an immediate security risk, the Secretary  
18        shall notify the Administrator of the Federal Aviation Administration  
19        of the determination. On receipt of the determination, the Adminis-  
20        trator shall revoke the certification of the repair station.

21        (3) PROCEDURES FOR APPEALS.—The Secretary, in consultation  
22        with the Administrator of the Federal Aviation Administration, shall  
23        establish procedures for appealing a revocation of a certificate under  
24        this subsection.

25     (d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits re-  
26     quired by subsection (a) are not completed on or before the date that is  
27     6 months after the date on which the Secretary issues regulations under  
28     subsection (f), the Administrator of the Federal Aviation Administration  
29     shall be barred from certifying a foreign repair station (other than a station  
30     that was previously certified, or is in the process of certification, by the Ad-  
31     ministrator under part A of subtitle VII of title 49 until the audits are com-  
32     pleted for existing stations.

33     (e) PRIORITY FOR AUDITS.—In conducting the audits described in sub-  
34     section (a), the Secretary and the Administrator of the Federal Aviation Ad-  
35     ministration shall give priority to foreign repair stations located in countries  
36     identified by the Government as posing the most significant security risks.

37     (f) REGULATIONS.—The Secretary, in consultation with the Adminis-  
38     trator of the Federal Aviation Administration, shall issue final regulations  
39     to ensure the security of foreign and domestic aircraft repair stations.



1     **§ 40934. Deployment and use of detection equipment at air-**  
2                     **port screening checkpoints**

3             (a) WEAPONS AND EXPLOSIVES.—The Secretary shall give a high priority  
4     to developing, testing, improving, and deploying, at airport screening check-  
5     points, equipment that detects nonmetallic, chemical, biological, and radio-  
6     logical weapons, and explosives, in all forms, on individuals and in their per-  
7     sonal property. The Secretary shall ensure that the equipment alone, or as  
8     part of an integrated system, can detect under realistic operating conditions  
9     the types of weapons and explosives that terrorists would likely try to smug-  
10    gle aboard an air carrier aircraft.

11            (b) STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DE-  
12    TECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.—

13            (1) IN GENERAL.—The Secretary shall submit to the appropriate  
14    congressional committees a strategic plan to promote the optimal utili-  
15    zation and deployment of explosive detection equipment at airports to  
16    screen individuals and their personal property. Such equipment in-  
17    cludes walk-through explosive detection portals, document scanners,  
18    shoe scanners, and backscatter x-ray scanners. The plan may be sub-  
19    mitted in a classified format.

20            (2) CONTENT.—The strategic plan shall include, at minimum—

21            (A) a description of current efforts to detect explosives in all  
22    forms on individuals and in their personal property;

23            (B) a description of the operational applications of explosive de-  
24    tection equipment at airport screening checkpoints;

25            (C) a deployment schedule and a description of the quantities  
26    of equipment needed to implement the plan;

27            (D) a description of funding needs to implement the plan, in-  
28    cluding a financing plan that provides for leveraging of non-Fed-  
29    eral funding;

30            (E) a description of the measures taken and anticipated to be  
31    taken in carrying out subsection (d); and

32            (F) a description of any recommended legislative actions.

33            (c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
34    propriated to the Secretary for the use of the Transportation Security Ad-  
35    ministration \$250,000,000, in addition to amounts otherwise authorized by  
36    law, for research, development, and installation of detection systems and  
37    other devices for the detection of biological, chemical, radiological, and ex-  
38    plosive materials.

39            (d) INTERIM ACTION.—Until measures are implemented that enable the  
40    screening of all passengers for explosives, the Secretary shall provide, by  
41    means the Secretary considers appropriate, explosives detection screening

1 for all passengers identified for additional screening and their personal  
2 property that will be carried aboard a passenger aircraft operated by an air  
3 carrier or foreign air carrier in air transportation or intrastate air transpor-  
4 tation.

5 **§ 40935. Appeal and redress process for passengers wrongly**  
6 **delayed or prohibited from boarding a flight**

7 (a) IN GENERAL.—The Secretary shall establish a timely and fair process  
8 for individuals who believe they have been delayed or prohibited from board-  
9 ing a commercial aircraft because they were wrongly identified as a threat  
10 under the regimes utilized by the Transportation Security Administration,  
11 the Bureau of Customs and Border Protection, or another office or compo-  
12 nent of the Department.

13 (b) OFFICE OF APPEALS AND REDRESS.—

14 (1) ESTABLISHMENT.—The Secretary shall establish in the Depart-  
15 ment an Office of Appeals and Redress to implement, coordinate, and  
16 execute the process established by the Secretary under subsection (a).  
17 The Office shall include representatives from the Transportation Secu-  
18 rity Administration, the Bureau of Customs and Border Protection,  
19 and other offices and components of the Department the Secretary de-  
20 termines appropriate.

21 (2) RECORDS.—The process established by the Secretary under sub-  
22 section (a) shall include the establishment of a method by which the  
23 Office, under the direction of the Secretary, will be able to maintain  
24 a record of air carrier passengers and other individuals who have been  
25 misidentified and have corrected erroneous information.

26 (3) INFORMATION.—To prevent repeated delays of an misidentified  
27 passenger or other individual, the Office shall—

28 (A) ensure that the records maintained under this subsection  
29 contain information determined by the Secretary to authenticate  
30 the identity of the passenger or individual;

31 (B) furnish to the Transportation Security Administration, the  
32 Bureau of Customs and Border Protection, or another appropriate  
33 office or component of the Department, on request, information  
34 necessary to allow the office or component to assist air carriers  
35 in improving their administration of the advanced passenger pre-  
36 screening system and reduce the number of false positives; and

37 (C) require that air carriers and foreign air carriers take action  
38 to identify passengers determined, under the process established  
39 under subsection (a), to have been wrongly identified.

1           (4) HANDLING OF PERSONALLY IDENTIFIABLE INFORMATION.—The  
2 Secretary, in conjunction with the Chief Privacy Officer of the Depart-  
3 ment, shall—

4           (A) require that Federal employees of the Department handling  
5 personally identifiable information of passengers (in this para-  
6 graph referred to as “PII”) complete mandatory privacy and secu-  
7 rity training prior to being authorized to handle PII;

8           (B) ensure that the records maintained under this subsection  
9 are secured by encryption, one-way hashing, other data  
10 anonymization techniques, or other, equivalent security technical  
11 protections the Secretary determines necessary;

12           (C) limit the information collected from misidentified passengers  
13 or other individuals to the minimum amount necessary to resolve  
14 a redress request;

15           (D) require that the data generated under this subsection shall  
16 be shared or transferred via a secure data network, that has been  
17 audited to ensure that the anti-hacking and other security related  
18 software functions properly and is updated as necessary;

19           (E) ensure that an employee of the Department receiving the  
20 data contained within the records handles the information under  
21 the section 552a of title 5, and the Federal Information Security  
22 Management Act of 2002 (Public Law 107–296, 116 Stat. 2135);

23           (F) only retain the data for as long as needed to assist the indi-  
24 vidual traveler in the redress process; and

25           (G) conduct and publish a privacy impact assessment of the  
26 process described within this subsection and transmit the assess-  
27 ment to the Committee on Homeland Security of the House of  
28 Representatives, the Committee on Commerce, Science, and  
29 Transportation of the Senate, and Committee on Homeland Secu-  
30 rity and Governmental Affairs of the Senate.

31           (5) INITIATION OF REDRESS PROCESS AT AIRPORTS.—The Office  
32 shall establish at each airport at which the Department has a signifi-  
33 cant presence a process to provide information to air carrier passengers  
34 to begin the redress process established under subsection (a).

### 35           **Subchapter III Administration and Personnel**

#### 36           **§ 40951 .Federal Security Managers**

37           (a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Secretary,  
38 acting through the Administrator of the Transportation Security Adminis-  
39 tration, shall establish the position of Federal Security Manager at each air-  
40 port in the United States described in section 40913(e) of this title. The

1 Secretary shall designate individuals as Managers for, and station those  
2 Managers at, those airports.

3 (b) DUTIES AND POWERS.—The Federal Security Manager at each air-  
4 port shall—

5 (1) oversee the screening of passengers and property at the airport; and

6 (2) carry out other duties prescribed by the Secretary.

7 **§ 40952. Foreign Security Liaison Officers**

8 (a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Secretary,  
9 acting through the Administrator of the Transportation Security Adminis-  
10 tration, shall establish the position of Foreign Security Liaison Officer for  
11 each airport outside the United States at which the Secretary decides an  
12 Officer is necessary for air transportation security. In coordination with the  
13 Secretary of State, the Secretary shall designate an Officer for each of those  
14 airports. In coordination with the Secretary, the Secretary shall designate  
15 an Officer for each of those airports where extraordinary security measures  
16 are in place. The Secretary shall give high priority to stationing those Offi-  
17 cers.

18 (b) DUTIES AND POWERS.EACH FEDERAL SECURITY LIAISON OFFICER  
19 REPORTS DIRECTLY TO THE SECRETARY. THE OFFICER AT EACH AIRPORT  
20 SHALL—

21 (1) serve as the liaison of the Secretary to foreign security authori-  
22 ties (including governments of foreign countries and foreign airport au-  
23 thorities) in carrying out United States Government security require-  
24 ments at that airport; and

25 (2) to the extent practicable, carry out duties and powers referred  
26 to in section 40951(b) of this title.

27 (c) COORDINATION OF ACTIVITIES.—The activities of each Foreign Secu-  
28 rity Liaison Officer shall be coordinated with the chief of the diplomatic  
29 mission of the United States to which the Officer is assigned. Activities of  
30 an Officer under this section shall be consistent with the duties and powers  
31 of the Secretary and the chief of mission to a foreign country under section  
32 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22  
33 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22  
34 U.S.C. 3927).

35 **§ 40953. Employment standards and training**

36 (a) EMPLOYMENT STANDARDS.—The Secretary, acting through the Ad-  
37 ministrator of the Transportation Security Administration, shall prescribe  
38 standards for the employment and continued employment of, and contract-  
39 ing for, air carrier personnel and, as appropriate, airport security personnel.  
40 The standards shall include—

41 (1) minimum training requirements for new employees;

- 1 (2) retraining requirements;
- 2 (3) minimum staffing levels;
- 3 (4) minimum language skills; and
- 4 (5) minimum education levels for employees, when appropriate.

5 (b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers,  
6 airport operators, and other interested persons, the Secretary shall review  
7 issues related to human performance in the aviation security system to  
8 maximize that performance. When the review is completed, the Secretary  
9 shall recommend guidelines and prescribe appropriate changes in existing  
10 procedures to improve that performance.

11 (c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICA-  
12 TIONS.—

13 (1) IN GENERAL.—The Secretary—

14 (A) may train individuals employed to carry out a security pro-  
15 gram under section 40913(c) of this title; and

16 (B) shall prescribe uniform training standards and uniform  
17 minimum qualifications for individuals eligible for that training.

18 (2) REIMBURSEMENTS.—The Secretary may authorize reimburse-  
19 ment for travel, transportation, and subsistence expenses for security  
20 training of non-United States Government domestic and foreign indi-  
21 viduals whose services will contribute significantly to carrying out civil  
22 aviation security programs. To the extent practicable, air travel reim-  
23 bursed under this paragraph shall be on air carriers.

24 (d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINA-  
25 TORS, SUPERVISORY PERSONNEL, AND PILOTS.—

26 (1) IN GENERAL.—The Secretary shall prescribe standards for edu-  
27 cating and training

28 (A) ground security coordinators;

29 (B) security supervisory personnel; and

30 (C) airline pilots as in-flight security coordinators.

31 (2) ELEMENTS.—The standards shall include initial training, re-  
32 training, and continuing education requirements and methods. Those  
33 requirements and methods shall be used annually to measure the per-  
34 formance of ground security coordinators and security supervisory per-  
35 sonnel.

36 (e) SECURITY SCREENERs.—

37 (1) TRAINING PROGRAM.—The Secretary shall establish a program  
38 for the hiring and training of security screening personnel.

39 (2) HIRING.—

40 (A) QUALIFICATIONS.—The Secretary shall establish qualifica-  
41 tion standards for individuals to be hired by the United States as

1 security screening personnel. Notwithstanding any other provision  
2 of law, those standards shall require, at a minimum, an individ-  
3 ual—

4 (i) to have a satisfactory or better score on a Federal secu-  
5 rity screening personnel selection examination;

6 (ii) to be a citizen of the United States or a national of  
7 the United States, as defined in section 101(a)(22) of the Im-  
8 migration and Nationality Act (8 U.S.C. 1101(a)(22));

9 (iii) to meet, at a minimum, the requirements set forth in  
10 subsection (f);

11 (iv) to meet other qualifications the Secretary may estab-  
12 lish; and

13 (v) to have the ability to demonstrate daily a fitness for  
14 duty without an impairment due to illegal drugs, sleep depri-  
15 vation, medication, or alcohol.

16 (B) BACKGROUND CHECKS.—The Secretary shall require that  
17 an individual to be hired as a security screener undergo an em-  
18 ployment investigation (including a criminal history record check)  
19 under section 40954(a)(1) of this title.

20 (C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NA-  
21 TIONAL SECURITY RISKS.—The Secretary, in consultation with the  
22 heads of other appropriate Federal agencies, shall establish proce-  
23 dures, in addition to any background check conducted under sec-  
24 tion 40954, to ensure that an individual who presents a threat to  
25 national security is not employed as a security screener.

26 (3) EXAMINATION.—The Secretary shall develop a security screening  
27 personnel examination for use in determining the qualification of indi-  
28 viduals seeking employment as security screening personnel.

29 (4) Review of standards, rules, and regulations.—The Secretary shall  
30 review, and revise as necessary, a standard, rule, or regulation govern-  
31 ing the employment of individuals as security screening personnel.

32 (f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

33 (1) SCREENER REQUIREMENTS.—Notwithstanding any other provi-  
34 sion of law, an individual may not be deployed as a security screener  
35 unless that individual meets the following requirements:

36 (A) The individual possesses a high school diploma, a general  
37 equivalency diploma, or experience that the Secretary has deter-  
38 mined to be sufficient for the individual to perform the duties of  
39 the position.

1 (B) The individual possesses basic aptitudes and physical abili-  
2 ties, including color perception, visual and aural acuity, physical  
3 coordination, and motor skills, to the following standards:

4 (i) Screeners operating screening equipment are able to dis-  
5 tinguish on the screening equipment monitor the appropriate  
6 imaging standard specified by the Secretary.

7 (ii) Screeners operating screening equipment are able to  
8 distinguish each color displayed on every type of screening  
9 equipment and explain what each color signifies.

10 (iii) Screeners are able to hear and respond to the spoken  
11 voice and to audible alarms generated by screening equipment  
12 in an active checkpoint environment.

13 (iv) Screeners performing physical searches or other related  
14 operations are able to efficiently and thoroughly manipulate  
15 and handle the baggage, containers, and other objects subject  
16 to security processing.

17 (v) Screeners who perform pat-downs or hand-held metal  
18 detector searches of individuals have sufficient dexterity and  
19 capability to thoroughly conduct those procedures over an in-  
20 dividual's entire body.

