

109TH CONGRESS
1ST SESSION

H. R. 4009

To direct the Secretary of Homeland Security to conduct comprehensive examinations of the human resource capabilities and needs, organizational structure, innovation and improvement plans, intelligence and information analysis capabilities and resources, infrastructure capabilities and resources, budget, and other elements of the homeland security program and policies of the United States.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2005

Mr. THOMPSON of Mississippi (for himself, Ms. HARMAN, Mr. LANGEVIN, Ms. ZOE LOFGREN of California, Ms. NORTON, Mr. PASCRELL, Mrs. CHRISTENSEN, Ms. JACKSON-LEE of Texas, Mr. DEFazio, Mr. MEEK of Florida, Mr. DICKS, Mr. ETHERIDGE, and Mrs. LOWEY) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Select Committee on Intelligence (Permanent Select) and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Homeland Security to conduct comprehensive examinations of the human resource capabilities and needs, organizational structure, innovation and improvement plans, intelligence and information analysis capabilities and resources, infrastructure capabilities and resources, budget, and other elements of the homeland security program and policies of the United States.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Department of Homeland Security Reform Act of 2005”.

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

Sec. 1. Short title; table of contents.

TITLE I—DEPARTMENT OF HOMELAND SECURITY REFORMS

- Sec. 101. Quadrennial Homeland Security Review.
- Sec. 102. Chief Intelligence Officer.
- Sec. 103. Repeal of Directorate of Information Analysis and Infrastructure Preparedness.
- Sec. 104. Intra-agency task force on protection of unclassified but security-relevant information provided by the private sector.
- Sec. 105. Redesignation of Directorate.
- Sec. 106. Establishment of Assistant Secretary for Preparedness.
- Sec. 107. Establishment of Director and Deputy Director of Federal Emergency Management Agency.
- Sec. 108. Chief medical officer.
- Sec. 109. Operations office.
- Sec. 110. Authorities of the Privacy Officer of the Department of Homeland Security.
- Sec. 111. Greater accountability.
- Sec. 112. Whistleblower protections.
- Sec. 113. Office of Tribal Security.
- Sec. 114. Assistant Secretary for Cybersecurity and Telecommunications.
- Sec. 115. Assistant Secretary for Physical Infrastructure Security.
- Sec. 116. Under Secretary for Policy.

TITLE II—SECURE HANDLING OF AMMONIUM NITRATE

- Sec. 201. Short title.
- Sec. 202. Findings.
- Sec. 203. Definitions.
- Sec. 204. Regulation of handling and purchase of ammonium nitrate.
- Sec. 205. Enforcement.
- Sec. 206. Administrative provisions.
- Sec. 207. Civil liability.
- Sec. 208. State law preemption.

1 **TITLE I—DEPARTMENT OF**
2 **HOMELAND SECURITY REFORMS**

3 **SEC. 101. QUADRENNIAL HOMELAND SECURITY REVIEW.**

4 (a) QUADRENNIAL HOMELAND SECURITY REVIEW.—
5 Title I of the Homeland Security Act of 2002 (6 U.S.C.
6 111 et seq.) is amended by adding at the end the following
7 new section:

8 **“SEC. 104. QUADRENNIAL HOMELAND SECURITY REVIEW.**

9 “(a) REVIEW REQUIRED.—In any year following a
10 year evenly divisible by 4, the Secretary, acting through
11 the Under Secretary for Policy, shall conduct a com-
12 prehensive examination of the Department to be known
13 as a Quadrennial Homeland Security Review.

14 “(b) FUNCTIONS OF REVIEW.—The functions of the
15 Quadrennial Homeland Security Review shall be the fol-
16 lowing:

17 “(1) To establish a 10-year homeland security
18 strategy and policy program, to be known as the Na-
19 tional Homeland Security Strategy, which shall be
20 consistent with this Act.

21 “(2) To determine, with respect to the Depart-
22 ment, each of the following:

23 “(A) Human resource capabilities and re-
24 quirements.

25 “(B) Organizational structure.

1 “(C) Innovation and improvement plans.

2 “(D) Intelligence and information analysis
3 capabilities and resources.

4 “(E) Infrastructure capabilities and re-
5 sources.

6 “(F) Budget; technology resources, capa-
7 bilities and requirements.

8 “(G) Any other elements required to sup-
9 port the National Homeland Security Strategy.

10 “(3) To identify, with respect to the Depart-
11 ment, each of the following:

12 “(A) A budget plan, acquisition strategy,
13 and procurement process to provide sufficient
14 resources to successfully execute the responsibil-
15 ities of the Department that are delineated in
16 the National Homeland Security Strategy.

17 “(B) Any additional resources required to
18 attain such responsibilities.

19 “(c) REPORT TO CONGRESS.—

20 “(1) REPORT.—The Secretary shall submit a
21 report on each Quadrennial Homeland Security Re-
22 view to the Committee on Homeland Security of the
23 House of Representatives and the Committee on
24 Homeland Security and Governmental Affairs of the
25 Senate. The report shall be submitted in the year

1 following the year in which the review is conducted,
2 but not later than the date on which the President
3 submits the budget for the next fiscal year to Con-
4 gress under section 1105(a) of title 31, United
5 States Code.

6 “(2) CONTENTS.—The report shall include the
7 following:

8 “(A) The results of the Review, including
9 a comprehensive discussion of the National
10 Homeland Security Strategy and the structure
11 best suited to implement it.

12 “(B) The assumed or defined homeland se-
13 curity interests of the United States that in-
14 form the National Homeland Security Strategy
15 as defined in the review.

16 “(C) The threats to the assumed or de-
17 fined homeland security interests of the United
18 States examined for purposes of the review and
19 any scenarios developed in the examination of
20 such threats.

21 “(D) An explanation of any and all under-
22 lying assumptions used in the review.

23 “(E) The effect on human resource re-
24 quirements and response capabilities, identified
25 by type of threat, including conventional, nu-

1 clear, biological, chemical, radiological, and ag-
2 ricultural threats, and by means of attack
3 through traditional and non-traditional means
4 or from traditional as well as non-traditional
5 sources.

6 “(F) The anticipated roles and responsibil-
7 ities of the agencies, components, and organiza-
8 tional elements of the Department, as outlined
9 in the National Homeland Security Strategy,
10 and the strength, capabilities, technology and
11 equipment necessary to assure that such agen-
12 cies, components, and organizational elements
13 can capably discharge such roles and respon-
14 sibilities.