21 (C) The individual is able to read, speak, and write English well  
22 enough to—

23 (i) carry out written and oral instructions regarding the  
24 proper performance of screening duties;

25 (ii) read English language identification media, credentials,  
26 airline tickets, and labels on items normally encountered in  
27 the screening process;

28 (iii) provide direction to and understand and answer ques-  
29 tions from English-speaking individuals undergoing screening;  
30 and

31 (iv) write incident reports and statements and log entries  
32 into security records in the English language.

33 (D) The individual has satisfactorily completed all initial, recur-  
34 rent, and appropriate specialized training required by the security  
35 program, except as provided in paragraph (3).

36 (2) VETERANS PREFERENCE.—The Secretary shall provide a pref-  
37 erence for the hiring of an individual as a security screener if the in-  
38 dividual is a member or former member of the armed forces and if the  
39 individual is entitled, under statute, to retired, retirement, or retainer  
40 pay on account of service as a member of the armed forces.

1 (3) EXCEPTIONS.—An individual who has not completed the training  
2 required by this section may be deployed during the on-the-job portion  
3 of training to perform functions if that individual—

4 (A) is closely supervised; and

5 (B) does not make independent judgments as to whether indi-  
6 viduals or property may enter a sterile area or aircraft without  
7 further inspection.

8 (4) REMEDIAL TRAINING.—No individual employed as a security  
9 screener may perform a screening function after that individual has  
10 failed an operational test related to that function until that individual  
11 has successfully completed the remedial training specified in the secu-  
12 rity program.

13 (5) ANNUAL PROFICIENCY REVIEW.—The Secretary shall provide  
14 that an annual evaluation of each individual assigned screening duties  
15 is conducted and documented. An individual employed as a security  
16 screener may not continue to be employed in that capacity unless the  
17 evaluation demonstrates that the individual—

18 (A) continues to meet all qualifications and standards required  
19 to perform a screening function;

20 (B) has a satisfactory record of performance and attention to  
21 duty based on the standards and requirements in the security pro-  
22 gram; and

23 (C) demonstrates the current knowledge and skills necessary to  
24 courteously, vigilantly, and effectively perform screening functions.

25 (6) OPERATIONAL TESTING.—In addition to the annual proficiency  
26 review conducted under paragraph (5), the Secretary shall provide for  
27 the operational testing of personnel.

28 (g) Training.—

29 (1) USE OF OTHER AGENCIES.—The Secretary may enter into a  
30 memorandum of understanding or other arrangement with another  
31 Federal agency or department with appropriate law enforcement re-  
32 sponsibilities, to provide personnel, resources, or other forms of assist-  
33 ance in the training of security screening personnel.

34 (2) TRAINING PLAN.—The Secretary shall develop a plan for the  
35 training of security screening personnel. The plan shall require, at a  
36 minimum, that a security screener—

37 (A) has completed 40 hours of classroom instruction or success-  
38 fully completed a program that the Secretary determines will train  
39 individuals to a level of proficiency equivalent to the level that  
40 would be achieved by the classroom instruction;

41 (B) has completed 60 hours of on-the-job instructions; and



1 (C) has successfully completed an on-the-job training examina-  
2 tion prescribed by the Secretary.

3 (3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a  
4 security screener may not use a security screening device or equipment  
5 in the scope of that individual's employment unless the individual has  
6 been trained on that device or equipment and has successfully com-  
7 pleted a test on the use of the device or equipment.

8 (h) TECHNOLOGICAL TRAINING.—

9 (1) DEFINITION.—IN THIS SUBSECTION, THE TERM "DUAL-USE ITEM"  
10 MEANS AN ITEM THAT MAY SEEM HARMLESS BUT THAT MAY BE USED  
11 AS A WEAPON.

12 (2) IN GENERAL.—THE SECRETARY SHALL REQUIRE TRAINING TO EN-  
13 SURE THAT SCREENERs ARE PROFICIENT IN USING THE MOST UP-TO-  
14 DATE NEW TECHNOLOGY AND TO ENSURE THEIR PROFICIENCY IN REC-  
15 OGNIZING NEW THREATS AND WEAPONS.

16 (3) PERIODIC ASSESSMENTS.—The Secretary shall make periodic as-  
17 sessments to determine if there are dual-use items and inform security  
18 screening personnel of the existence of the items.

19 (4) CURRENT LISTS OF DUAL-USE ITEMS.—Current lists of dual-use  
20 items shall be part of the ongoing training for screeners.

21 (i) LIMITATION ON RIGHT TO STRIKE.—An individual who screens pas-  
22 sengers or property, or both, at an airport under this section may not par-  
23 ticipate in a strike, or assert the right to strike, against the person (includ-  
24 ing a governmental entity) employing the individual to perform the screen-  
25 ing.

26 (j) UNIFORMS.—The Secretary shall require an individual who screens  
27 passengers and property under section 40911 of this title to be attired while  
28 on duty in a uniform approved by the Secretary.

29 (k) ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES.—The  
30 Secretary shall work with air carriers and airports to ensure that computer-  
31 based training facilities intended for use by security screeners at an airport  
32 regularly serving an air carrier holding a certificate issued by the Secretary  
33 of Transportation are conveniently located for that airport and easily acces-  
34 sible.

35 (l) SCREENER PERSONNEL.—

36 (1) GENERAL AUTHORITY OF SECRETARY.—Except as provided in  
37 paragraph (2), and notwithstanding any other provision of law, the  
38 Secretary may employ, appoint, discipline, terminate, and fix the com-  
39 pensation, terms, and conditions of employment of Federal service for  
40 the number of individuals the Secretary determines to be necessary to  
41 carry out the screening functions of the Secretary under section 40911

1 of this title. The Secretary shall establish levels of compensation and  
2 other benefits for the individuals employed.

3 (2) UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT  
4 RIGHTS.—In carrying out the functions authorized under paragraph  
5 (1), the Secretary is subject to the provisions set forth in chapter 43  
6 of title 38.

7 **§ 40954. Employment investigations and restrictions**

8 (a) EMPLOYMENT INVESTIGATION REQUIREMENT.—

9 (1) IN GENERAL.—

10 (A) EMPLOYEE COVERAGE.—The Secretary, acting through the  
11 Administrator of the Transportation Security Administration, shall  
12 require by regulation that an employment investigation, including  
13 a criminal history record check and a review of available law en-  
14 forcement data bases and records of other governmental and inter-  
15 national agencies, to the extent determined practicable by the Sec-  
16 retary, shall be conducted of each individual employed in, or apply-  
17 ing for, a position as a security screener under section 40953(e)  
18 of this title or a position in which the individual has unescorted  
19 access, or may permit other individuals to have unescorted access,  
20 to—

21 (i) aircraft of an air carrier or foreign air carrier; or

22 (ii) a secured area of an airport in the United States the  
23 Secretary designates that serves an air carrier or foreign air  
24 carrier.

25 (B) FURTHER COVERAGE.—The Secretary shall require by regu-  
26 lation that an employment investigation (including a criminal his-  
27 tory record check and a review of available law enforcement data  
28 bases and records of other governmental and international agen-  
29 cies, to the extent determined practicable by the Secretary) be con-  
30 ducted for—

31 (i) individuals who are responsible for screening passengers  
32 or property under section 40911 of this title;

33 (ii) supervisors of the individuals described in clause (i);

34 (iii) individuals who regularly have escorted access to air-  
35 craft of an air carrier or foreign air carrier or a secured area  
36 of an airport in the United States the Administrator des-  
37 ignates that serves an air carrier or foreign air carrier; and

38 (iv) other individuals who exercise security functions associ-  
39 ated with baggage or cargo that the Secretary determines is  
40 necessary to ensure air transportation security.

1 (C) EXEMPTION.—An employment investigation, including a  
2 criminal history record check, is not required under this subsection  
3 for an individual who is exempted under section 107.31(m)(1) or  
4 (2) of title 14, Code of Federal Regulations, as in effect on No-  
5 vember 22, 2000. The Secretary shall work with the International  
6 Civil Aviation Organization and with appropriate authorities of  
7 foreign countries to ensure that individuals exempted under this  
8 subparagraph do not pose a threat to aviation or national security.

9 (2) EMPLOYER ROLE.—An air carrier, foreign air carrier, airport op-  
10 erator, or government that employs, or authorizes or makes a contract  
11 for the services of, an individual in a position described in paragraph  
12 (1) shall ensure that the investigation the Secretary requires is con-  
13 ducted.

14 (3) PERIODIC AUDITS.—The Secretary shall provide for the periodic  
15 audit of the effectiveness of criminal history record checks conducted  
16 under paragraph (1).

17 (b) PROHIBITED EMPLOYMENT.—

18 (1) IN GENERAL.—Except as provided in paragraph (3), an air car-  
19 rier, foreign air carrier, airport operator, or government may not em-  
20 ploy, or authorize or make a contract for the services of, an individual  
21 in a position described in subsection (a)(1) if—

22 (A) the investigation of the individual required under this sec-  
23 tion has not been conducted; or

24 (B) the results of that investigation establish that, in the 10-  
25 year period ending on the date of the investigation, the individual  
26 was convicted (or found not guilty by reason of insanity) of—

27 (i) a crime referred to in subchapter VI of this chapter,  
28 section 40998 of this title, section 32 of title 18, or section  
29 46306, 46308, 46312, or 46315 of title 49;

30 (ii) murder;

31 (iii) assault with intent to murder;

32 (iv) espionage;

33 (v) sedition;

34 (vi) treason;

35 (vii) rape;

36 (viii) kidnapping;

37 (ix) unlawful possession, sale, distribution, or manufacture  
38 of an explosive or weapon;

39 (x) extortion;

40 (xi) armed or felony unarmed robbery;

- 1 (xii) distribution of, or intent to distribute, a controlled  
2 substance;
- 3 (xiii) a felony involving a threat;
- 4 (xiv) a felony involving
- 5 (I) willful destruction of property;
- 6 (II) importation or manufacture of a controlled sub-  
7 stance;
- 8 (III) burglary;
- 9 (IV) theft;
- 10 (V) dishonesty, fraud, or misrepresentation;
- 11 (VI) possession or distribution of stolen property;
- 12 (VII) aggravated assault;
- 13 (VIII) bribery; and
- 14 (IX) illegal possession of a controlled substance pun-  
15 ishable by a maximum term of imprisonment of more  
16 than 1 year, or another crime classified as a felony that  
17 the Secretary determines indicates a propensity for plac-  
18 ing contraband aboard an aircraft in return for money;
- 19 or
- 20 (xv) conspiracy to commit any of the acts referred to in  
21 clauses (i) through (xiv).

22 (2) OTHER FACTORS.—The Secretary may specify other factors that  
23 are sufficient to prohibit the employment of an individual in a position  
24 described in subsection (a)(1).

25 (3) ALTERNATE SECURITY ARRANGEMENTS.—An air carrier, foreign  
26 air carrier, airport operator, or government may employ, or authorize  
27 or contract for the services of, an individual in a position described in  
28 subsection (a)(1) without carrying out the investigation required under  
29 this section, if the Secretary approves a plan to employ the individual  
30 that provides alternate security arrangements.

31 (c) FINGERPRINTING AND RECORD CHECK INFORMATION.—

32 (1) IN GENERAL.—If the Secretary requires an identification and  
33 criminal history record check, to be conducted by the Attorney General,  
34 as part of an investigation under this section, the Secretary shall des-  
35 ignate an individual to obtain fingerprints and submit those finger-  
36 prints to the Attorney General. The Attorney General may make the  
37 results of a check available to an individual the Secretary designates.  
38 Before designating an individual to obtain and submit fingerprints or  
39 receive results of a check, the Secretary shall consult with the Attorney  
40 General. All Federal agencies shall cooperate with the Secretary and

1 the Secretary's designee in the process of collecting and submitting fin-  
2 gerprints.

3 (2) REGULATIONS.—The Secretary shall prescribe regulations on—

4 (A) procedures for taking fingerprints; and

5 (B) requirements for using information received from the Attor-  
6 ney General under paragraph (1)—

7 (i) to limit the dissemination of the information; and

8 (ii) to ensure that the information is used only to carry out  
9 this section.

10 (3) ACCESS TO INVESTIGATION.—If an identification and criminal  
11 history record check is conducted as part of an investigation of an indi-  
12 vidual under this section, the individual—

13 (A) shall receive a copy of a record received from the Attorney  
14 General; and

15 (B) may complete and correct the information contained in the  
16 check before a final employment decision is made based on the  
17 check.

18 (d) FEES AND CHARGES.—The Secretary and the Attorney General shall  
19 establish reasonable fees and charges to pay expenses incurred in carrying  
20 out this section. The employer of the individual being investigated shall pay  
21 the costs of a record check of the individual. Money collected under this sec-  
22 tion shall be credited to the account in the Treasury from which the ex-  
23 penses were incurred and are available to the Secretary and the Attorney  
24 General for those expenses.

25 (e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This  
26 section does not require an investigation or record check when the investiga-  
27 tion or record check is prohibited by a law of a foreign country.

## 28 **§ 40955. Prohibition on transferring duties and powers**

29 Except as specifically provided by law, the Secretary, acting through the  
30 Administrator of the Transportation Security Administration, may not  
31 transfer a duty or power under section 40913(a), (b), (c), or (e), 40916,  
32 40922(a) through (c), 40953(a) through (k), or 40954 of this title or sec-  
33 tion 44938(b)(3) of title 49.

## 34 **§ 40956. Reports**

35 (a) TRANSPORTATION SECURITY.—Not later than March 31 each year,  
36 the Secretary shall submit to Congress a report on transportation security  
37 with recommendations the Secretary considers appropriate. The report shall  
38 be prepared in conjunction with the biennial report the Secretary submits  
39 under subsection (b) in each year the Secretary submits the biennial report,  
40 but may not duplicate the information submitted under subsection (b) or

1 section 40917(a)(3) of this title. The Secretary may submit the report in  
2 classified and unclassified parts. The report shall include—

- 3 (1) an assessment of trends and developments in terrorist activities,  
4 methods, and other threats to transportation;
- 5 (2) an evaluation of deployment of explosive detection devices;
- 6 (3) recommendations for research, engineering, and development ac-  
7 tivities related to transportation security, except research engineering  
8 and development activities related to aviation security to the extent  
9 those activities are covered by the national aviation research plan re-  
10 quired under section 44501(c) of title 49;
- 11 (4) identification and evaluation of cooperative efforts with other de-  
12 partments, agencies, and instrumentalities of the United States Gov-  
13 ernment;
- 14 (5) an evaluation of cooperation with foreign transportation and se-  
15 curity authorities;
- 16 (6) the status of the extent to which the recommendations of the  
17 President's Commission on Aviation Security and Terrorism have been  
18 carried out and the reasons for delay in carrying out those recom-  
19 mendations;
- 20 (7) an assessment of financial and staffing requirements, and attain-  
21 ment of existing staffing goals, for carrying out duties and powers of  
22 the Secretary related to security; and
- 23 (8) appropriate legislative and regulatory recommendations.

24 (b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—  
25 The Secretary shall submit biennially to Congress a report on the effective-  
26 ness of procedures under section 40911 of this title that includes—

- 27 (1) a summary of the assessments conducted under section  
28 40917(a)(1) and (2) of this title; and
- 29 (2) an assessment of the steps being taken, and the progress being  
30 made, in ensuring compliance with section 40916 of this title for each  
31 foreign air carrier security program at airports outside the United  
32 States—
  - 33 (A) at which the Secretary decides that Foreign Security Liai-  
34 son Officers are necessary for air transportation security; and
  - 35 (B) for which extraordinary security measures are in place.

36 **§ 40957. Training to operate certain aircraft**

37 (a) WAITING PERIOD.—

- 38 (1) DEFINITION.—In this subsection, the term “training”—
  - 39 (A) means training received from an instructor in an aircraft  
40 or aircraft simulator; but

1 (B) does not include recurrent training, ground training, or  
2 demonstration flights for marketing purposes.

3 (2) REQUIREMENTS.—A person operating as a flight instructor, pilot  
4 school, or aviation training center or subject to regulation under part  
5 A of subtitle VII of title 49 may provide training in the operation of  
6 an aircraft having a maximum certificated takeoff weight of more than  
7 12,500 pounds to an alien (as defined in section 101(a)(3) of the Im-  
8 migration and Nationality Act (8 U.S.C. 1101(a)(3))) or to another in-  
9 dividual specified by the Secretary only if—

10 (A) that person has first notified the Secretary that the alien  
11 or individual has requested training and submitted to the Sec-  
12 retary, in form the Secretary prescribes, the following information  
13 about the alien or individual:

14 (i) Full name, including aliases used by the applicant or  
15 variations in spelling of the applicant's name.

16 (ii) Passport and visa information.

17 (iii) Country of citizenship.

18 (iv) Date of birth.

19 (v) Dates of training.

20 (vi) Fingerprints collected by, or under the supervision of,  
21 a Federal, State, or local law enforcement agency or by an-  
22 other entity approved by the Federal Bureau of Investigation  
23 or the Secretary, including fingerprints taken by United  
24 States Government personnel at a United States embassy or  
25 consulate; and

26 (B) the Secretary has not directed, within 30 days after being  
27 notified under subparagraph (A), that person not to provide the  
28 requested training because the Secretary has determined that the  
29 individual presents a risk to aviation or national security.

30 (b) INTERRUPTION OF TRAINING.—If the Secretary, more than 30 days  
31 after receiving notification under subsection (a) from a person providing  
32 training described in subsection (a), determines that the individual presents  
33 a risk to aviation or national security, the Secretary shall immediately notify  
34 the person providing the training of the determination and that person shall  
35 immediately terminate the training.

36 (c) NOTIFICATION.—A person operating as a flight instructor, pilot  
37 school, or aviation training center or subject to regulation under part A of  
38 subtitle VII of title 49 may provide training in the operation of an aircraft  
39 having a maximum certificated takeoff weight of 12,500 pounds or less to  
40 an alien (as defined in section 101(a)(3) of the Immigration and Nationality  
41 Act (8 U.S.C. 1101(a)(3))) or to another individual specified by the Sec-

1     retary only if that person has notified the Secretary that the individual has  
2     requested the training and furnished the Secretary with that individual's  
3     identification in the form the Secretary requires.

4     (d) EXPEDITED PROCESSING.—The Secretary shall establish a process to  
5     ensure that the waiting period under subsection (a) shall not exceed 5 days  
6     for an alien (as defined in section 101(a)(3) of the Immigration and Nation-  
7     ality Act (8 U.S.C. 1101(a)(3))) who—

8         (1) holds an airman's certification of a foreign country that is recog-  
9         nized by an agency of the United States, including a military agency,  
10         that permits an individual to operate a multi-engine aircraft that has  
11         a certificated takeoff weight of more than 12,500 pounds;

12         (2) is employed by a foreign air carrier that is certified under part  
13         129 of title 14, Code of Federal Regulations, and that has a security  
14         program approved under section 1546 of title 49, Code of Federal Reg-  
15         ulations;

16         (3) is an individual that has unescorted access to a secured area of  
17         an airport designated under section 40954(a)(1)(A)(ii) of this title; or

18         (4) is an individual that is part of a class of individuals that the Sec-  
19         retary has determined that providing aviation training to presents mini-  
20         mal risk to aviation or national security because of the aviation train-  
21         ing already possessed by the class of individuals.

22     (e) NONAPPLICABILITY TO CERTAIN FOREIGN MILITARY PILOTS.—The  
23     procedures and processes required by subsections (a) through (d) do not  
24     apply to a foreign military pilot endorsed by the Department of Defense for  
25     flight training in the United States and seeking training described in sub-  
26     section (a)(1) in the United States.

27     (f) FEE.—

28         (1) IN GENERAL.—The Secretary may assess a fee for an investiga-  
29         tion under this section. The Secretary may adjust the maximum  
30         amount of the fee to reflect the costs of an investigation.

31         (2) Offset.—Notwithstanding section 3302 of title 31, a fee collected  
32         under this section—

33             (A) shall be credited to the account in the Treasury from which  
34             the expenses were incurred and shall be available to the Secretary  
35             for those expenses; and

36             (B) remains available until expended.

37     (g) INTERAGENCY COOPERATION.—The Attorney General, the Director of  
38     Central Intelligence, and the Administrator of the Federal Aviation Admin-  
39     istration shall cooperate with the Secretary in implementing this section.

40     (h) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Secretary  
41     shall require flight schools to conduct a security awareness program for



1 flight school employees to increase their awareness of suspicious circum-  
2 stances and activities of individuals enrolling in or attending flight school.

3 **§ 40958. Security service fee**

4 (a) GENERAL AUTHORITY.—

5 (1) PASSENGER FEES.—The Secretary, acting through the Adminis-  
6 trator of the Transportation Security Administration, shall impose a  
7 uniform fee, on passengers of air carriers and foreign air carriers in  
8 air transportation and intrastate air transportation originating at air-  
9 ports in the United States, to pay for the following costs of providing  
10 civil aviation security services:

11 (A) Salary, benefits, overtime, retirement and other costs of  
12 screening personnel, their supervisors and managers, Federal law  
13 enforcement personnel, and State and local law enforcement offi-  
14 cers deputized under section 40931 of this title, who are deployed  
15 at airport security screening locations under section 40911 of this  
16 title.

17 (B) The costs of training personnel described in subparagraph  
18 (A), and the acquisition, operation, and maintenance of equipment  
19 used by the personnel.

20 (C) The costs of performing background investigations of per-  
21 sonnel described in subparagraphs (A), (D), (F), and (G).

22 (D) The costs of the Federal air marshals program.

23 (E) The costs of performing civil aviation security research and  
24 development under this title.

25 (F) The costs of Federal Security Managers under section  
26 40913 of this title.

27 (G) The costs of deploying Federal law enforcement personnel  
28 under section 40913(h) of this title.

29 (H) The costs of security-related capital improvements at air-  
30 ports.

31 (I) The costs of training pilots and flight attendants under sec-  
32 tions 40928 and 40930 of this title.

33 (2) DETERMINATION OF COSTS.—The amount of costs listed in para-  
34 graph (1) shall be determined by the Secretary and are not subject to  
35 judicial review

36 (b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the  
37 Secretary shall ensure that the fees are reasonably related to the Transpor-  
38 tation Security Administration's costs of providing services rendered.

39 (c) LIMITATION ON FEE.—The fee imposed under subsection (a) is \$5.60  
40 per one-way trip in air transportation or intrastate air transportation that  
41 originates at an airport in the United States.

1 (d) IMPOSITION OF FEE.—

2 (1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the  
3 procedural requirements of section 553 of title 5, the Secretary shall  
4 impose the fee under subsection (a) through the publication of notice  
5 of the fee in the Federal Register and begin collection of the fee as  
6 soon as possible.

7 (2) SPECIAL RULES FOR PASSENGER FEES.—A fee imposed under  
8 subsection (a) through the procedures under paragraph (1) shall apply  
9 only to tickets sold after the date on which the fee is imposed. If a  
10 fee imposed under subsection (a) through the procedures under para-  
11 graph (1) on transportation of a passenger of a carrier described in  
12 subsection (a) is not collected from the passenger, the amount of the  
13 fee shall be paid by the carrier.

14 (3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee  
15 under paragraph (1), the Secretary may modify, from time to time  
16 through publication of notice in the Federal Register, the imposition  
17 or collection of the fee, or both.

18 (4) LIMITATION ON COLLECTION.—A fee may be collected under this  
19 section, other than subsection (i), only to the extent that the expendi-  
20 ture of the fee to pay the costs of activities and services for which the  
21 fee is imposed is provided for in advance in an appropriations Act or  
22 in section 40932 of this title.

23 (e) ADMINISTRATION OF FEES.—

24 (1) FEES PAYABLE TO SECRETARY.—All fees imposed and amounts  
25 collected under this section are payable to the Secretary.

26 (2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under sub-  
27 section (a)(1) shall be collected by the air carrier or foreign air carrier  
28 that sells a ticket for transportation described in subsection (a).

29 (3) DUE DATE FOR REMITTANCE.—A fee collected under this section  
30 shall be remitted on the last day of each calendar month by the carrier  
31 collecting the fee. The amount to be remitted shall be for the calendar  
32 month preceding the calendar month in which the remittance is made.

33 (4) INFORMATION.—The Secretary may require the provision of in-  
34 formation the Secretary decides is necessary to verify that fees have  
35 been collected and remitted at the proper times and in the proper  
36 amounts.

37 (5) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of  
38 the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee imposed  
39 under this section is not considered to be part of the amount paid for  
40 taxable transportation.

1 (6) COST OF COLLECTING FEE.—No portion of the fee collected  
2 under this section may be retained by the air carrier or foreign air car-  
3 rier for the costs of collecting, handling, or remitting the fee, except  
4 for interest accruing to the carrier after collection and before remit-  
5 tance.

6 (f) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstand-  
7 ing section 3302 of title 31, a fee collected under this section—

8 (1) shall be credited as offsetting collections to the account that fi-  
9 nances the activities and services for which the fee is imposed;

10 (2) shall be available for expenditure only to pay the costs of activi-  
11 ties and services for which the fee is imposed; and

12 (3) remains available until expended.

13 (g) REFUNDS.—The Secretary may refund a fee paid by mistake or an  
14 amount paid in excess of that required.

15 (h) EXEMPTIONS.—The Secretary may exempt from the passenger fee  
16 imposed under subsection (a) a passenger enplaning at an airport in the  
17 United States that does not receive screening services under section 40911  
18 of this title for that segment of the trip for which the passenger does not  
19 receive screening.

20 (i) Deposit of Receipts.—

21 (1) IN GENERAL.—Out of fees received in a fiscal year under sub-  
22 section (a), after amounts are made available in the fiscal year under  
23 section 40932(h), the next funds derived from the fees in the fiscal  
24 year, in the amount specified for the fiscal year in paragraph (4), shall  
25 be credited as offsetting receipts and deposited in the general fund of  
26 the Treasury.

27 (2) FEE LEVELS.—The Secretary shall impose the fee authorized by  
28 subsection (a) so as to collect in a fiscal year at least the amount speci-  
29 fied in paragraph (4) for the fiscal year for making deposits under  
30 paragraph (1).

31 (3) RELATIONSHIP TO OTHER PROVISIONS.—Subsections (b) and (f)  
32 do not apply to amounts to be used for making deposits under this sub-  
33 section.

34 (4) FISCAL YEAR AMOUNTS.—For purposes of paragraphs (1) and  
35 (2), the fiscal year amounts are as follows:

36 (A) \$390,000,000 for fiscal year 2014.

37 (B) \$1,190,000,000 for fiscal year 2015.

38 (C) \$1,250,000,000 for fiscal year 2016

39 (D) \$1,280,000,000 for fiscal year 2017

40 (E) \$1,320,000,000 for fiscal year 2018.

41 (F) \$1,360,000,000 for fiscal year 2019.

1 (G) \$1,400,000,000 for fiscal year 2020.

2 (H) \$1,440,000,000 for fiscal year 2021.

3 (I) \$1,480,000,000 for fiscal year 2022.

4 (J) \$1,520,000,000 for fiscal year 2023.

5 **§ 40959. Immunity for reporting suspicious activities**

6 (a) IN GENERAL.—An air carrier or foreign air carrier or an employee  
7 of an air carrier or foreign air carrier who makes a voluntary disclosure of  
8 a suspicious transaction relevant to a possible violation of law or regulation,  
9 relating to air piracy, a threat to aircraft or passenger safety, or terrorism,  
10 as defined by section 3077 of title 18, to an employee or agent of the De-  
11 partment, the Department of Justice, a Federal, State, or local law enforce-  
12 ment officer, or an airport or airline security officer shall not be civilly liable  
13 to any person under a law or regulation of the United States, or a constitu-  
14 tion, law, or regulation of a State or political subdivision of a State, for the  
15 disclosure.

16 (b) APPLICATION.—Subsection (a) does not apply to—

17 (1) a disclosure made with actual knowledge that the disclosure was  
18 false, inaccurate, or misleading; or

19 (2) a disclosure made with reckless disregard as to the truth or fal-  
20 sity of that disclosure.

21 **§ 40960. Performance goals and objectives**

22 (a) LONG-TERM RESULTS-BASED MANAGEMENT.—Each year, consistent  
23 with the requirements of the Government Performance and Results Act of  
24 1993 (in this section referred to as “GPR”) (Public Law 103–62, 107 Stat.  
25 285), the Secretary and the Administrator of the Transportation Security  
26 Administration shall agree on a performance plan for the succeeding 5 years  
27 that establishes measurable goals and objectives for aviation security. The  
28 plan shall identify action steps necessary to achieve the goals.

29 (b) CLARIFICATION OF RESPONSIBILITIES.—In addition to meeting the  
30 requirements of GPRA, the performance plan should clarify the responsibil-  
31 ities of the Secretary, the Administrator of the Transportation Security Ad-  
32 ministration, and any other agency or organization that may have a role in  
33 ensuring the safety and security of the civil air transportation system.

34 (c) ANNUAL PERFORMANCE REPORT.—Each year, consistent with the re-  
35 quirements of GPRA, the Secretary shall prepare and submit to Congress  
36 an annual report, including an evaluation of the extent goals and objectives  
37 were met. The report shall include the results achieved during the year re-  
38 lative to the goals established in the performance plan.

39 **§ 40961. Performance management system**

40 (a) ESTABLISHING A FAIR AND EQUITABLE SYSTEM FOR MEASURING  
41 STAFF PERFORMANCE.—The Secretary, acting through the Administrator

1 of the Transportation Security Administration, shall establish a performance  
2 management system that strengthens the organization's effectiveness by  
3 providing for the establishment of goals and objectives for managers, em-  
4 ployees, and organizational performance consistent with the performance  
5 plan.

6 (b) ESTABLISHING MANAGEMENT ACCOUNTABILITY FOR MEETING PER-  
7 FORMANCE GOALS.—

8 (1) ADMINISTRATOR.—Each year, the Secretary and the Adminis-  
9 trator of the Transportation Security Administration shall enter into  
10 an annual performance agreement that shall set forth organizational  
11 and individual performance goals for the Administrator.

12 (2) Senior managers.—Each year, the Administrator of the Trans-  
13 portation Security Administration and each senior manager who re-  
14 ports to the Administrator shall enter into an annual performance  
15 agreement that sets forth organization and individual goals for those  
16 managers. All other employees hired under the authority of the Trans-  
17 portation Security Administration shall enter into an annual perform-  
18 ance agreement that sets forth organization and individual goals for  
19 those employees.