15 “(G) An examination of any steps taken by
16 the Department to promote an “intelligence cul-
17 ture” among employees designed to develop
18 analyses specific to the overall mission of the
19 Department.

20 “(H) The strategic and tactical air, sea,
21 and ground transportation capabilities required
22 to support the National Homeland Security
23 Strategy.

24 “(I) The state of the physical infrastruc-
25 ture at border crossings and an examination of

1 the resources, personnel, and time necessary to
2 assure that such border crossing are capable of
3 supporting the mission of the Department, as
4 outlined in the National Homeland Security
5 Strategy.

6 “(J) The level of preparedness of first re-
7 sponders and an examination of the resources
8 necessary to assure they are capable of fulfilling
9 their responsibilities, as outlined in the Na-
10 tional Homeland Security Strategy.

11 “(K) An examination of ports, airports,
12 and other points of transshipment to determine
13 the necessary resources to ensure adequate se-
14 curity and functioning, as outline in the Na-
15 tional Homeland Security Strategy.

16 “(L) An examination of the Nation’s rail
17 and transit system to determine the necessary
18 resources to ensure adequate security and func-
19 tioning, as outlined in the National Homeland
20 Security Strategy.

21 “(M) An examination and risk assessment
22 of key resources and public and privately owned
23 infrastructure and other facilities determined to
24 present an increased security risk by the Na-
25 tional Homeland Security Strategy.

1 “(N) An examination of the efforts of the
2 Department to develop a consistent policy that
3 encourages information sharing of unclassified
4 but security-relevant information between the
5 government and the private sector.

6 “(O) An examination of passenger and
7 non-passenger modes of conveyance to ensure
8 the adequacy of precautionary policies and
9 measures to ensure the security of the general
10 public.

11 “(P) An examination of the security of the
12 computer systems and networks of the Federal
13 Government to assure the adequacy of pre-
14 cautionary and protective devices.

15 “(Q) Any need for Department personnel
16 or resources to be positioned outside the United
17 States in order to support the National Home-
18 land Security Strategy.

19 “(R) The extent to which domestic re-
20 sources must be shifted in order to ensure that
21 border crossings and ports of entry are ade-
22 quately secured.

23 “(S) The effect of any technology antici-
24 pated to be available during the subsequent 8
25 years on the human resources capabilities,

1 costs, efficiencies, resources, and planning of
2 the Department.

3 “(T) Any other matter the Secretary con-
4 siderers appropriate to include in the review.”.

5 (b) REPORT REQUIRED.—Not later than 90 days
6 after the date of the enactment of this Act, the Secretary
7 of Homeland Security shall submit to the Committee on
8 Homeland Security of the House of Representatives and
9 the Committee on Homeland Security and Governmental
10 Affairs of the Senate a report on any congressionally re-
11 quired reports which he views as duplicating the require-
12 ments under section 104 of the Homeland Security Act
13 of 2002, as added by subsection (a).

14 (c) CLERICAL AMENDMENT.—The table of contents
15 in section 1(b) of such Act is amended by adding after
16 the item relating to section 103 the following new item:
“Sec. 104. Quadrennial Homeland Security Review.”.

17 **SEC. 102. CHIEF INTELLIGENCE OFFICER.**

18 (a) ESTABLISHMENT AND TRANSFER OF CERTAIN
19 FUNCTIONS OF UNDER SECRETARY FOR INFORMATION
20 ANALYSIS AND INFRASTRUCTURE PROTECTION.—Subtitle
21 A of title II of such Act is amended by adding at the end
22 the following new section:

1 **“SEC. 203. OFFICE OF INTELLIGENCE AND ANALYSIS AND**
2 **CHIEF INTELLIGENCE OFFICER.**

3 “(a) OFFICE OF INTELLIGENCE AND ANALYSIS.—
4 There shall be in the Department an Office of Intelligence
5 and Analysis headed by a Chief Intelligence Officer, who
6 shall be appointed by the President.

7 “(b) TRANSITIONAL RULE.—The Assistant Secretary
8 for Information Analysis appointed pursuant to Sec.
9 201(b)(1) of this Act shall serve as the Chief Intelligence
10 Officer.

11 “(c) RESPONSIBILITIES OF CHIEF INTELLIGENCE
12 OFFICER.—Subject to the direction and control of the
13 Secretary, the responsibilities of the Chief Intelligence Of-
14 ficer shall be as follows:

15 “(1) To act as the principal intelligence advisor
16 to the Secretary.

17 “(2) To represent the Secretary to the intel-
18 ligence community (as that term is defined in sec-
19 tion 3(4) of the National Security Act of 1947 (50
20 U.S.C. 401a(4))).

21 “(3) To access, receive, and analyze law en-
22 forcement information, intelligence information, and
23 other information from other agencies of the Federal
24 Government, State, local, and tribal government
25 agencies (including law enforcement agencies), and

1 private sector entities, and to integrate such infor-
2 mation in order to—

3 “(A) identify and assess the nature and
4 scope of terrorist threats to the homeland;

5 “(B) detect and identify threats of ter-
6 rorism against the United States; and

7 “(C) understand such threats in light of
8 actual and potential vulnerabilities of the home-
9 land.

10 “(4) To ensure, pursuant to section 202, that
11 the relevant personnel of the Department have time-
12 ly and efficient access to any information necessary
13 to discharge their responsibilities under this section,
14 including obtaining such information from other
15 agencies of the Federal Government;

16 “(5) To identify the intelligence-gathering com-
17 ponents of the Department and, within each compo-
18 nent, to promote an understanding of the intel-
19 ligence function of that component;

20 “(6) To establish, in consultation with other
21 agencies of the Federal Government, State, local,
22 and tribal government agencies (including law en-
23 forcement and intelligence agencies), and private
24 sector entities, a Department-wide terrorist intel-
25 ligence matrix, to identify and describe—

1 “(A) individuals and organizations sus-
2 pected of terrorist involvement; and

3 “(B) current and developing terrorist capa-
4 bilities, methods, plans, tactics, and threats.

5 “(7) To create a coordinated process for col-
6 lecting and managing intelligence to be used by the
7 intelligence-gathering components of the Department
8 for providing relevant information for purposes of
9 the terrorist intelligence matrix and other informa-
10 tion needs of the Department.

11 “(8) To administer the Homeland Security Ad-
12 visory System, including—

13 “(A) exercising primary responsibility for
14 public advisories related to threats to homeland
15 security; and

16 “(B) in coordination with other agencies of
17 the Federal Government, providing specific
18 warning information and advice about appro-
19 priate protective measures and counter-
20 measures, to State, local and tribal government
21 agencies and authorities, the private sector,
22 other entities, and the public.