20 (c) PERFORMANCE-BASED SERVICE CONTRACTING.—To the extent con-  
21 tracts are used to implement the Aviation and Transportation Security Act  
22 (Public Law 107–71, 115 Stat. 597), the Administrator shall, to the extent  
23 practical, maximize the use of performance-based service contracts. These  
24 contracts should be consistent with guidelines published by the Office of  
25 Federal Procurement Policy.

26 **§ 40962. Voluntary provision of emergency services**

27 (a) PROGRAM FOR PROVISION OF VOLUNTARY SERVICES.—

28 (1) PROGRAM.—The Secretary, acting through the Administrator of  
29 the Transportation Security Administration, shall carry out a program  
30 to permit qualified law enforcement officers, firefighters, and emer-  
31 gency medical technicians to provide emergency services on commercial  
32 air flights during emergencies.

33 (2) REQUIREMENTS.—The Secretary shall establish requirements for  
34 qualifications of providers of voluntary services under the program  
35 under paragraph (1), including training requirements, the Secretary  
36 considers appropriate.

37 (3) CONFIDENTIALITY OF REGISTRY.—If as part of the program  
38 under paragraph (1) the Secretary requires or permits registration of  
39 law enforcement officers, firefighters, or emergency medical technicians  
40 who are willing to provide emergency services on commercial flights  
41 during emergencies, the Secretary shall take appropriate actions to en-

1           sure that the registry is available only to appropriate airline personnel  
2           and otherwise remains confidential.

3           (4) CONSULTATION.—The Secretary shall consult with appropriate  
4           representatives of the commercial airline industry, and organizations  
5           representing community-based law enforcement, firefighters, and emer-  
6           gency medical technicians, in carrying out the program under para-  
7           graph (1), including the actions taken under paragraph (3).

8           (b) EXEMPTION FROM LIABILITY.—An individual is not liable for dam-  
9           ages in an action brought in a Federal or State court that arises from an  
10          act or omission of the individual in providing or attempting to provide as-  
11          sistance in the case of an in-flight emergency in an aircraft of an air carrier  
12          if the individual meets qualifications as the Secretary prescribes for pur-  
13          poses of this section.

14          (c) EXCEPTION.—The exemption under subsection (b) shall not apply in  
15          a case in which an individual provides, or attempts to provide, assistance  
16          described in subsection (b) in a manner that constitutes gross negligence  
17          or willful misconduct.

18       **§ 40963. Disposition of unclaimed money and clothing**

19          (a) IN GENERAL.—

20           (1) DISPOSITION OF UNCLAIMED MONEY.—Notwithstanding section  
21           3302 of title 31, unclaimed money recovered at an airport security  
22           checkpoint—

23           (A) shall be retained by the Transportation Security Adminis-  
24           tration; and

25           (B) remains available until expended for the purpose of provid-  
26           ing civil aviation security as required in this chapter.

27          (2) DISPOSITION OF UNCLAIMED CLOTHING.—

28           (A) IN GENERAL.—In disposing of unclaimed clothing recovered  
29           at any airport security checkpoint, the Administrator of the  
30           Transportation Security Administration shall make every reason-  
31           able effort, in consultation with the Secretary of Veterans Affairs,  
32           to transfer the clothing to the local airport authority or other local  
33           authorities for donation to charity, including local veterans organi-  
34           zations or other local charitable organizations for distribution to  
35           homeless or needy veterans and veteran families.

36           (B) AGREEMENTS.—In implementing paragraph (1), the Ad-  
37           ministrator of the Transportation Security Administration may  
38           enter into agreements with airport authorities.

39           (C) OTHER CHARITABLE ARRANGEMENTS.—Nothing in this  
40           subsection prevents an airport or the Transportation Security Ad-

1           ministration from donating unclaimed clothing to a charitable or-  
2           ganization of their choosing.

3           (D) LIMITATION.—Nothing in this subsection creates a cost to  
4           the Government.

5           (b) ANNUAL REPORT.—The Secretary, acting through the Administrator  
6           of the Transportation Security Administration, shall transmit annually to  
7           the Committee on Transportation and Infrastructure of the House of Rep-  
8           representatives; the Committee on Appropriations of the House of Representa-  
9           tives; the Committee on Commerce, Science and Transportation of the Sen-  
10          ate; and the Committee on Appropriations of the Senate, a report that con-  
11          tains a detailed description of the amount of unclaimed money recovered in  
12          total and at each individual airport, and specifically how the unclaimed  
13          money is being used to provide civil aviation security.

14                   **Subchapter IV—Investigations and Proceedings**  
15           **§ 40971. Complaints and investigations**

16          (a) IN GENERAL.—

17           (1) FILING COMPLAINT.—A person may file a complaint in writing  
18           with the Secretary, acting through the Administrator of the Transpor-  
19           tation Security Administration, about a person violating this chapter or  
20           a requirement prescribed under this chapter. Except as provided in  
21           subsection (b), the Secretary shall investigate the complaint if a reason-  
22           able ground appears to the Secretary for the investigation.

23           (2) CONDUCTING INVESTIGATION.—On the initiative of the Sec-  
24           retary, the Secretary may conduct an investigation, if a reasonable  
25           ground appears to the Secretary for the investigation, about—

26                   (A) a person violating this chapter or a requirement prescribed  
27                   under this chapter; or

28                   (B) any question that may arise under this chapter.

29           (3) DISMISSAL OF COMPLAINT.—The Secretary may dismiss a com-  
30           plaint without a hearing when the Secretary is of the opinion that the  
31           complaint does not state facts that warrant an investigation or action.

32           (4) HEARINGS AND ORDERS.—After notice and an opportunity for  
33           a hearing and subject to section 40105(b) of title 49, the Secretary  
34           shall issue an order to compel compliance with this chapter if the Sec-  
35           retary finds in an investigation under this subsection that a person is  
36           violating this chapter.

37           (b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Sec-  
38           retary shall refer a complaint against a member of the armed forces of the  
39           United States performing official duties to the Secretary of the department  
40           concerned for action. Not later than 90 days after receiving the complaint,  
41           the Secretary of that department shall inform the Secretary of the action

1 taken on the complaint, including any corrective or disciplinary action  
2 taken.

3 **§ 40972. Proceedings**

4 (a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5  
5 of title 5, the Secretary, acting through the Administrator of the Transpor-  
6 tation Security Administration, may conduct proceedings in a way conducive  
7 to justice and the proper dispatch of business.

8 (b) APPEARANCE.—A person may appear and be heard before the Sec-  
9 retary in person or by an attorney.

10 (c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Sec-  
11 retary under this chapter shall be recorded. Proceedings before the Sec-  
12 retary shall be open to the public on the request of an interested party un-  
13 less the Secretary decides that secrecy is required because of national de-  
14 fense.

15 (d) CONFLICTS OF INTEREST.—The Secretary or an officer or employee  
16 of the Transportation Security Administration may not participate in a pro-  
17 ceeding referred to in subsection (a) of this section in which the individual  
18 has a pecuniary interest.

19 **§ 40973. Service of notice, process, and actions**

20 (a) DESIGNATING AGENTS.—

21 (1) IN GENERAL.—Each air carrier and foreign air carrier shall des-  
22 ignate an agent on whom service of notice and process in a proceeding  
23 before, and an action of, the Secretary, acting through the Adminis-  
24 trator of the Transportation Security Administration, may be made.

25 (2) FORM OF DESIGNATION; CHANGES.—The designation

26 (A) shall be in writing and filed with the Secretary; and

27 (B) may be changed in the same way as originally made.

28 (b) SERVICE.—

29 (1) METHOD OF SERVICE.—Service may be made—

30 (A) by personal service;

31 (B) on a designated agent; or

32 (C) by certified or registered mail to the person to be served or  
33 the designated agent of the person.

34 (2) DATE OF SERVICE.—The date of service made by certified or  
35 registered mail is the date of mailing.

36 (c) SERVING AGENTS.—Service on an agent designated under this section  
37 shall be made at the office or usual place of residence of the agent. If an  
38 air carrier or foreign air carrier does not have a designated agent, service  
39 may be made by posting the notice, process, or action in the office of the  
40 Secretary.



1     **§ 40974. Evidence**

2           (a) IN GENERAL.—In conducting a hearing or investigation under this  
3 chapter, the Secretary, acting through the Administrator of the Transpor-  
4 tation Security Administration, may—

5               (1) subpoena witnesses and records related to a matter involved in the  
6 hearing or investigation from any place in the United States to the des-  
7 ignated place of the hearing or investigation;

8               (2) administer oaths;

9               (3) examine witnesses; and

10              (4) receive evidence at a place in the United States the Secretary  
11 designates.

12           (b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpoena, the  
13 Secretary or a party to a proceeding before the Secretary may petition a  
14 court of the United States to enforce the subpoena. A judicial proceeding to  
15 enforce a subpoena under this section may be brought in the jurisdiction in  
16 which the proceeding or investigation is conducted. The court may punish  
17 a failure to obey an order of the court to comply with the subpoena as a  
18 contempt of court.

19           (c) Depositions.—

20               (1) IN GENERAL.—In a proceeding or investigation, the Secretary  
21 may order a person to give testimony by deposition and to produce  
22 records. If a person fails to be deposed or to produce records, the order  
23 may be enforced in the same way a subpoena may be enforced under  
24 subsection (b) of this section.

25               (2) TAKING OF DEPOSITION.—A deposition may be taken before an  
26 individual designated by the Secretary and having the power to admin-  
27 ister oaths.

28               (3) NOTICE REQUIREMENTS.—Before taking a deposition, the party  
29 or the attorney of the party proposing to take the deposition must give  
30 reasonable notice in writing to the opposing party or the attorney of  
31 record of that party. The notice shall state the name of the witness  
32 and the time and place of taking the deposition.

33               (4) DEPOSITION PROCESS.—The testimony of a person deposed  
34 under this subsection shall be under oath. The person taking the depo-  
35 sition shall prepare, or cause to be prepared, a transcript of the testi-  
36 mony taken. The transcript shall be subscribed by the deponent. Each  
37 deposition shall be filed promptly with the Secretary.

38               (5) DEPOSITIONS ABROAD.—If the laws of a foreign country allow,  
39 the testimony of a witness in that country may be taken by deposi-  
40 tion—

1 (A) by a consular officer or an individual commissioned by the  
2 Secretary or agreed on by the parties by written stipulation filed  
3 with the Secretary; or

4 (B) under letters rogatory issued by a court of competent juris-  
5 diction at the request of the Secretary.

6 (d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EX-  
7 PENSES.—A witness summoned before the Secretary or whose deposition is  
8 taken under this section and the individual taking the deposition are each  
9 entitled to the same fee and mileage that the witness and individual would  
10 have been paid for those services in a court of the United States. Under  
11 regulations of the Secretary, the Secretary shall pay the necessary expenses  
12 incident to executing, in another country, a commission or letter rogatory  
13 issued at the initiative of the Secretary.

14 (e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When des-  
15 ignated by the Secretary, an employee appointed under section 3105 of title  
16 5 may conduct a hearing, subpoena witnesses, administer oaths, examine wit-  
17 nesses, and receive evidence at a place in the United States the Secretary  
18 designates. On request of a party, the Secretary shall hear or receive argu-  
19 ment.

#### 20 **§ 40975. Regulations and orders**

21 (a) EFFECTIVENESS OF ORDERS.—Except as provided in this chapter, a  
22 regulation prescribed or order issued by the Secretary, acting through the  
23 Administrator of the Transportation Security Administration, takes effect  
24 within a reasonable time prescribed by the Secretary. The regulation or  
25 order remains in effect under its own terms or until superseded. Except as  
26 provided in this chapter, the Secretary may amend, modify, or suspend an  
27 order in the way, and by giving the notice, the Secretary decides.

28 (b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary  
29 shall include the findings of fact on which the order is based and shall be  
30 served on the parties to the proceeding and the persons affected by the  
31 order.

#### 32 **§ 40976. Enforcement by the Department**

33 The Secretary, acting through the Administrator of the Transportation  
34 Security Administration, may bring a civil action against a person in a dis-  
35 trict court of the United States to enforce this chapter or a requirement  
36 or regulation prescribed or order issued under this chapter. The action may  
37 be brought in the judicial district in which the person does business or the  
38 violation occurred.

1     **§ 40977. Enforcement by Attorney General**

2         (a) IN GENERAL.—On request of the Secretary of Transportation or Ad-  
3     ministrator of the Transportation Security Administration, the Attorney  
4     General may bring a civil action in an appropriate court—

5             (1) to enforce this chapter or section 11317 or 11318 of this title  
6             or a requirement or regulation prescribed or order issued under this  
7             chapter or section 11317 or 11318 of this title; and

8             (2) to prosecute a person violating this chapter or section 11317 or  
9             11318 of this title or a requirement or regulation prescribed or order  
10            issued under this chapter or section 11317 or 11318 of this title.

11         (b) Costs and Expenses Paid Out of Appropriations for Court Ex-  
12     penses.—The costs and expenses of a civil action under this chapter or sec-  
13     tion 11317 or 11318 of this title shall be paid out of the appropriations  
14     for the expenses of the courts of the United States.

15         (c) PARTICIPATION OF SECRETARY OR ADMINISTRATOR.—On request of  
16     the Attorney General, the Secretary or Administrator of the Transportation  
17     Security Administration may participate in a civil action under this chapter  
18     or section 11317 or 11318 of this title.

19     **§ 40978. Joinder and intervention**

20         A person interested in or affected by a matter under consideration in a  
21     proceeding before the Secretary, acting through the Administrator of the  
22     Transportation Security Administration, a civil action to enforce this chap-  
23     ter, or a requirement or regulation prescribed or order issued under this  
24     chapter may be joined as a party or permitted to intervene in the proceeding  
25     or civil action.

26     **§ 40979. Judicial review**

27         (a) FILING AND VENUE.—A person disclosing a substantial interest in an  
28     order issued by the Secretary, acting through the Administrator of the  
29     Transportation Security Administration, in whole or in part under this  
30     chapter or sections 11307, 11314, 11317, or 11318 of this title, may apply  
31     for review of the order by filing a petition for review in the United States  
32     Court of Appeals for the District of Columbia Circuit or in the court of ap-  
33     peals of the United States for the circuit in which the person resides or has  
34     its principal place of business. The petition must be filed not later than 60  
35     days after the order is issued. The court may allow the petition to be filed  
36     after the 60th day only if there are reasonable grounds for not filing by  
37     the 60th day.

38         (b) JUDICIAL PROCEDURES.—When a petition is filed under subsection  
39     (a), the clerk of the court immediately shall send a copy of the petition to  
40     the Secretary. The Secretary shall file with the court a record of any pro-

1 ceeding in which the order was issued, as provided in section 2112 of title  
2 28.

3 (c) AUTHORITY OF COURT.—When the petition is sent to the Secretary,  
4 the court has exclusive jurisdiction to affirm, amend, modify, or set aside  
5 any part of the order and may order the Secretary to conduct further pro-  
6 ceedings. After reasonable notice to the Secretary, the court may grant in-  
7 terim relief by staying the order or taking other appropriate action when  
8 good cause for its action exists. Findings of fact by the Secretary, if sup-  
9 ported by substantial evidence, are conclusive.