23 “(9) To establish a streamlined process within
24 the Department and the Office of Intelligence and
25 Analysis to receive, integrate, and distribute threat

1 assessment information through the Homeland Security
2 Advisory System;

3 “(10) To review, analyze, and make recommendations
4 for improvements in the policies and procedures governing the sharing of law enforcement
5 information, intelligence information, intelligence-related information, and other information relating to
6 homeland security within the Federal Government
7 and between the Federal Government and State,
8 local, and tribal government agencies and authorities.
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12 “(11) To disseminate, as appropriate, information
13 analyzed by the Department within the Department,
14 to other agencies of the Federal Government
15 with responsibilities relating to homeland security,
16 and to agencies of State, local, and tribal governments
17 and private sector entities with such responsibilities
18 in order to assist in the deterrence, prevention,
19 preemption of, or response to, terrorist attacks
20 against the United States.

21 “(12) To consult with the Director of National
22 Intelligence and other appropriate intelligence, law
23 enforcement, or other elements of the Federal Government
24 to establish collection priorities and strategies
25 for information, including law enforcement-re-

1 lated information, relating to threats of terrorism
2 against the United States through such means as
3 the representation of the Department in discussions
4 regarding requirements and priorities in the collec-
5 tion of such information.

6 “(13) To consult with State, local, and tribal
7 governments and private sector entities to ensure
8 appropriate exchanges of information, including law
9 enforcement-related information, relating to threats
10 of terrorism against the United States;

11 “(14) To ensure that—

12 “(A) any material received pursuant to
13 this Act is protected from unauthorized disclo-
14 sure and handled and used only for the per-
15 formance of official duties; and

16 “(B) any intelligence information under
17 this Act is shared, retained, and disseminated
18 consistent with the authority of the Director of
19 National Intelligence to protect intelligence
20 sources and methods under the National Secu-
21 rity Act of 1947 (50 U.S.C. 401 et seq.) and
22 related procedures and, as appropriate, similar
23 authorities of the Attorney General concerning
24 sensitive law enforcement information.

1 “(15) To request additional information from
2 other agencies of the Federal Government, State,
3 local and tribal government agencies, and the private
4 sector relating to threats of terrorism in the United
5 States, or relating to other areas of responsibility as-
6 signed by the Secretary, including the entry into co-
7 operative agreements through the Secretary to ob-
8 tain such information.

9 “(16) To establish and utilize, in conjunction
10 with the Chief Information Officer of the Depart-
11 ment, a secure communications and information
12 technology infrastructure, including data-mining and
13 other advanced analytical tools, in order to access,
14 receive, and analyze data and information in further-
15 ance of the responsibilities under this section, and to
16 disseminate information acquired and analyzed by
17 the Department, as appropriate.

18 “(17) To coordinate training and other support
19 to the elements and personnel of the Department,
20 other agencies of the Federal Government, and
21 State, local and tribal governments that provide in-
22 formation to the Department, or are consumers of
23 information provided by the Department, in order to
24 facilitate the identification and sharing of homeland
25 security-relevant information revealed in their ordi-

1 nary duties and the optimal utilization of informa-
2 tion received from the Department.

3 “(18) To provide intelligence and information
4 analysis and support to other elements of the De-
5 partment.

6 “(19) To establish within the Office of Intel-
7 ligence Analysis an internal continuity of operations
8 (COOP) plan that—

9 “(A) assures that the capability exists to
10 continue uninterrupted intelligence analysis, col-
11 lection, and related functions during a wide
12 range of potential emergencies, including local-
13 ized acts of nature, accidents, and technological
14 or attack-related emergencies, that is main-
15 tained at a high level of readiness and is capa-
16 ble of implementation with and without warn-
17 ing; and

18 “(B) includes plans and procedures gov-
19 erning succession to office within the Office of
20 Intelligence and Analysis, including—

21 “(i) emergency delegations of author-
22 ity (where permissible, and in accordance
23 with applicable law);

24 “(ii) the safekeeping of vital re-
25 sources, facilities, and records;

1 “(iii) the improvisation or emergency
2 acquisition of vital resources necessary for
3 the performance of operations of the Of-
4 fice; and

5 “(iv) the capability to relocate essen-
6 tial personnel and functions to and to sus-
7 tain the performance of the operations of
8 the Office at an alternate work site until
9 normal operations can be resumed.

10 “(20) To perform such other duties relating to
11 such responsibilities as the Secretary may provide.

12 “(d) CONSULTATION WITH ASSISTANT SECRETARY
13 FOR PHYSICAL INFRASTRUCTURE SECURITY.—Subject to
14 the direction and control of the Secretary, the Chief Intel-
15 ligence Officer shall consult with the Assistant Secretary
16 for Physical Infrastructure Security on the following re-
17 sponsibilities:

18 “(1) To integrate relevant information, anal-
19 yses, and vulnerability assessments (whether such
20 information, analyses, or assessments are provided
21 or produced by the Department or others) in order
22 to identify priorities for protective and support
23 measures by the Department, other agencies of the
24 Federal Government, State and local government
25 agencies.

1 “(2) To ensure, in conjunction with the chief
2 information officer of the Department, that any in-
3 formation databases and analytical tools developed
4 or utilized by the Department—

5 “(A) are compatible with one another and
6 with relevant information databases of other
7 agencies of the Federal Government; and

8 “(B) treat information in such databases
9 in a manner that complies with applicable Fed-
10 eral law on privacy.

11 “(3) To coordinate with elements of the intel-
12 ligence community and with Federal, State, and
13 local law enforcement agencies, and the private sec-
14 tor, as appropriate.

15 “(e) TRANSFER OF FUNCTIONS.—In accordance with
16 title XV, there shall be transferred to the Chief Intel-
17 ligence Officer the functions, personnel, assets, and liabil-
18 ities of the Directorate for Information Analysis and In-
19 frastructure Protection.

20 “(f) INTELLIGENCE THROUGH EMPLOYEES GENER-
21 ATING RESOURCES FOR ANALYTICAL LEADERSHIP (IN-
22 TEGRAL) PROGRAM.—

23 “(1) FINDINGS.—Congress finds the following:

1 “(A) It is of critical importance that the
2 Department establish an ‘intelligence culture’
3 among all of its employees.

4 “(B) At its inception, the Department
5 drew together 22 Federal agencies that are now
6 united in a common homeland security mission.

7 “(C) Most of those agencies were not intel-
8 ligence agencies and were instead primarily con-
9 cerned with either law enforcement or the provi-
10 sion of services.

11 “(D) Many employees who once worked for
12 those agencies still do not view themselves as ei-
13 ther collectors of intelligence information or
14 contributors to the Department’s intelligence
15 information analysis efforts.

16 “(E) The Department lacks an intelligence
17 culture in which individuals understand that
18 they are an integral part of a chain in which
19 even the most seemingly insignificant piece of
20 data can lead to the unraveling of a terrorist
21 threat.

22 “(2) INTEGRAL PROGRAM.—The Secretary,
23 acting through the Chief Intelligence Officer and in
24 coordination with appropriate Department personnel,
25 shall establish a program to be known as the Intel-

1 ligence Through Employees Generating Resources
2 for Analytical Leadership (INTEGRAL) Program
3 that—

4 “(A) is based on evaluations of how em-
5 ployees, including intelligence analysts and law
6 enforcement agents, can better collect, analyze,
7 process, and report intelligence information rel-
8 evant to the intelligence analysis employees of
9 the Department, the Chief Intelligence Officer,
10 the Office of Intelligence and Analysis, and the
11 wider intelligence community (as that term is
12 defined in section 3(4) of the National Security
13 Act of 1947 (50 U.S.C. 401a(4)));

14 “(B) provides training, employee ex-
15 changes, and other educational opportunities
16 for employees to better develop an under-
17 standing of the value of the intelligence infor-
18 mation they collect for the intelligence analysis
19 employees of the Department;

20 “(C) provides guidance on how the infor-
21 mation Department employees collect can be
22 used by the intelligence analysis employees of
23 the Department and on what type of intel-
24 ligence information is most useful;

1 “(D) creates mechanisms by which employ-
2 ees can communicate the information they gath-
3 er to the intelligence analysis employees of the
4 Department; and

5 “(E) establishes strategies for employees to
6 adapt their daily work habits to promote an in-
7 telligence culture within the Department.”.

8 (b) REPORTS.—

9 (1) REPORT ON OFFICE OF INTELLIGENCE AND
10 ANALYSIS AND CHIEF INTELLIGENCE OFFICER.—

11 Not later than 180 days after the date of the enact-
12 ment of this Act, the Secretary of Homeland Secu-
13 rity shall submit to the Committee on Homeland Se-
14 curity of the House of Representatives and the Com-
15 mittee on Homeland Security and Governmental Af-
16 fairs of the Senate a report on the effectiveness and
17 activities of the Office of Intelligence and Analysis
18 and the Chief Intelligence Officer.

19 (2) REPORT ON INTEGRAL PROGRAM.—Not
20 later than 180 days after the date of the enactment
21 of this Act, the Secretary of Homeland Security
22 shall submit to Congress a report on the develop-
23 ment of the INTEGRAL program established under
24 section 201(e)(4) of the Homeland Security Act of
25 2002 (6 U.S.C. 121(e)(4)).

1 (c) CONFORMING AMENDMENTS.—Such Act is
2 amended—

3 (1) in section 103, by striking “An Under Sec-
4 retary for Information Analysis and Infrastructure
5 Protection” and inserting “A Chief Intelligence Offi-
6 cer”;

7 (2) in section 223, by striking “section 201”
8 and inserting “section 203”; and

9 (3) by striking “Under Secretary for Informa-
10 tion Analysis and Infrastructure Protection” each
11 place it appears and inserting “Chief Intelligence
12 Officer”.

13 (d) HEADING AMENDMENT.—The heading for sub-
14 title A of title II of such Act is amended by striking “**Di-**
15 **rectorate for Information Analysis and Infra-**
16 **structure Protection**” and inserting “**Chief Intel-**
17 **ligence Officer**”.

18 (e) CLERICAL AMENDMENTS.—The table of contents
19 in section 1(b) of such Act is amended—

20 (1) by adding after the item relating to section
21 202 the following:

“Sec. 203. Chief Intelligence Officer.”

22 ; and

23 (2) in the item relating to subtitle A of title II,
24 by striking “Directorate for Information Analysis

1 and Infrastructure Protection” and inserting “Chief
2 Intelligence Officer”.

3 **SEC. 103. REPEAL OF DIRECTORATE OF INFORMATION**
4 **ANALYSIS AND INFRASTRUCTURE PRE-**
5 **PAREDNESS.**

6 (a) REPEAL.—Section 201 of the Homeland Security
7 Act of 2002 (6 U.S.C. 121) is repealed.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 in section 1(b) of such Act is amended by striking the
10 item relating to section 201.

11 (c) CONFORMING AMENDMENT.—Section 510(d) of
12 such Act is amended by striking “Directorate of Informa-
13 tion Analysis and Infrastructure Preparedness” and in-
14 serting “Office of Intelligence and Analysis”.

15 **SEC. 104. INTRA-AGENCY TASK FORCE ON PROTECTION OF**
16 **UNCLASSIFIED BUT SECURITY-RELEVANT IN-**
17 **FORMATION PROVIDED BY THE PRIVATE**
18 **SECTOR.**

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

20 (1) The vast majority of critical infrastructure
21 located within the United States is privately owned.

22 (2) Securing this infrastructure from terrorist
23 attack requires consistent policy and legislation that
24 encourage the sharing of unclassified but security-

1 relevant information between the private sector and
2 the government.

3 (b) TASK FORCE.—The Secretary of the Department
4 of Homeland Security shall establish an intra-agency task
5 force to be comprised of the Chief Intelligence Officer of
6 the Department, the general counsel, the special assistant
7 to the Secretary (private sector), the officer for civil lib-
8 erties and civil rights, the privacy officer, and other appro-
9 priate personnel of the Department.

10 (c) STUDY.—The task force established under para-
11 graph (2) shall conduct a study of unclassified but secu-
12 rity-relevant information to—

13 (1) determine—

14 (A) what kind of information possessed by
15 the private sector is security-relevant but un-
16 classified information;

17 (B) how such information should be con-
18 trolled; and

19 (C) the significance of such information for
20 national security.

21 (2) propose a policy to encourage the sharing of
22 unclassified but security-relevant information be-
23 tween the private sector and government that—

1 (A) is sensitive to the public benefit of
2 openness and which does not unnecessarily re-
3 strict public access to information;

4 (B) addresses private sector fears of busi-
5 ness losses due to public disclosure of propri-
6 etary information, including disclosure through
7 error, court documents, or public security an-
8 nouncements;

9 (C) addresses private sector fears of liabil-
10 ity for disclosure; and

11 (D) addresses the fears of private citizens
12 of inappropriate and overreaching government
13 secrecy.