10 (d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under  
11 this section, the court may consider an objection to an order of the Sec-  
12 retary only if the objection was made in the proceeding conducted by the  
13 Secretary or if there was a reasonable ground for not making the objection  
14 in the proceeding.

15 (e) SUPREME COURT REVIEW.—A decision by a court under this section  
16 may be reviewed only by the Supreme Court under section 1254 of title 28.

### 17 **Subchapter V—Penalties**

#### 18 **§ 40991. Civil penalties**

19 (a) DEFINITION.—In this section, the term “small business concern” has  
20 the meaning given that term in section 3 of the Small Business Act (15  
21 U.S.C. 632).

22 (b) GENERAL PENALTY.—

23 (1) CHAPTER 409 VIOLATIONS; REGULATION VIOLATIONS.—A person  
24 is liable to the United States Government for a civil penalty of not  
25 more than \$25,000 (or \$1,100 if the person is an individual or small  
26 business concern) for violating

27 (A) chapter 409 (except sections 40912, 40913(d), 40914,  
28 40917 (a) through (d)(1)(A) and (1)(C) through (f), and 40918)  
29 of this title; or

30 (B) a regulation prescribed or order issued under any provision  
31 to which subparagraph (A) applies.

32 (2) SEPARATE VIOLATIONS.—A separate violation occurs under this  
33 subsection for each day the violation continues or, if applicable, for  
34 each flight involving the violation.

35 (3) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph  
36 (1) of this subsection, the maximum civil penalty for violating chapter  
37 409 shall be \$10,000; except that the maximum civil penalty shall be  
38 \$25,000 in the case of a person operating an aircraft for the transpor-  
39 tation of passengers or property for compensation (except an individual  
40 serving as an airman).

1 (4) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS  
2 CONCERNS.—An individual (except an airman serving as an airman) or  
3 small business concern is liable to the Government for a civil penalty  
4 of not more than \$10,000 for violating

5 (A) chapter 409 (except sections 40912, 40913(d), 40914, and  
6 40917 through 40919) of this title; or

7 (B) a regulation prescribed or order issued under any provision  
8 to which subparagraph (A) applies.

9 (5) FAILURE TO COLLECT AIRPORT SECURITY BADGES.—Notwith-  
10 standing paragraph (1), an employer (other than a governmental entity  
11 or airport operator) who employs an employee to whom an airport secu-  
12 rity badge or other identifier used to obtain access to a secure area of  
13 an airport is issued and who does not collect or make reasonable efforts  
14 to collect the badge from the employee on the date that the employ-  
15 ment of the employee is terminated and does not notify the operator  
16 of the airport of the termination within 24 hours of the date of the  
17 termination is liable to the Government for a civil penalty not to exceed  
18 \$10,000.

19 (c) PROCEDURAL REQUIREMENTS.—

20 (1) IN GENERAL.—The Secretary, acting through the Administra-  
21 tors, may impose a civil penalty for the following violations only after  
22 notice and an opportunity for a hearing:

23 (A) A violation of section 40919 of this title.

24 (B) A violation of a regulation prescribed or order issued under  
25 any provision to which subparagraph (A) of this paragraph ap-  
26 plies.

27 (2) WRITTEN NOTICE.—The Secretary shall give written notice of  
28 the finding of a violation and the civil penalty under paragraph (1) of  
29 this subsection.

30 (d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

31 (1) DEFINITIONS.—In this subsection:

32 (A) FLIGHT ENGINEER.—The term “flight engineer” means an  
33 individual who holds a flight engineer certificate issued under part  
34 63 of title 14, Code of Federal Regulations.

35 (B) MECHANIC.—The term “mechanic” means an individual  
36 who holds a mechanic certificate issued under part 65 of title 14,  
37 Code of Federal Regulations.

38 (C) PILOT.—The term “pilot” means an individual who holds  
39 a pilot certificate issued under part 61 of title 14, Code of Federal  
40 Regulations.

1 (D) REPAIRMAN.—The term “repairman” means an individual  
2 who holds a repairman certificate issued under part 65 of title 14,  
3 Code of Federal Regulations.

4 (2) PENALTY COVERAGE.—

5 (A) IN GENERAL.—The Secretary may impose a civil penalty for  
6 a violation of chapter 409 (except sections 40912, 40913(d),  
7 40917 (a) through (d)(1)(A) and (1)(C) through (f), 40918, and  
8 40919).

9 (B) WRITTEN NOTICE.—The Secretary shall give written notice  
10 of the finding of a violation and the penalty.

11 (C) EXCEPTION.—In the case of a violation of section 40992 of  
12 this title or a regulation prescribed or order issued under that pro-  
13 vision, a penalty may not be imposed under this subsection for a  
14 violation relating to section 41014 of this title.

15 (3) LIMIT ON REEXAMINATION.—In a civil action to collect a civil  
16 penalty imposed by the Secretary under this subsection, the issues of  
17 liability and the amount of the penalty may not be reexamined.

18 (4) DISTRICT COURT JURISDICTION.—Notwithstanding paragraph  
19 (2) of this subsection, the district courts of the United States have ex-  
20 clusive jurisdiction of a civil action involving a penalty the Secretary  
21 initiates if—

22 (A) the amount in controversy is more than—

23 (i) \$50,000 if the violation was committed by any person  
24 before December 12, 2003;

25 (ii) \$400,000 if the violation was committed by a person  
26 other than an individual or small business concern on or after  
27 that date; or

28 (iii) \$50,000 if the violation was committed by an individ-  
29 ual or small business concern on or after that date;

30 (B) the action is in rem or another action in rem based on the  
31 same violation has been brought;

32 (C) the action involves an aircraft subject to a lien that has  
33 been seized by the Government; or

34 (D) another action has been brought for an injunction based on  
35 the same violation.

36 (5) PENALTY MAXIMUM.—The maximum civil penalty the Secretary  
37 may impose under this subsection is—

38 (A) \$50,000 if the violation was committed by any person before  
39 December 12, 2003;

1 (B) \$400,000 if the violation was committed by a person other  
2 than an individual or small business concern on or after that date;  
3 or

4 (C) \$50,000 if the violation was committed by an individual or  
5 small business concern on or after that date.

6 (6) LIMITATION.—This subsection applies only to a violation occur-  
7 ring after August 25, 1992.

8 (e) COMPROMISE AND SETOFF.—

9 (1) COMPROMISE.—The Secretary may compromise the amount of a  
10 civil penalty imposed for violating—

11 (A) chapter 409 (except sections 40912, 40913(d), 40914,  
12 40917(a) through (d)(1)(A) and (1)(C) through (f), 40918, and  
13 40919) of this title; or

14 (B) a regulation prescribed or order issued under any provision  
15 to which subparagraph (A) of this paragraph applies.

16 (2) SETOFF.—The United States Government may deduct the  
17 amount of a civil penalty imposed or compromised under this sub-  
18 section from amounts it owes the person liable for the penalty.

19 (f) JUDICIAL REVIEW.—An order of the Secretary imposing a civil pen-  
20 alty may be reviewed judicially only under section 40979 of this title.

21 (g) NONAPPLICATION.—

22 (1) IN GENERAL.—This section does not apply to the following when  
23 performing official duties:

24 (A) a member of the armed forces of the United States.

25 (B) a civilian employee of the Department of Defense subject  
26 to the Uniform Code of Military Justice.

27 (2) REPORT ON ACTION TAKEN.—The appropriate military authority  
28 is responsible for taking necessary disciplinary action and submitting  
29 to the Secretary a timely report on action taken.

30 **§ 40992. False information**

31 (a) CIVIL PENALTY.—A person that, knowing the information to be false,  
32 gives, or causes to be given, under circumstances in which the information  
33 reasonably may be believed, false information about an alleged attempt  
34 being made or to be made to do an act that would violate section 41012(a),  
35 41014, 41015, or 41016 of this title is liable to the United States Govern-  
36 ment for a civil penalty of not more than \$10,000 for each violation.

37 (b) COMPROMISE AND SETOFF.—

38 (1) COMPROMISE.—The Secretary may compromise the amount of a  
39 civil penalty imposed under subsection (a).

1           (2) SETOFF.—The United States Government may deduct the  
2           amount of a civil penalty imposed or compromised under this section  
3           from amounts it owes the person liable for the penalty.

4    **§ 40993. Carrying a weapon**

5           (a) CIVIL PENALTY.—An individual who, when on, or attempting to  
6           board, an aircraft in, or intended for operation in, air transportation or  
7           intrastate air transportation, has on or about the individual or the property  
8           of the individual a concealed dangerous weapon that is or would be acces-  
9           sible to the individual in flight is liable to the United States Government  
10          for a civil penalty of not more than \$10,000 for each violation.

11          (b) COMPROMISE AND SETOFF.—

12           (1) COMPROMISE.—The Secretary may compromise the amount of a  
13           civil penalty imposed under subsection (a).

14           (2) SETOFF.—The United States Government may deduct the  
15           amount of a civil penalty imposed or compromised under this section  
16           from amounts it owes the individual liable for the penalty.

17          (c) NONAPPLICATION.—This section does not apply to—

18           (1) a law enforcement officer of a State or political subdivision of  
19           a State, or an officer or employee of the United States Government,  
20           authorized to carry arms in an official capacity; or

21           (2) another individual the Secretary or the Administrator of the Fed-  
22           eral Transportation Administration by regulation authorizes to carry  
23           arms in an official capacity.

24    **§ 40994. Actions to recover civil penalties**

25          A civil penalty under this subchapter may be collected by bringing a civil  
26          action against the person subject to the penalty, a civil action in rem  
27          against an aircraft subject to a lien for a penalty, or both. The action shall  
28          conform as nearly as practicable to a civil action in admiralty, regardless  
29          of the place an aircraft in a civil action in rem is seized. However, a party  
30          may demand a jury trial of an issue of fact in an action involving a civil  
31          penalty under this subchapter if the value of the matter in controversy is  
32          more than \$20. Issues of fact tried by a jury may be reexamined only under  
33          common law rules.

34    **§ 40995. Reporting and recordkeeping violations**

35          An air carrier or an officer, agent, or employee of an air carrier shall  
36          be fined under title 18 for intentionally—

37           (1) failing to make a report or keep a record under this chapter;

38           (2) falsifying, mutilating, or altering a report or record under this  
39           chapter; or

40           (3) filing a false report or record under this chapter.



1     **§ 40996. Unlawful disclosure of information**

2         (a) CRIMINAL PENALTY.—The Secretary, acting through the Adminis-  
3         trator, or an officer or employee of the Secretary, shall be fined under title  
4         18, imprisoned for not more than 2 years, or both, if the Secretary or em-  
5         ployee knowingly and willfully discloses information that—

6             (1) the Secretary or employee acquires when inspecting the records  
7             of an air carrier; or

8             (2) is withheld from public disclosure under section 11318 of this  
9             title.

10         (b) NONAPPLICATION.—Subsection (a) does not apply if—

11             (1) the officer or employee is directed by the Secretary to disclose  
12             information that the Secretary had ordered withheld; or

13             (2) the Secretary or employee is directed by a court of competent  
14             jurisdiction to disclose the information.

15         (c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does  
16         not authorize the Secretary to withhold information from a committee of  
17         Congress authorized to have the information.

18     **§ 40997. Refusing to appear or produce records**

19         A person not obeying a subpoena or requirement of the Secretary, acting  
20         through the Administrator, to appear and testify or produce records shall  
21         be fined under title 18, imprisoned for not more than one year, or both.

22     **§ 40998. Entering aircraft or airport area in violation of se-**  
23             **curity requirements**

24         (a) PROHIBITION.—A person may not knowingly and willfully enter, in  
25         violation of security requirements prescribed under section 40911, 40913(b)  
26         or (c), or 40916 of this title, an aircraft or an airport area that serves an  
27         air carrier or foreign air carrier.

28         (b) CRIMINAL PENALTY.—

29             (1) IN GENERAL.—A person violating subsection (a) shall be fined  
30             under title 18, imprisoned for not more than one year, or both.

31             (2) INCREASED PENALTY.—A person violating subsection (a) with in-  
32             tent to evade security procedures or restrictions or with intent to com-  
33             mit, in the aircraft or airport area, a felony under a law of the United  
34             States or a State shall be fined under title 18, imprisoned for not more  
35             than 10 years, or both.

36         (c) NOTICE OF PENALTIES.—

37             (1) SIGNS.—Each operator of an airport in the United States that  
38             is required to establish an air transportation security program under  
39             section 40913(c) of this title shall ensure that signs that meet require-  
40             ments the Secretary, acting through the Administrator, may prescribe  
41             for providing notice of the penalties imposed under subsection (b) and

1 section 40991(b)(4)(A) of this title are displayed near all screening lo-  
 2 cations, all locations where passengers exit the sterile area, and other  
 3 locations at the airport the Secretary determines appropriate.

4 (2) EFFECT OF SIGNS ON PENALTIES.—An individual is subject to  
 5 a penalty imposed under subsection (b) or section 40991(b)(4)(A) of  
 6 this title without regard to whether signs are displayed at an airport  
 7 as required by paragraph (1).

8 **§ 40999. General criminal penalty when specific penalty not**  
 9 **provided**

10 (a) CRIMINAL PENALTY.—Except as provided by subsection (b), when an-  
 11 other criminal penalty is not provided under this subchapter, a person that  
 12 knowingly and willfully violates this chapter, or a regulation prescribed or  
 13 order issued by the Secretary, acting through the Administrator, under this  
 14 chapter, shall be fined under title 18. A separate violation occurs for each  
 15 day the violation continues.

16 (b) NONAPPLICATION.—Subsection (a) does not apply to chapter 409 (ex-  
 17 cept sections 40912, 40913(d), 40914, and 40917 through 40919) of this  
 18 title.

19 **§ 41000. Interference with cabin or flight crew**

20 (a) IN GENERAL.—An individual who physically assaults or threatens to  
 21 physically assault a member of the flight crew or cabin crew of a civil air-  
 22 craft or any other individual on the aircraft, or takes any action that poses  
 23 an imminent threat to the safety of the aircraft or other individuals on the  
 24 aircraft is liable to the United States Government for a civil  
 25 penalty of not more than \$25,000.

26 (b) COMPROMISE AND SETOFF.—

27 (1) COMPROMISE.—The Secretary, acting through the Administrator,  
 28 may compromise the amount of a civil penalty imposed under this sec-  
 29 tion.

30 (2) Setoff.—The United States Government may deduct the amount  
 31 of a civil penalty imposed or compromised under this section from  
 32 amounts the Government owes the person liable for the penalty.

33 **Subchapter VI—Special Aircraft Jurisdiction of the United**  
 34 **States**

35 **§ 41011. Definitions**

36 In this subchapter:

37 (1) AIRCRAFT IN FLIGHT.—The term “aircraft in flight” means an  
 38 aircraft from the moment all external doors are closed following board-  
 39 ing—

40 (A) through the moment when one external door is opened to  
 41 allow passengers to leave the aircraft; or

1 (B) until, if a forced landing, competent authorities take over  
2 responsibility for the aircraft and individuals and property on the  
3 aircraft.

4 (2) COMMIT AN OFFENSE.—The term “commit an offense” means,  
5 in the case of an individual and for the purposes of the Convention for  
6 the Suppression of Unlawful Seizure of Aircraft, when the individual,  
7 when on an aircraft in flight

8 (A) by any form of intimidation, unlawfully seizes, exercises  
9 control of, or attempts to seize or exercise control of, the aircraft;  
10 or

11 (B) is an accomplice of an individual referred to in subpara-  
12 graph (A).