14 (d) REPORT.—Not later than 180 days after the date
15 of the enactment of this Act, the task force shall submit
16 to the Committee on Homeland Security of the House of
17 Representatives and the Committee on Homeland Security
18 and Governmental Affairs of the Senate a report based
19 on the study conducted under subsection (B).

20 **SEC. 105. REDESIGNATION OF DIRECTORATE.**

21 (a) IN GENERAL.—The Homeland Security Act of
22 2002 is amended—

23 (1) by striking “Directorate of Emergency Pre-
24 paredness and Response” each place it appears and

1 inserting “Directorate of Preparedness and Re-
2 sponse”;

3 (2) by striking “Under Secretary of Emergency
4 Preparedness and Response” each place it appears
5 and inserting “Under Secretary of Preparedness and
6 Response”; and

7 (3) in the heading for title V, by striking
8 “**EMERGENCY**”.

9 (b) CLERICAL AMENDMENT.—The item relating to
10 title V in the table of contents in section 1(b) of such Act
11 is amended by striking “Emergency”.

12 **SEC. 106. ESTABLISHMENT OF ASSISTANT SECRETARY FOR**
13 **PREPAREDNESS.**

14 (a) ESTABLISHMENT.—Section 501 of the Homeland
15 Security Act of 2002 (6 U.S.C. 311) is amended—

16 (1) in the section heading, by striking “**UNDER**
17 **SECRETARY FOR**” and inserting “**DIRECTORATE**
18 **OF**”;

19 (2) by inserting “(a) ESTABLISHMENT OF DI-
20 RECTORATE; UNDER SECRETARY” before the first
21 sentence; and

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

23 “(b) ASSISTANT SECRETARY.—

1 “(1) IN GENERAL.—There shall be in the De-
2 partment an Assistant Secretary for Preparedness,
3 who shall be appointed by the President.

4 “(2) RESPONSIBILITIES.—The Assistant Sec-
5 retary for Preparedness shall perform such functions
6 as were authorized to be performed by the Office for
7 State and Local Government Coordination and Pre-
8 paredness immediately before the enactment of the
9 Department of Homeland Security Reform Act of
10 2005.

11 “(3) CONSULTATION WITH ASSISTANT SEC-
12 RETARY FOR INFRASTRUCTURE PROTECTION.—The
13 Assistant Secretary for Preparedness shall consult
14 with the Assistant Secretary for Infrastructure Pro-
15 tection in the coordination and oversight of the fol-
16 lowing grant programs:

17 “(A) Buffer Zone Protection Program.

18 “(B) Transit Security Grant Program.

19 “(C) Intercity Passenger Rail Security
20 Grant Program.

21 “(D) Truck Security Program.

22 “(E) Intercity Bus Security Program.

23 “(F) Port Security Grant Program.

24 “(4) PREPAREDNESS FOR TERRORISM.—In ad-
25 dition to the responsibilities under paragraph (2),

1 the Assistant Secretary for Preparedness shall have
2 the primary responsibility within the executive
3 branch of Government for the preparedness of the
4 United States for acts of terrorism, including—

5 “(A) coordinating preparedness efforts at
6 the Federal level, and working with all State,
7 local, tribal, parish, and private sector emer-
8 gency response providers on all matters per-
9 taining to combating terrorism, including train-
10 ing, exercises, and equipment support;

11 “(B) coordinating or, as appropriate, con-
12 solidating communications and systems of com-
13 munications relating to homeland security at all
14 levels of government;

15 “(C) directing and supervising terrorism
16 preparedness grant programs of the Federal
17 Government (other than those programs admin-
18 istered by the Department of Health and
19 Human Services) for all emergency response
20 providers;

21 “(D) incorporating the Strategy priorities
22 into planning guidance on an agency level for
23 the preparedness efforts of the Office for Do-
24 mestic Preparedness;

1 “(E) providing agency-specific training for
2 agents and analysts within the Department,
3 other agencies, and State and local agencies
4 and international entities;

5 “(F) as the lead executive branch agency
6 for preparedness of the United States for acts
7 of terrorism, cooperating closely with the Fed-
8 eral Emergency Management Agency, which
9 shall have the primary responsibility within the
10 executive branch to prepare for and mitigate
11 the effects of nonterrorist-related disasters in
12 the United States;

13 “(G) assisting and supporting the Sec-
14 retary, in coordination with other Directorates
15 and entities outside the Department, in con-
16 ducting appropriate risk analysis and risk man-
17 agement activities of State, local, and tribal
18 governments consistent with the mission and
19 functions of the Directorate;

20 “(H) those elements of the Office of Na-
21 tional Preparedness of the Federal Emergency
22 Management Agency which relate to terrorism,
23 which shall be consolidated within the Depart-
24 ment in the Office for Domestic Preparedness
25 established under this section; and

1 “(I) helping to ensure the acquisition of
2 interoperable communication technology by
3 State and local governments and emergency re-
4 sponse providers.

5 “(c) NATIONAL CAPITAL REGION COORDINATION.—
6 The Under Secretary of Preparedness and Response shall
7 have primary responsibility for oversight and coordination
8 of Federal programs for and relationships with State,
9 local, and regional authorities in the National Capital Re-
10 gion, as defined under section 2674(f)(2) of title 10,
11 United States Code.

12 “(d) MILITARY LIAISON.—

13 “(1) ESTABLISHMENT.—There shall be in the
14 Directorate of Preparedness and Response a Mili-
15 tary Liaison, who shall be appointed by the Presi-
16 dent.

17 “(2) RESPONSIBILITIES.—The Military Liaison
18 shall consult with the Secretary of Defense and co-
19 ordinate the activities of the Directorate with the ef-
20 forts of the Secretary of Defense to assist in pre-
21 paredness and response with respect to hazards that
22 threaten the loss of life and property in the United
23 States.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 2 of such Act is amended by striking the item
3 relating to section 501 and inserting the following:

“Sec. 501. Directorate of Preparedness and Response.”.

4 (c) ELIMINATION OF OFFICE FOR STATE AND LOCAL
5 GOVERNMENT COORDINATION AND PREPAREDNESS AND
6 OFFICE FOR DOMESTIC PREPAREDNESS.—

7 (1) OFFICE FOR STATE AND LOCAL GOVERN-
8 MENT COORDINATION AND PREPAREDNESS.—Section
9 801 of the Homeland Security Act of 2002 (6
10 U.S.C. 361) is repealed.