13 (3) SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES.—  
14 The term “special aircraft jurisdiction of the United States” includes  
15 any of the following aircraft in flight:

16 (A) A civil aircraft of the United States.

17 (B) An aircraft of the armed forces of the United States.

18 (C) Another aircraft in the United States.

19 (D) Another aircraft outside the United States—

20 (i) that has its next scheduled destination or last place of  
21 departure in the United States, if the aircraft next lands in  
22 the United States;

23 (ii) on which an individual commits an offense (as specified  
24 in the Convention for the Suppression of Unlawful Seizure of  
25 Aircraft) if the aircraft lands in the United States with the  
26 individual still on the aircraft; or

27 (iii) against which an individual commits an offense (as  
28 specified in subsection (d) or (e) of article I, section I of the  
29 Convention for the Suppression of Unlawful Acts against the  
30 Safety of Civil Aviation) if the aircraft lands in the United  
31 States with the individual still on the aircraft.

32 (E) Any other aircraft leased without crew to a lessee whose  
33 principal place of business is in the United States or, if the lessee  
34 does not have a principal place of business, whose permanent resi-  
35 dence is in the United States.

36 **§ 41012. Aircraft piracy**

37 (a) AIRCRAFT PIRACY IN SPECIAL AIRCRAFT JURISDICTION.—

38 (1) DEFINITION.—In this subsection, the term “aircraft piracy”  
39 means seizing or exercising control of an aircraft in the special aircraft  
40 jurisdiction of the United States by force, violence, threat of force or  
41 violence, or any form of intimidation, and with wrongful intent.

1           (2) WHEN ATTEMPT TO COMMIT AIRCRAFT PIRACY DEEMED TO BE  
2           IN SPECIAL AIRCRAFT JURISDICTION.—An attempt to commit aircraft  
3           piracy is deemed to be in the special aircraft jurisdiction of the United  
4           States, although the aircraft is not in flight at the time of the attempt,  
5           if the aircraft would have been in the special aircraft jurisdiction of the  
6           United States had the aircraft piracy been completed.

7           (3) CRIMINAL PENALTY.—An individual committing or attempting or  
8           conspiring to commit aircraft piracy

9                   (A) shall be imprisoned for at least 20 years; or

10                   (B) notwithstanding section 3559(b) of title 18, if the death of  
11           another individual results from the commission or attempt, shall  
12           be put to death or imprisoned for life.

13           (b) AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION.—

14           (1) DEFINITION.—In this subsection, the term “national of the  
15           United States” has the meaning given the term in section 101(a)(22)  
16           of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

17           (2) CRIMINAL PENALTY.—An individual committing or conspiring to  
18           commit an offense (as specified in the Convention for the Suppression  
19           of Unlawful Seizure of Aircraft) on an aircraft in flight outside the spe-  
20           cial aircraft jurisdiction of the United States—

21                   (A) shall be imprisoned for at least 20 years; or

22                   (B) notwithstanding section 3559(b) of title 18, if the death of  
23           another individual results from the commission or attempt, shall  
24           be put to death or imprisoned for life.

25           (3) JURISDICTION.—There is jurisdiction over the offense in para-  
26           graph (2) if—

27                   (A) a national of the United States was aboard the aircraft;

28                   (B) an offender is a national of the United States; or

29                   (C) an offender is afterwards found in the United States.

30           **§ 41013. Interference with security screening personnel**

31           An individual in an area in a commercial service airport in the United  
32           States who, by assaulting a Federal, airport, or air carrier employee who  
33           has security duties in the airport, interferes with the performance of the du-  
34           ties of the employee or lessens the ability of the employee to perform those  
35           duties shall be fined under title 18, imprisoned for not more than 10 years,  
36           or both. If the individual uses a dangerous weapon in committing the as-  
37           sault or interference, the individual may be imprisoned for any term of  
38           years or for life.

1    **§ 41014. Interference with flight crew members and attend-**  
2                                   **ants**

3           An individual on an aircraft in the special aircraft jurisdiction of the  
4    United States who, by assaulting or intimidating a flight crew member or  
5    flight attendant of the aircraft, interferes with the performance of the duties  
6    of the member or attendant or lessens the ability of the member or attend-  
7    ant to perform those duties, or attempts or conspires to do such an act,  
8    shall be fined under title 18, imprisoned for not more than 20 years, or  
9    both. If a dangerous weapon is used in assaulting or intimidating the mem-  
10   ber or attendant, the individual shall be imprisoned for any term of years  
11   or for life.

12   **§ 41015. Carrying a weapon or explosive on an aircraft**

13           (a) DEFINITION.—In this section, the term “loaded firearm” means a  
14    starter gun or a weapon designed or converted to expel a projectile through  
15    an explosive, that has a cartridge, a detonator, or powder in the chamber,  
16    magazine, cylinder, or clip.

17           (b) GENERAL CRIMINAL PENALTY.—An individual shall be fined under  
18    title 18, imprisoned for not more than 10 years, or both, if the individual—

19                   (1) when on, or attempting to get on, an aircraft in, or intended for  
20                   operation in, air transportation or intrastate air transportation, has on  
21                   or about the individual or the property of the individual a concealed  
22                   dangerous weapon that is or would be accessible to the individual in  
23                   flight;

24                   (2) has placed, attempted to place, or attempted to have placed a  
25                   loaded firearm on that aircraft in property not accessible to passengers  
26                   in flight; or

27                   (3) has on or about the individual, or has placed, attempted to place,  
28                   or attempted to have placed on that aircraft, an explosive or incendiary  
29                   device.

30           (c) CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.—An  
31    individual who willfully and without regard for the safety of human life, or  
32    with reckless disregard for the safety of human life, violates subsection (b)  
33    shall be fined under title 18, imprisoned for not more than 20 years, or  
34    both, and, if death results to any person, shall be imprisoned for any term  
35    of years or for life.

36           (d) NONAPPLICATION.—Subsection (b)(1) does not apply to—

37                   (1) a law enforcement officer of a State or political subdivision of  
38                   a State, or an officer or employee of the United States Government,  
39                   authorized to carry arms in an official capacity;

1 (2) another individual the Secretary, acting through the Adminis-  
2 trator, by regulation authorizes to carry a dangerous weapon in air  
3 transportation or intrastate air transportation; or

4 (3) an individual transporting a weapon (except a loaded firearm) in  
5 baggage not accessible to a passenger in flight if the air carrier was  
6 informed of the presence of the weapon.

7 (e) CONSPIRACY.—If 2 or more individuals conspire to violate subsection  
8 (b) or (c), and 1 or more of the individuals do any act to effect the object  
9 of the conspiracy, each of the parties to the conspiracy shall be punished  
10 as provided in subsection (b) or (c).

11 **§ 41016. Application of certain criminal laws to acts on air-**  
12 **craft**

13 An individual on an aircraft in the special aircraft jurisdiction of the  
14 United States who commits an act that—

15 (1) if committed in the special maritime and territorial jurisdiction  
16 of the United States (as defined in section 7 of title 18) would violate  
17 section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter  
18 109A of title 18, shall be fined under title 18, imprisoned under that  
19 section or chapter, or both; or

20 (2) if committed in the District of Columbia would violate section 9  
21 of the Act of July 29, 1892 (D.C. Code 22-1312), shall be fined under  
22 title 18, imprisoned under section 9 of the Act, or both.

23 **§ 41017. False information and threats**

24 An individual shall be fined under title 18, imprisoned for not more than  
25 5 years, or both, if the individual—

26 (1) knowing the information to be false, willfully and maliciously or  
27 with reckless disregard for the safety of human life, gives, or causes  
28 to be given, under circumstances in which the information reasonably  
29 may be believed, false information about an alleged attempt being made  
30 or to be made to do an act that would violate section 41012(a), 41014,  
31 41015, or 41016 of this title; or

32 (2) threatens to violate section 41012(a), 41014, 41015, or 41016 of this  
33 title, or causes a threat to violate any of those sections to be made, and  
34 has the apparent determination and will to carry out the threat.

35 **Subtitle V—Border Infrastructure and**  
36 **Technology Modernization**

37 **Chapter 501—General**

Sec.50101. Definitions.50102. Port of Entry Infrastructure Assessment Study.50103. Na-  
tional Land Border Security Plan.50104. Port of entry technology demonstration  
program.50105. Authorization of appropriations.

1     **§ 50101. Definitions**

2         In this subtitle:

3             (1) COMMISSIONER.—The term “Commissioner” means the Commis-  
4             sioner of Customs and Border Protection.

5             (2) NORTHERN BORDER.—The term “northern border” means the  
6             international border between the United States and Canada.

7             (3) SECRETARY.—The term “Secretary” means the Secretary of  
8             Homeland Security.

9             (4) SOUTHERN BORDER.—The term “southern border” means the  
10            international border between the United States and Mexico.

11     **§ 50102. Port of Entry Infrastructure Assessment Study**

12         (a) REQUIREMENT TO UPDATE.—Not later than January 31 every other  
13         year, the Secretary, acting through the Commissioner, in consultation with  
14         the Administrator of General Services shall—

15             (1) review—

16                 (A) the Port of Entry Infrastructure Assessment Study pre-  
17                 pared by the former United States Customs Service, the former  
18                 Immigration and Naturalization Service, and the General Services  
19                 Administration in accordance with the matter relating to the ports  
20                 of entry infrastructure assessment set forth in the joint explana-  
21                 tory statement on page 67 of H. R. Rep. No. 106–319, accom-  
22                 panying the Treasury and General Government Appropriations  
23                 Act, 2000 (Public Law 106–58, 113 Stat. 430); and

24                 (B) the nationwide strategy to prioritize and address the infra-  
25                 structure needs at the land ports of entry prepared by the Depart-  
26                 ment of Homeland Security and the General Services Administra-  
27                 tion in accordance with the committee recommendations on page  
28                 22 of S. Rep. No. 108–86, accompanying the Department of  
29                 Homeland Security Appropriations Act, 2004 (Public Law 108–  
30                 90, 117 Stat. 1137);

31             (2) update the assessment of the infrastructure needs of all United  
32             States land ports of entry; and

33             (3) submit an updated assessment of land port of entry infrastruc-  
34             ture needs to the Committees on Appropriations of the Senate and the  
35             House of Representatives, the Senate Committee on Environment and  
36             Public Works, the Senate Committee on Homeland Security and Gov-  
37             ernmental Affairs, the House Committee on Transportation and Infra-  
38             structure, and the House Committee on Homeland Security.

39         (b) CONSULTATION.—In preparing the updated studies required under  
40         subsection (a), the Secretary and the Administrator of General Services  
41         shall consult with the Director of the Office of Management and Budget

1 and affected State and local agencies on the northern and southern borders  
2 of the United States.

3 (e) CONTENT.—Each updated study required in subsection (a) shall—

4 (1) identify port of entry infrastructure and technology improvement  
5 projects that would enhance border security and facilitate the flow of  
6 legitimate commerce if implemented;

7 (2) include the projects identified in the National Land Border Secu-  
8 rity Plan required by section 50105 of this title; and

9 (3) prioritize the projects described in paragraphs (1) and (2) based  
10 on the ability of a project

11 (A) to enhance the ability of the Bureau of Customs and Border  
12 Protection to achieve its mission and to support operations;

13 (B) to fulfill security requirements; and

14 (C) to facilitate trade across the borders of the United States.

15 (d) PROJECT IMPLEMENTATION.—The Secretary, as appropriate, shall—

16 (1) implement the infrastructure and technology improvement  
17 projects described in subsection (c) in the order of priority assigned to  
18 each project under subsection (c)(3); or

19 (2) forward the prioritized list of infrastructure and technology im-  
20 provement projects to the Administrator of General Services for imple-  
21 mentation in the order of priority assigned to each project under sub-  
22 section (c)(3).

23 (e) DIVERGENCE FROM PRIORITIES.—The Secretary may diverge from  
24 the priority order if the Commissioner determines that significantly changed  
25 circumstances, including immediate security needs, changes in infrastructure  
26 in Mexico or Canada, or similar concerns, compellingly alter the need for  
27 a project in the United States.

### 28 **§ 50103. National Land Border Security Plan**

29 (a) REQUIREMENT FOR PLAN.—Not later than January 31 every other  
30 year, the Secretary, acting through the Commissioner, shall prepare a Na-  
31 tional Land Border Security Plan and submit the plan to the Committees  
32 on Appropriations of the Senate and the House of Representatives, the Sen-  
33 ate Committee on Environment and Public Works, the Senate Committee  
34 on Homeland Security and Governmental Affairs, the Senate Committee on  
35 the Judiciary, the House Committee on Transportation and Infrastructure,  
36 the House Committee on Homeland Security, and the House Committee on  
37 the Judiciary.

38 (b) CONSULTATION.—In preparing the plan required under subsection  
39 (a), the Secretary shall consult with other appropriate Federal agencies,  
40 State and local law enforcement agencies, and private entities that are in-  
41 volved in international trade across the northern or southern border.



1 (c) Vulnerability Assessment.—

2 (1) IN GENERAL.—The plan required under subsection (a) shall in-  
3 clude a vulnerability, risk, and threat assessment of each port of entry  
4 located on the northern border or the southern border.

5 (2) PORT SECURITY COORDINATORS.—The Secretary may establish  
6 one or more port security coordinators at each port of entry located  
7 on the northern border or the southern border—

8 (A) to assist in conducting a vulnerability assessment at the  
9 port; and

10 (B) to provide other assistance with the preparation of the plan  
11 required under subsection (a).

12 (d) COORDINATION WITH SECURE BORDER INITIATIVE.—The plan re-  
13 quired under subsection (a) shall include a description of activities under-  
14 taken during the previous year as part of the Secure Border Initiative and  
15 actions planned for the coming year as part of the Secure Border Initiative.

16 **§ 50104. Port of entry technology demonstration program**

17 (a) ESTABLISHMENT.—The Secretary, acting through the Commissioner,  
18 shall carry out a technology demonstration program to test and evaluate  
19 new port of entry technologies, refine port of entry technologies and oper-  
20 ational concepts, and train personnel under realistic conditions.

21 (b) TECHNOLOGY TESTED.—Under the demonstration program, the Sec-  
22 retary shall test technologies that enhance port of entry operations, includ-  
23 ing those related to inspections, communications, port tracking, identifica-  
24 tion of persons and cargo, sensory devices, personal detection, decision sup-  
25 port, and the detection and identification of weapons of mass destruction.

26 (c) DEMONSTRATION SITES.—

27 (1) NUMBER.—The Secretary shall carry out the demonstration pro-  
28 gram at not fewer than 3 sites and not more than 5 sites.

29 (2) LOCATION.—Of the sites selected under paragraph (1)—

30 (A) at least one shall be located on the northern border of the  
31 United States; and

32 (B) at least one shall be located on the southern border of the  
33 United States.