11 (2) OFFICE FOR DOMESTIC PREPAREDNESS.—
12 Section 430 of the Homeland Security Act of 2002
13 (6 U.S.C. 238) is repealed.

14 (3) CLERICAL AMENDMENT.—The table of con-
15 tents in section 1(b) of the Homeland Security Act
16 of 2002 is amended by striking the items relating to
17 sections 430 and 801.

18 (d) ELIMINATION OF OFFICE OF NATIONAL CAPITAL
19 REGION COORDINATION.—

20 (1) TRANSFER OF FUNCTIONS.—Effective as of
21 the date of the enactment of this Act, there are
22 transferred to the Directorate of Preparedness and
23 Response the functions performed immediately be-
24 fore such transfer occurs by the Office of National
25 Capital Region Coordination, pursuant to section

1 882 of the the Homeland Security Act of 2002 (6
2 U.S.C. 462).

3 (2) REPEAL.—Section 882 of the Homeland Se-
4 curity Act of 2002 (6 U.S.C. 462) is repealed.

5 (3) CLERICAL AMENDMENT.—The table of con-
6 tents in section 1(b) of the Homeland Security Act
7 of 2002 is amended by striking the item relating to
8 section 882.

9 (4) CONFORMING AMENDMENT.—Section
10 102(c) of such Act is amended by striking “the Of-
11 fice of State and Local Coordination (established
12 under section 801)” and inserting “the Under Sec-
13 retary of Preparedness and Response”.

14 **SEC. 107. ESTABLISHMENT OF DIRECTOR AND DEPUTY DI-**
15 **RECTOR OF FEDERAL EMERGENCY MANAGE-**
16 **MENT AGENCY.**

17 (a) ESTABLISHMENT OF POSITION.—Section 507 of
18 the Homeland Security Act of 2002 (6 U.S.C. 317) is
19 amended—

20 (1) in the heading by striking “**ROLE OF**”;

21 (2) by redesignating subsections (a) and (b) as
22 subsections (c) and (d), respectively; and

23 (3) by inserting before subsection (b), as so re-
24 designated, the following:

25 “(b) DIRECTOR.—

1 “(1) IN GENERAL.—The Federal Emergency
2 Management Agency shall be headed by a Director
3 who shall be an Assistant Secretary within the Pre-
4 paredness and Response Directorate.

5 “(2) QUALIFICATION.—The Director shall be
6 appointed by the President, by and with the advice
7 and consent of the Senate, from among individuals
8 who have extensive background in emergency or dis-
9 aster-related management.

10 “(3) TERM OF OFFICE.—The term of office of
11 an individual as Director shall be 5 years.

12 “(c) DEPUTY DIRECTOR.—There shall be a Deputy
13 Director of the Federal Emergency Management Agency,
14 who shall be appointed by the Director. The Deputy Direc-
15 tor shall be a career Federal service employee.”.

16 (b) RATE OF PAY.—Chapter 53 of title 5, United
17 States Code, is amended

18 (1) in section 5313 by adding at the end the
19 following: “Director, Federal Emergency Manage-
20 ment Agency.”; and

21 (2) in section 5314 by adding at the end the
22 following: “Deputy Director, Federal Emergency
23 Management Agency.”

24 (c) CLERICAL AMENDMENT.—The table of contents
25 in section 2 of the Homeland Security Act of 2002 is

1 amended by striking the item relating to section 507 and
2 inserting the following:

“Sec. 507. Federal Emergency Management Agency.”.

3 **SEC. 108. CHIEF MEDICAL OFFICER.**

4 (a) ESTABLISHMENT.—Title V of the Homeland Se-
5 curity Act of 2002 (6 U.S.C. 311 et seq.) is amended—

6 (1) by redesignating the second section 510 as
7 section 511; and

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

9 **“SEC. 512. CHIEF MEDICAL OFFICER.**

10 “(a) CHIEF MEDICAL OFFICER.—There is in the Di-
11 rectorate of Preparedness and Response a Chief Medical
12 Officer who shall be an Assistant Secretary.

13 “(b) RESPONSIBILITIES.—Subject to the direction
14 and control of the Secretary, the responsibilities of the
15 Chief Medical Officer shall include the following:

16 “(1) To coordinate activities related to emer-
17 gency management system terrorism preparedness.

18 “(2) To serve as liaison to the emergency man-
19 agement system community.

20 “(3) To evaluate training programs and stand-
21 ards for emergency management system personnel
22 related to terrorism preparedness.

23 “(4) To conduct periodic assessments into the
24 needs and capabilities of emergency management

1 system providers, including governmental and non-
2 governmental providers.

3 “(5) To conduct periodic research into the num-
4 ber of emergency management system personnel, in-
5 cluding

6 “(A) governmental and nongovernmental
7 emergency management system personnel; and

8 “(B) emergency management system pro-
9 viders associated with fire departments or hos-
10 pitals.

11 “(6) To contribute to the development of mate-
12 rial threat assessments and material threat deter-
13 minations for Project BioShield.

14 “(7) To serve as a member of the Weapons of
15 Mass Destruction Medical Countermeasures sub-
16 committee of the National Science and Technology
17 Council and the White House Office of Science and
18 Technology Policy.

19 “(8) To consult with the Department of Health
20 and Human Services during the development of any
21 request for proposals under Project BioShield.

22 “(9) To be responsible for the oversight of the
23 Metropolitan Medical Response System.

24 “(10) To consult with the Secretary of Health
25 and Human Services and the Director of the Centers

1 for Disease Control and Prevention to ensure that
 2 the public health infrastructure of the United States
 3 is ready to respond to a mass casualty event or an
 4 attack on the United States population involving a
 5 biological, chemical, radiological, or nuclear weapon.

6 “(11) To develop and update guidelines to be
 7 distributed to local authorities for medical plans for
 8 responding to biological, chemical, radiological, or
 9 nuclear weapon attacks.

10 “(12) To perform other such duties relating to
 11 such responsibilities as the Secretary may provide.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
 13 in section 1(b) of the Homeland Security Act of 2002 is
 14 amended by adding after the items relating to section 509
 15 the following:

“Sec. 510. Procurement of security countermeasures for strategic national
 stockpile.

“Sec. 511. Urban and other high risk area communications capabilities.

“Sec. 512. Chief Medical Officer.”.