34 (3) SELECTION CRITERIA.—To ensure that one of the facilities se-  
35 lected as a port of entry demonstration site for the demonstration pro-  
36 gram has the most up-to-date design, contains sufficient space to con-  
37 duct the demonstration program, has a traffic volume low enough to  
38 easily incorporate new technologies without interrupting normal pro-  
39 cessing activity, and can efficiently carry out demonstration and port of  
40 entry operations, one port of entry selected as a demonstration site  
41 may—

1 (A) have been established not more than 15 years before De-  
2 cember 26, 2007;

3 (B) consist of not less than 65 acres, with the possibility of ex-  
4 pansion onto not less than 25 adjacent acres; and

5 (C) have serviced an average of not more than 50,000 vehicles  
6 per month during the 12 months preceding December 26, 2007.

7 (d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit  
8 personnel from appropriate Federal agencies to utilize a demonstration site  
9 described in subsection (c) to test technologies that enhance port of entry  
10 operations, including those relating to inspections, communications, port  
11 tracking, identification of persons and cargo, sensory devices, personal de-  
12 tection, decision support, and the detection and identification of weapons of  
13 mass destruction.

14 (e) REPORT.—

15 (1) REQUIREMENT.—The Secretary annually shall submit to the  
16 Committees on Appropriations of the Senate and the House of Rep-  
17 resentatives, the Senate Committee on Environment and Public Works,  
18 the Senate Committee on Homeland Security and Governmental Af-  
19 fairs, the House Committee on Transportation and Infrastructure, and  
20 the House Committee on Homeland Security a report on the activities  
21 carried out at each demonstration site under the technology demonstra-  
22 tion program established under this section.

23 (2) CONTENT.—The report shall include an assessment by the Sec-  
24 retary of the feasibility of incorporating demonstrated technology for  
25 use throughout the Bureau of Customs and Border Protection.

## 26 **§ 50105. Authorization of appropriations**

27 (a) IN GENERAL.—In addition to any funds otherwise available, there is  
28 authorized to be appropriated such sums as may be necessary to carry out  
29 this subtitle for fiscal year 2013.

30 (b) INTERNATIONAL AGREEMENTS.—Funds authorized to be approp-  
31 riated under this subtitle may be used for the implementation of projects  
32 described in the Declaration on Embracing Technology and Cooperation to  
33 Promote the Secure and Efficient Flow of People and Commerce across our  
34 Shared Border between the United States and Mexico, agreed to March 22,  
35 2002, Monterrey, Mexico (commonly known as the Border Partnership Ac-  
36 tion Plan) or the Smart Border Declaration between the United States and  
37 Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent  
38 with the provisions of this subtitle.

## 39 **SEC. 4. CONFORMING AMENDMENTS TO OTHER LAWS.**

40 (a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is  
41 amended as follows:

1 (1) Section 5313 is amended by striking the following:

2 “The Under Secretary of Transportation for Security.”

3 (2) Section 5314 is amended by striking—

4 “Commissioner of Customs, Department of Homeland Security.”

5 and substituting the following:

6 “Commissioner of Customs and Border Protection, Department of  
7 Homeland Security.”

8 (3) Section 8331(3)(E)(ii) is amended by striking “Department of  
9 Transportation” and substituting “Department of Homeland Security”.

10 (4) Section 9701(g) is amended by striking “section 842 of the  
11 Homeland Security Act of 2002” and substituting “section 10352 of  
12 title 6”.

13 (5) Section 10101 is amended—

14 (A) in paragraph (3), by striking “section 602 of the Post-  
15 Katrina Emergency Management Reform Act of 2006” and sub-  
16 stituting “section 20101 of title 6”; and

17 (B) in paragraph (5), by striking “section 624 of the Post-  
18 Katrina Emergency Management Reform Act of 2006” and sub-  
19 stituting “section 20301 of title 6”.

20 (6) Section 10103(b) is amended by striking “section 844 of the  
21 Homeland Security Act of 2002” and substituting “section 10355 of  
22 title 6”.

23 (b) TITLE 8, UNITED STATES CODE.—Section 7202(g)(2)(H) of the In-  
24 telligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C.  
25 1777(g)(2)(H)) is amended by striking “section 1016(b)” and substituting  
26 “section 11707(b) of title 6, United States Code”.

27 (c) TITLE 10, UNITED STATES CODE.—Section 130d of title 10, United  
28 States Code, is amended by striking “section 892 of the Homeland Security  
29 Act of 2002 (6 U.S.C. 482)” and substituting “section 11706 of title 6”.

30 (d) TITLE 16, UNITED STATES CODE.—Section 402(b)(1)(H) of the  
31 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C.  
32 1881a(b)(1)(H)) is amended by striking “section 888(a)(2) of the Homeland  
33 Security Act of 2002 (6 U.S.C. 482(a)(2))” and substituting “section  
34 10313(d)(1)(B) of title 6, United States Code”.

35 (e) TITLE 19, UNITED STATES CODE.—Title 19, United States Code, is  
36 amended as follows:

37 (1) Section 13031(f)(2) of Public Law 99–272 (19 U.S.C. 58e(f)(2))  
38 is amended by striking “section 415 of the Homeland Security Act of  
39 2002 (other than functions performed by the Office of International  
40 Affairs referred to in section 415(8) of that Act)” and substituting  
41 “section 10911 of title 6, United States Code (other than functions

1 performed by the Office of International Affairs referred to in section  
2 10911(8) of title 6),”.

3 (2) Section 2(d)(2)(C)(ii) of the Act of March 3, 1927 (19 U.S.C.  
4 2072(d)(2)(C)(ii) is amended by striking “section 412(b) of the Home-  
5 land Security Act of 2002 (6 U.S.C. 212(b))” and substituting “section  
6 10912(b) of title 6, United States Code,”.

7 (3) Section 301(h) of Public Law 99–272 (19 U.S.C. 2075(h)) is  
8 amended—

9 (A) in paragraph (1), by striking “section 412(b)(2) of the  
10 Homeland Security Act of 2002 (6 U.S.C. 212(b)(2))” and “sec-  
11 tion 412(b)(1) of such Act” and substituting “section 10912(b)(2)  
12 of title 6, United States Code” and “section 10912(b)(1) of such  
13 title”, respectively; and

14 (B) in paragraph (2)(A), by striking “section 412(b) of the  
15 Homeland Security Act of 2002 (6 U.S.C. 212(b))” and substitut-  
16 ing “section 10912(b) of title 6, United States Code,”.

17 (f) TITLE 26, UNITED STATES CODE.—Section 4261(f) of the Internal  
18 Revenue Code of 1986 (26 U.S.C. 4261(f)) is amended by striking “44509  
19 or 44913(b)” and substituting “40923(b) of title 6, United States Code, or  
20 section 44509”.

21 (g) TITLE 31, UNITED STATES CODE.—Section 3516(f)(3)(A) of title 31,  
22 United States Code, is amended by striking “section 874(b)(2) of the  
23 Homeland Security Act of 2002” and substituting “section 10376 of title  
24 6”.

25 (h) TITLE 33, UNITED STATES CODE.—Section 303(b)(4) of Public Law  
26 105–384 (33 U.S.C. 892a(b)(4)) is amended by striking “section 641 of the  
27 Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 741)”  
28 and substituting “section 20501 of title 6, United States Code”.

29 (i) TITLE 38, UNITED STATES CODE.—Section 8117(a)(2)(C) of title 38,  
30 United States Code, is amended by striking “section 502(6) of the Home-  
31 land Security Act of 2002” and substituting “section 11103(a)(6) of title  
32 6”.

33 (j) TITLE 42, UNITED STATES CODE.—Title 42, United States Code, is  
34 amended as follows:

35 (1) Section 319F–1(a)(2)(A) of the Act of July 1, 1944 (42 U.S.C.  
36 247d–6a(a)(2)(A)) is amended by striking “sections 302(2) and 304(a)  
37 of the Homeland Security Act of 2002” and substituting “sections  
38 10701(2) and 10703(a) of title 6, United States Code,”.

39 (2) Section 319F–2(c) of the Act of July 1, 1944 (42 U.S.C. 247d–  
40 6b(c)) is amended—

1 (A) in paragraph (1)(B)(i)(I), by striking “sections 302(2) and  
2 304(a) of the Homeland Security Act of 2002” and substituting  
3 “sections 10701(2) and 10703(a) of title 6, United States Code,”;  
4 and

5 (B) in paragraph (2)(D), by striking “section 202 of the Home-  
6 land Security Act of 2002” and substituting “section 10502 of  
7 title 6, United States Code”.

8 (3) Section 2801(a) of the Act of July 1, 1944 (42 U.S.C. 300hh(a))  
9 is amended by striking “section 502(6) of the Homeland Security Act  
10 of 2002” and substituting “section 11103(6) of title 6, United States  
11 Code”.

12 (4) Section 2802(a)(1) of the Act of July 1, 1944 (42 U.S.C.  
13 300hh–1(a)(1)) is amended by striking “section 502(6) of the Home-  
14 land Security Act of 2002” and substituting “section 11103(6) of title  
15 6, United States Code”.

16 (5) Section 1061(d) of the Intelligence Reform and Terrorism Pre-  
17 vention Act of 2004 (42 U.S.C. 2000ee(d)) is amended—

18 (A) in paragraph (1)(A), by striking “subsections (d) and (f) of  
19 section 1016” and substituting “section 11707(c) and (d) of title  
20 6, United States Code”;

21 (B) in paragraph (1)(B), by striking “subsections (d) and (f)  
22 of section 1016” and substituting “section 11707(c) and (d) of  
23 title 6, United States Code”; and

24 (C) in paragraph (2)(B), by striking “subsections (d) and (f) of  
25 section 1016” and substituting “section 11707(c) and (d) of title  
26 6, United States Code,”.

27 (6) Section 303(b) of the Robert T. Stafford Disaster Relief and  
28 Emergency Assistance Act (42 U.S.C. 5144(b)) is amended—

29 (A) in paragraph (1)(B), by striking “section 507 of the Home-  
30 land Security Act of 2002” and substituting “section 11107 of  
31 title 6, United States Code,”;

32 (B) in paragraph (2), by striking “section 646(a) of the Post-  
33 Katrina Emergency Management Reform Act of 2006” and sub-  
34 stituting “section 20506(a) of title 6, United States Code”; and

35 (C) in paragraph (4), by striking “section 652(a) of the Post-  
36 Katrina Emergency Management Reform Act of 2006” and sub-  
37 stituting “section 20512(a) of title 6, United States Code”.

38 (k) TITLE 46, UNITED STATES CODE.—Title 46, United States Code, is  
39 amended as follows:

40 (1) Section 70105(l) is amended by striking “section 2(1) of the  
41 SAFE Port Act” and substituting “section 30101 of title 6”.

1 (2) Section 70107A(b)(4) is amended—

2 (A) in subparagraph (B), by striking “section 1016 of the Na-  
3 tional Security Intelligence Reform Act of 2004 (6 U.S.C. 485)  
4 and the Homeland Security Information Sharing Act (6 U.S.C.  
5 481 et seq.)” and substituting “sections 11706 and 11707 of title  
6 6”; and

7 (B) in subparagraph (D), by striking “section 201(b)(10) of the  
8 SAFE Port Act” and substituting “section 30501(b) of title 6”.

9 (l) TITLE 49, UNITED STATES CODE.—Title 49, United States Code, is  
10 amended as follows:

11 (1) Section 106(g) is amended to read as follows:

12 “(g) DUTIES AND POWERS OF ADMINISTRATOR.—The Administrator  
13 shall carry out—

14 “(1) duties and powers of the Secretary of Transportation under  
15 subsection (f) of this section related to aviation safety (except those re-  
16 lated to transportation, packaging, marking, or description of hazard-  
17 ous material) and stated in sections 308(b), 1132(c) and (d), 40101(c),  
18 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d),  
19 40113(e), 40114(a), and 40119, chapter 445 (except sections  
20 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506,  
21 44509, 44510, 44514, and 44515), chapter 447 (except sections  
22 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and  
23 44723), chapter 451, chapter 453, sections 46104, 46301(d) and  
24 (h)(2), 46303(c), 46304–46308, 46310, 46311, and 46313–46316,  
25 chapter 465, and section 47504(b) (related to flight procedures),  
26 47508(a), and 48107 of this title; and

27 “(2) additional duties and powers prescribed by the Secretary of  
28 Transportation.”.

29 (2) Chapter 51 is amended—

30 (A) by inserting after section 5110 the following:

31 **“§ 5111. Hazardous material highway route plans**

32 “(a) ROUTE PLAN GUIDANCE.—Not later than August 3, 2008, the Sec-  
33 retary of Transportation, in consultation with the Secretary of Homeland  
34 Security, shall—

35 “(1) document existing and proposed routes for the transportation  
36 of radioactive and nonradioactive hazardous materials by motor carrier,  
37 and develop a framework for using a geographic information system-  
38 based approach to characterize routes in the national hazardous mate-  
39 rials route registry;

40 “(2) assess and characterize existing and proposed routes for the  
41 transportation of radioactive and nonradioactive hazardous materials

1 by motor carrier for the purpose of identifying measurable criteria for  
2 selecting routes based on safety and security concerns;

3 “(3) analyze current route-related hazardous materials regulations in  
4 the United States, Canada, and Mexico to identify cross-border dif-  
5 ferences and conflicting regulations;

6 “(4) document the safety and security concerns of the public, motor  
7 carriers, and State, local, territorial, and tribal governments about the  
8 highway routing of hazardous materials;

9 “(5) prepare guidance materials for State officials to assist them in  
10 identifying and reducing both safety concerns and security risks when  
11 designating highway routes for hazardous materials consistent with the  
12 13 safety-based nonradioactive materials routing criteria and radio-  
13 active materials routing criteria in subpart C part 397 of title 49, Code  
14 of Federal Regulations;

15 “(6) develop a tool that will enable State officials to examine poten-  
16 tial routes for the highway transportation of hazardous materials, as-  
17 sess specific security risks associated with each route, and explore al-  
18 ternative mitigation measures; and

19 “(7) transmit to the appropriate congressional committees (as de-  
20 fined in section 10101 of title 6) a report on the actions taken to fulfill  
21 paragraphs (1) through (6) and any recommended changes to the rout-  
22 ing requirements for the highway transportation of hazardous materials  
23 in part 397 of title 49, Code of Federal Regulations.

24 “(b) ROUTE PLANS.—

25 “(1) ASSESSMENT.—Not later than August 3, 2008, the Secretary  
26 of Transportation shall complete an assessment of the safety and na-  
27 tional security benefits achieved under existing requirements for route  
28 plans, in written or electronic format, for explosives and radioactive  
29 materials. The assessment shall, at a minimum

30 “(A) compare the percentage of Department of Transportation  
31 recordable incidents and the severity of the incidents for shipments  
32 of explosives and radioactive materials for which route plans are  
33 required with the percentage of recordable incidents and the sever-  
34 ity of the incidents for shipments of explosives and radioactive ma-  
35 terials not subject to route plans; and

36 “(B) quantify the security and safety benefits, feasibility, and  
37 costs of requiring each motor carrier that is required to have a  
38 hazardous material safety permit under part 385 of title 49, Code  
39 of Federal Regulations, to maintain, follow, and carry a route plan  
40 that meets the requirements of section 397.101 of that title when  
41 transporting the type and quantity of hazardous materials de-

1           scribed in section 385.403, taking into account the various seg-  
2           ments of the motor carrier industry, including tank truck, truck-  
3           load and less-than-truckload carriers.