16 **SEC. 109. OPERATIONS OFFICE.**

17 (a) SENSE OF CONGRESS REGARDING CONSOLIDA-
 18 TION OF CBP AND ICE.—

19 (1) FINDINGS.—Congress finds that—

20 (A) the Bureau of Customs and Border
 21 Protection (CBP) of the Department of Home-
 22 land Security is responsible for managing, con-
 23 trolling, and protecting the borders of the

1 United States, at and between United States
2 ports of entry;

3 (B) U.S. Immigration and Customs En-
4 forcement (ICE) of the Department of Home-
5 land Security is the investigative and enforce-
6 ment arm of the Department of Homeland Se-
7 curity responsible for hindering terrorism
8 through the identification and resolution of vio-
9 lations and vulnerabilities in Federal immigra-
10 tion laws, customs laws, and air security laws;

11 (C) in the report titled “DHS 2.0 Rethink-
12 ing The Department Of Homeland Security”,
13 the Heritage Foundation recommended that a
14 more efficient organization of border security
15 which would be consistent with an effective
16 homeland security program would require merg-
17 ing CBP and ICE;

18 (D) the current separation of CBP and
19 ICE by the Department of Homeland Security
20 has created organizational “turf battles” and
21 inefficiency; and

22 (E) a combined entity containing compo-
23 nents of CBP and ICE will bring together all
24 of the tools for effective border and immigration
25 enforcement.

1 (2) SENSE OF CONGRESS.—It is the sense of
2 Congress that the Bureau of Customs and Border
3 Protection (CPB) and U.S. Immigration and Customs
4 Enforcement (ICE), currently separate entities
5 within the Department of Homeland Security,
6 should be merged into a single operational unit with-
7 in the Department of Homeland Security to better
8 protect the borders of the United States and to con-
9 duct interior enforcement operations and investiga-
10 tions to increase homeland security.

11 (b) REPORT ON THE FUNCTIONS OF THE TRANSPOR-
12 TATION SECURITY ADMINISTRATION.—

13 (1) IN GENERAL.—Within 120 days after the
14 date of the enactment of this Act, the Secretary
15 shall report to Congress the methodology and man-
16 ner that the Transportation Security Administration
17 will use to protect all modes of our Nation’s trans-
18 portation systems from acts of terrorism.

19 (2) REQUIREMENTS OF REPORT.—The report
20 required under paragraph (1) shall set forth the fol-
21 lowing:

22 (A) Plans for the allocation of resources to
23 manage risks, address threats, and enhance se-
24 curity across all transportation modes.

1 (B) The rationale for the allocation of re-
2 sources that has resulted in non-aviation modes
3 of transportation receiving fewer resources for
4 security enhancements than aviation.

5 (C) A methodology to resolve the disparity
6 in resource allocation across modes of transpor-
7 tation.

8 (D) Any structural and organizational
9 changes necessary to ensure the effective oper-
10 ation and management of the Transportation
11 Security Administration as a transportation se-
12 curity agency for all modes of transportation.

13 (E) A description of ongoing and planned
14 research and development programs for all
15 modes of transportation, including rail and
16 transit security, that includes the funding for
17 such programs and efforts that have occurred
18 since March 11, 2004.

19 **SEC. 110. AUTHORITIES OF THE PRIVACY OFFICER OF THE**
20 **DEPARTMENT OF HOMELAND SECURITY.**

21 Section 222 of the Homeland Security Act of 2002
22 (6 U.S.C. 142) is amended—

23 (1) by striking “The Secretary shall establish”
24 and inserting the following:

1 “(a) APPOINTMENT AND RESPONSIBILITIES.—The
2 Secretary shall establish”; and

3 (2) by adding at the end the following new sub-
4 section:

5 “(b) AUTHORITY TO INVESTIGATE.—

6 “(1) IN GENERAL.—The senior official ap-
7 pointed under this section—

8 “(A) shall have access to any record, re-
9 port, audit, review, document, paper, rec-
10 ommendation, or other material available to the
11 Department relating to any program or oper-
12 ation for which the senior official has responsi-
13 bility under this section;

14 “(B) shall make such investigations and
15 reports relating to the administration of the
16 programs and operations of the Department as
17 are, in the judgment of the senior official, nec-
18 essary or desirable;

19 “(C) may require by subpoena the produc-
20 tion, by persons other than Federal agencies, of
21 all information, documents, reports, answers,
22 records, accounts, papers, and other data and
23 documentary evidence necessary to performance
24 of the functions of the senior official under this
25 section;

1 “(D) may administer to or take from any
2 person an oath, affirmation, or affidavit, when-
3 ever necessary to performance of the functions
4 of the senior official under this section; and

5 “(E) may take any other action authorized
6 to be taken by the Inspector General of the De-
7 partment, as necessary to require employees of
8 the Department to produce documents and an-
9 swer questions relevant to performance of the
10 functions of the senior official under this sec-
11 tion.

12 “(2) ENFORCEMENT OF SUBPOENAS.—Any sub-
13 poena issued under paragraph (1)(C) shall, in the
14 case of contumacy or refusal to obey, be enforceable
15 by order of any appropriate United States district
16 court.

17 “(3) EFFECT OF OATHS.—Any oath, affirma-
18 tion, or affidavit administered or taken under para-
19 graph (1)(D) by or before an employee of the Pri-
20 vacy Office designated for that purpose by the senior
21 official appointed under subsection (a) shall have the
22 same force and effect as if administered or taken by
23 or before an officer having a seal of office.

24 “(c) TERM OF OFFICE.—The term of appointment of
25 a senior official under subsection (a) shall be 5 years.

1 “(d) REPORTS TO CONGRESS.—The senior official
2 appointed under subsection (a) shall submit reports di-
3 rectly to the Congress regarding performance of the re-
4 sponsibilities of the senior official under this section, with-
5 out any prior comment or amendment by the Secretary,
6 Deputy Secretary, or any officer or employee of the De-
7 partment or the Office of Management and Budget.”.

8 **SEC. 111. GREATER ACCOUNTABILITY.**

9 (a) ELIMINATION OF UNDER SECRETARY FOR MAN-
10 AGEMENT.—

11 (1) TRANSFER OF FUNCTIONS.—Effective as of
12 the date of the enactment of this Act, there are
13 transferred to the Secretary the functions performed
14 immediately before such transfer occurs by the
15 Under Secretary for Management pursuant to sec-
16 tion 701(b) of the the Homeland Security Act of
17 2002 (6 U.S.C. 341(b)).

18 (2) REPEAL.—Section 701 of the Homeland Se-
19 curity Act of 2002 (6 U.S.C. 341) is repealed.