4           “(2) REPORT.—Not later than August 3, 2008, the Secretary of  
5           Transportation shall submit a report to the appropriate congressional  
6           committees containing the findings and conclusions of the assessment.

7           “(c) REQUIREMENT.—The Secretary shall require a motor carrier that  
8           has a hazardous material safety permit under part 385 of title 49, Code  
9           of Federal Regulations, to maintain, follow, and carry a route plan, in writ-  
10          ten or electronic format, that meets the requirements of section 397.101 of  
11          that title when transporting the type and quantity of hazardous materials  
12          described in section 385.403 if the Secretary determines, under the assess-  
13          ment required in subsection (b), that such a requirement would enhance se-  
14          curity and safety without imposing unreasonable costs or burdens upon  
15          motor carriers.”;

16          “(B) by inserting the following after section 5117:

17          **“§ 5118. Hazardous materials security inspections and study**

18          “(a) IN GENERAL.—The Secretary of Transportation shall consult with  
19          the Secretary of Homeland Security to limit, to the extent practicable, dupli-  
20          cative reviews of the hazardous materials security plans required under part  
21          172, title 49, Code of Federal Regulations.

22          “(b) TRANSPORTATION COSTS STUDY.—The Secretary of Transportation,  
23          in conjunction with the Secretary of Homeland Security, shall study to what  
24          extent the insurance, security, and safety costs borne by railroad carriers,  
25          motor carriers, pipeline carriers, air carriers, and maritime carriers associ-  
26          ated with the transportation of hazardous materials are reflected in the  
27          rates paid by offerors of the commodities as compared to the costs and  
28          rates, respectively, for the transportation of nonhazardous materials.”. and

29          (C) by amending the chapter analysis for chapter 51—

30                  (i) by inserting the following after the item relating to sec-  
31                  tion 5110:

“5111. Hazardous material highway route plans.”;

32          and

33                  (ii) by inserting the following after the item relating to sec-  
34                  tion 5117:

“5118. Hazardous materials security inspections and study.”.

35          (3) Chapter 401 is amended—

36                  (A) in section 40109—

37                          (i) in subsection (b), by striking “, 40119, 44901, 44903,  
38                          44906, and 44935–44937” and inserting “and 40119”; and



1 (ii) in subsection (c), by striking “sections 44909 and” and  
2 inserting “section”;

3 (B) in section 40113—

4 (i) in subsection (a)—

5 (I) by striking “the Under Secretary of Transpor-  
6 tation for Security with respect to security duties and  
7 powers designated to be carried out by the Under Sec-  
8 retary or”; and

9 (II) by striking “, Under Secretary,”; and

10 (ii) in subsection (d)—

11 (I) by striking “Under Secretary of Transportation for  
12 Security or the”;

13 (II) by striking “Transportation Security Administra-  
14 tion or Federal Aviation Administration, as the case may  
15 be,” and substituting “Federal Aviation Administration”;  
16 and

17 (III) by striking “Under Secretary or Administrator,  
18 as the case may be,” and substituting “Administrator”;  
19 and

20 (C) in section 40119(a)—

21 (i) by striking “Under Secretary of Transportation for Se-  
22 curity and the”; and

23 (ii) by striking “each”.

24 (4) Section 45107 is amended—

25 (A) by striking “Under Secretary of Transportation for Secu-  
26 rity” in subsection (a) and substituting “Secretary of Homeland  
27 Security”; and

28 (B) by striking “The Under Secretary of Transportation for Se-  
29 curity, the Transportation Security Administration, and employ-  
30 ees” in subsection (b) and substituting “Employees”.

31 (5) Chapter 461 is amended—

32 (A) by striking “, Under Secretary,” each place it appears;

33 (B) in section 46101(a)(1), by striking “the Under Secretary of  
34 Transportation for Security with respect to security duties and  
35 powers designated to be carried out by the Under Secretary or”;

36 (C) in section 46102—

37 (i) in subsection (a), by striking “the Under Secretary of  
38 Transportation for Security with respect to security duties  
39 and powers designated to be carried out by the Under Sec-  
40 retary or”; and

1 (ii) in subsection (d) as amended by subparagraph (A), by  
2 inserting a comma after “The Secretary”;

3 (D) in section 46103(a), by striking “the Under Secretary of  
4 Transportation for Security with respect to security duties and  
5 powers designated to be carried out by the Under Secretary or”

6 (E) in section 46104—

7 (i) in subsection (a), by striking “the Under Secretary of  
8 Transportation for Security with respect to security duties  
9 and powers designated to be carried out by the Under Sec-  
10 retary or”; and

11 (ii) in subsection (b) as amended by subparagraph (A), by  
12 inserting a comma after “the Secretary” the first place it ap-  
13 pears;

14 (F) in section 46105(a), by striking “the Under Secretary of  
15 Transportation for Security with respect to security duties and  
16 powers designated to be carried out by the Under Secretary or”;

17 (G) in section 46106, by striking “the Under Secretary of  
18 Transportation for Security with respect to security duties and  
19 powers designated to be carried out by the Under Secretary or”;

20 (H) in section 46107(b), by striking “the Under Secretary of  
21 Transportation for Security with respect to security duties and  
22 powers designated to be carried out by the Under Secretary or”;  
23 and

24 (I) in section 46110(a)—

25 (i) by striking “the Under Secretary of Transportation for  
26 Security with respect to security duties and powers des-  
27 ignated to be carried out by the Under Secretary or”; and

28 (ii) by striking “this part, part B, or subsection (l) or (s)  
29 of section 114” and substituting “this part or part B”.

30 (6) Chapter 463 is amended—

31 (A) in section 46301—

32 (i) in subsection (a)(1)(A), by striking “chapter 449 (ex-  
33 cept sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A)  
34 and (d)(1)(C)–(f), and 44908)”;

35 (ii) in subsection (a), by striking paragraph (4) and redesi-  
36 gnating paragraph (5) as paragraph (4);

37 (iii) in subsection (a)(4)(A)(i) as redesignated by clause  
38 (ii), by striking “chapter 447 (except sections 44717–44723),  
39 or chapter 449 (except sections 44902, 44903(d), 44904, and  
40 44907–44909” and substituting “or chapter 447 (except sec-  
41 tions 44717–44723)”

1 (iv) in subsection (c)(1)(A), by striking “subchapter II of  
2 chapter 421, or section 44909” and substituting “or sub-  
3 chapter II of chapter 421”;

4 (v) in subsection (d)(2), by striking the last two sentences  
5 and substituting “The Administrator shall give written notice  
6 of the finding of a violation and the penalty.”;

7 (vi) in subsection (d)(3), by striking “Secretary of Home-  
8 land Security or”;

9 (vii) in subsection (d)(4), by striking “Secretary of Home-  
10 land Security or”;

11 (viii) in subsection (d)(8), by striking “Under Secretary,  
12 Administrator,” and substituting “Administrator”; and

13 (ix) in subsection (f)(1)(A)(i), by striking “chapter 447  
14 (except sections 44717 and 44719–44723), or chapter 449  
15 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A)  
16 and (d)(1)(C)–(f), 44908, and 44909)” and substituting “or  
17 chapter 447 (except sections 44717 and 44719–44723)”;

18 (B) in section 46302—

19 (i) in subsection (a), by striking “section 46502(a), 46504,  
20 46505, or 46506” and substituting “section 46504”; and

21 (ii) in subsection (b)(1), by striking “The Secretary of  
22 Homeland Security and, for a violation relating to section  
23 46504, the Secretary of Transportation,” and substituting  
24 “The Secretary of Transportation”;

25 (C) in section 46306(d), by striking “Commissioner of Cus-  
26 toms” and substituting “Commissioner of Customs and Border  
27 Enforcement”;

28 (D) in section 46311—

29 (i) by striking “, Under Secretary,” each place it appears;  
30 and

31 (ii) in subsection (a), by striking “ the Under Secretary of  
32 Transportation for Security with respect to security duties  
33 and powers designated to be carried out by the Under Sec-  
34 retary,”;

35 (E) in section 46313, by striking “the Under Secretary of  
36 Transportation for Security with respect to security duties and  
37 powers designated to be carried out by the Under Secretary or”;  
38 an

39 (F) in section 46316—

40 (i) in subsection (a), by striking “the Under Secretary of  
41 Transportation for Security with respect to security duties

1 and powers designated to be carried out by the Under Sec-  
2 retary or”; and

3 (ii) in subsection (b), by striking “chapter 447 (except sec-  
4 tion 44718(a)), and chapter 449 (except sections 44902,  
5 44903(d), 44904, and 44907–44909)” and substituting “and  
6 chapter 447 (except section 44718(a))”.

7 (7) Section 46505(d)(2) is amended by striking “Under Secretary of  
8 Transportation for Security” and substituting “Secretary of Homeland  
9 Security”.

10 (8) Section 367 of Public Law 108–7 (49 U.S.C. 47110 note) is  
11 amended—

12 (A) in subsection (a), by striking “Under Secretary of Trans-  
13 portation for Security” and substituting “Secretary of Homeland  
14 Security”; and

15 (B) by striking “Under Secretary” each place it appears and  
16 substituting “Secretary”.

17 (9) Chapter 483 is repealed.

18 (10) The table of contents for subtitle VII of title 49, United States  
19 Code, is amended as follows:

20 (A) After the item for chapter 447, strike  
“1449. Security ..... 44901”.

21 (B) After the item for chapter 482, strike  
“1483. Aviation Security Funding ..... 48301”.

22 (m) TITLE 50, UNITED STATES CODE.—Title 50, United States Code,  
23 is amended as follows:

24 (1) Section 1414(b) of the National Defense Authorization Act for  
25 Fiscal Year 1997 (50 U.S.C. 2314(b)) is amended by striking “section  
26 502(6) of the Homeland Security Act of 2002” and substituting “sec-  
27 tion 11103(6) of title 6, United States Code,”.

28 (2) Section 1415(a)(2) of the National Defense Authorization Act for  
29 Fiscal Year 1997 (50 U.S.C. 2315(a)(2)) is amended by striking “sec-  
30 tions 102(c) and 430(c)(1) of the Homeland Security Act of 2002” and  
31 substituting “sections 10331(h) and 10904(b)(1) of title 6, United  
32 States Code”.

33 (3) Section 102A(f)(1)(B)(iii) of the Act of July 26, 1947 (50  
34 U.S.C. 3024(f)(1)(B)(iii)) is amended by striking “sections 201 and  
35 892 of the Homeland Security Act of 2002 (6 U.S.C. 121, 482)” and  
36 substituting “sections 10501 and 11706 of title 6, United States  
37 Code”.

38 **SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.**

39 (a) DEFINITIONS.—In this section:

1 (1) SOURCE PROVISION.—The term “source provision” means a pro-  
 2 vision of law that is replaced by a title 6 provision.

3 (2) TITLE 6 PROVISION.—The term “title 6 provision” means a pro-  
 4 vision of title 6, United States Code, that is enacted by section 1.

5 (b) CUTOFF DATE.—The title 6 provisions replace certain provisions of  
 6 law enacted on or before July 1, 20\_\_\_\_. If a law enacted after that date  
 7 amends or repeals a source provision, that law is deemed to amend or re-  
 8 peal, as the case may be, the corresponding title 6 provision. If a law en-  
 9 acted after that date is otherwise inconsistent with a title 6 provision or a  
 10 provision of this Act, that law supersedes the title 6 provision or provision  
 11 of this Act to the extent of the inconsistency.

12 (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of de-  
 13 termining whether one provision of law supersedes another based on enact-  
 14 ment later in time, a title 6 provision is deemed to have been enacted on  
 15 the date of enactment of the corresponding source provision.

16 (d) REFERENCE TO TITLE 6 PROVISION.—A reference to a title 6 provi-  
 17 sion is deemed to refer to the corresponding source provision.

18 (e) REFERENCE TO SOURCE PROVISION.—A reference to a source provi-  
 19 sion, including a reference in a regulation, order, or other law, is deemed  
 20 to refer to the corresponding title 6 provision.

21 (f) REGULATIONS, OORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—  
 22 A regulation, order, or other administrative action in effect under a source  
 23 provision continues in effect under the corresponding title 6 provision.

24 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or  
 25 an offense committed under a source provision is deemed to have been taken  
 26 or committed under the corresponding title 6 provision.

27 **SEC. 6. REPEALS.**

28 The following provisions of law are repealed, except with respect to the  
 29 rights and duties that matured, penalties that were incurred, or proceedings  
 30 that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Aviation and Transportation Security Act (Public Law 107–71) .....	109 .....	49 U.S.C. 114 note.
	111(d) .....	49 U.S.C. 44935 note.
Homeland Security Act of 2002 (Public Law 107–296) .....	2 .....	6 U.S.C. 101.
	2 .....	6 U.S.C. 101.
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	4 .....	6 U.S.C. 432.
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	304 .....	6 U.S.C. 184.
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	306 .....	6 U.S.C. 186.
	307 .....	6 U.S.C. 187.
	308 .....	6 U.S.C. 188.
	309 .....	6 U.S.C. 189.
	310 .....	6 U.S.C. 190.
	311 .....	6 U.S.C. 191.
	312 .....	6 U.S.C. 192.
	313 .....	6 U.S.C. 193.
	314 .....	6 U.S.C. 195.
	315 .....	6 U.S.C. 195a.
	316 .....	6 U.S.C. 195b.
	317 .....	6 U.S.C. 195c.
	401 .....	6 U.S.C. 201.
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	403 .....	6 U.S.C. 203.
	411 .....	6 U.S.C. 211.
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	416 .....	6 U.S.C. 216.
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	841(b) .....	6 U.S.C. 411(b).
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	881 .....	6 U.S.C. 461.
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	(2d proviso under heading “SALARIES AND EXPENSES” under heading “FEDERAL LAW ENFORCEMENT TRAINING CENTER”, 117 Stat. 1150).	6 U.S.C. 464b.
	(3d proviso under heading “SALARIES AND EXPENSES” under heading “FEDERAL LAW ENFORCEMENT TRAINING CENTER”, 117 Stat. 1151).	6 U.S.C. 464c.
	(4th proviso under heading “SALARIES AND EXPENSES” UNDER HEADING “FEDERAL LAW ENFORCEMENT TRAINING CENTER”, 117 Stat. 1151).	6 U.S.C. 464d.
	(6th proviso under heading “SALARIES AND EXPENSES” under heading “FEDERAL LAW ENFORCEMENT TRAINING CENTER”, 117 Stat. 1151).	6 U.S.C. 464e.
Department of Homeland Security Ap- propriations Act, 2005 (Public Law 108-334) .....	515(b) .....	49 U.S.C. 44945 note.
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	7405 .....	6 U.S.C. 112 note.
	8306 .....	6 U.S.C. 112 note.
Department of Homeland Security Ap- propriations Act, 2006 (Public Law 109-90) .....	503(e) .....	6 U.S.C. 103 note.
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Department of Homeland Security Ap- propriations Act, 2007 (Public Law 109-295) .....	558 .....	6 U.S.C. 981a.
	602 .....	6 U.S.C. 701.
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	538 .....	6 U.S.C. 190 note.
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	(last provision in paragraph under heading “CONSTRUCTION AND FACILITIES MANAGEMENT”, 125 Stat. 949).	6 U.S.C. 214 note.
Border Tunnel Prevention Act of 2012 (Public Law 112-127) .....	8 .....	6 U.S.C. 257.
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