20 (b) AUTHORITY OF CHIEF FINANCIAL OFFICER
21 OVER COMPONENT FINANCIAL OFFICERS.—Section 702
22 of such Act (15 U.S.C. 342) is amended by adding at the
23 end the following new sentence: “The Chief Financial Offi-
24 cer shall exercise joint authority, with the component
25 agency heads of the Department, over financial officers

1 in the component agencies and entities of the Depart-
2 ment.”

3 (c) **AUTHORITY OF CHIEF INFORMATION OFFICER**
4 **OVER COMPONENT INFORMATION OFFICERS.**—Section
5 703 of such Act (15 U.S.C. 343) is amended by adding
6 at the end the following new sentence: “The Chief Infor-
7 mation Officer shall exercise joint authority, with the com-
8 ponent agency heads of the Department, over information
9 officers in the component agencies and entities of the De-
10 partment.”

11 (d) **AUTHORITY OF CHIEF HUMAN CAPITAL OFFICER**
12 **OF COMPONENT HUMAN CAPITAL OFFICERS.**—Section
13 704 of such Act (6 U.S.C. 344) is amended by striking
14 “and” after “as the Secretary may direct” and inserting
15 the following: “. The Chief Human Capital Officer shall
16 exercise joint authority, with the component agency heads
17 of the Department, over human capital officers in the com-
18 ponent agencies and entities of the Department. The Chief
19 Human Capital Officer shall”.

20 (e) **BUSINESS TRANSFORMATION OFFICER.**—Title
21 VII of such Act (6 U.S.C. 341 et seq.) is amended by add-
22 ing at the end the following new section:

23 **“SEC. 707. BUSINESS TRANSFORMATION OFFICER.**

24 “The Business Transformation Officer shall report to
25 the Secretary, or to another official of the Department,

1 as the Secretary may direct. The Business Transformation
2 Officer shall—

3 “(1) develop an overarching management inte-
4 gration strategy with recommendations and perform-
5 ance goals for the Department, in consultation with
6 the Chief Procurement Officer, the Chief Human
7 Capital Officer, the Chief Intelligence Officer, and
8 any other appropriate official of the Department;
9 and

10 “(2) report to the Secretary and the appro-
11 priate congressional committees of jurisdiction on a
12 quarterly basis as to the progress of the manage-
13 ment integration strategy of the Department.”.

14 (f) CLERICAL AMENDMENTS.—The table of contents
15 in section 1(b) of such Act is amended—

16 (1) by striking the item relating to section 701;
17 and

18 (2) by inserting after the item relating to sec-
19 tion 706 the following:

“Sec. 707. Business Transformation Officer.”.

20 **SEC. 112. WHISTLEBLOWER PROTECTIONS.**

21 (a) IN GENERAL.—No covered individual may be dis-
22 charged, demoted, suspended, threatened, harassed, rep-
23 rimanded, investigated, or in any other manner discrimi-
24 nated against (including by a denial, suspension, or rev-
25 ocation of a security clearance or by any other security

1 access determination) if such discrimination is due, in
2 whole or in part, to any lawful act done, perceived to have
3 been done, or intended to be done by the covered indi-
4 vidual—

5 (1) to provide information, cause information to
6 be provided, or otherwise assist in an investigation
7 regarding any conduct which the covered individual
8 reasonably believes constitutes a violation of any
9 law, rule or regulation relating to national or home-
10 land security, which the covered individual reason-
11 ably believes constitutes a threat to national or
12 homeland security, or which the covered individual
13 reasonably believes constitutes fraud, waste or mis-
14 management of Government funds intended to be
15 used for national or homeland security, when the in-
16 formation or assistance is provided to or the inves-
17 tigation is conducted by—

18 (A) a Federal, State or local regulatory or
19 law enforcement agency (including an office of
20 Inspector General under the Inspector General
21 Act of 1978);

22 (B) any Member of Congress, any com-
23 mittee of Congress, or the Government Ac-
24 countability Office;

1 (C) a person with supervisory authority
2 over the covered individual (or such other per-
3 son who has the authority to investigate, dis-
4 cover, or terminate misconduct); or

5 (D) the Privacy Officer of the Department;

6 (2) to file, cause to be filed, testify, participate
7 in, or otherwise assist in a proceeding or action filed
8 or about to be filed relating to an alleged violation
9 of any law, rule or regulation relating to national or
10 homeland security; or

11 (3) to refuse to violate or assist in the violation
12 of any law, rule, or regulation relating to national or
13 homeland security.

14 (b) ENFORCEMENT ACTION.—

15 (1) IN GENERAL.—A covered individual who al-
16 leges discharge or other discrimination by any per-
17 son in violation of subsection (a) may seek relief
18 under subsection (c) by—

19 (A) filing a complaint with the Secretary of
20 Labor; or

21 (B) if the Secretary has not issued a final
22 decision within 180 days after the filing of the
23 complaint and there is no showing that such
24 delay is due to the bad faith of the claimant,
25 bringing an action at law or equity for de novo

1 review in the appropriate district court of the
2 United States, which shall have jurisdiction
3 over such an action without regard to the
4 amount in controversy.

5 (2) PROCEDURE.—

6 (A) IN GENERAL.—An action under para-
7 graph (1)(A) shall be governed under the rules
8 and procedures set forth in section 42121(b) of
9 title 49, United States Code.

10 (B) EXCEPTION.—Notification made under
11 section 42121(b)(1) of title 49, United States
12 Code, shall be made to the person named in the
13 complaint and to the person’s employer.

14 (C) BURDENS OF PROOF.—An action
15 brought under paragraph (1)(B) shall be gov-
16 erned by the legal burdens of proof set forth in
17 section 42121(b) of title 49, United States
18 Code.

19 (D) STATUTE OF LIMITATIONS.—An action
20 under paragraph (1) shall be commenced not
21 later than 1 year after the date on which the
22 violation occurs.

23 (c) REMEDIES.—

24 (1) IN GENERAL.—A covered individual pre-
25 vailing in any action under subsection (b)(1) shall be

1 entitled to all relief necessary to make the covered
2 individual whole.

3 (2) DAMAGES.—Relief for any action under
4 paragraph (1) shall include—

5 (A) reinstatement with the same seniority
6 status that the covered individual would have
7 had, but for the discrimination;

8 (B) the amount of any back pay, with in-
9 terest;

10 (C) compensation for any special damages
11 sustained as a result of the discrimination, in-
12 cluding litigation costs, expert witness fees, and
13 reasonable attorney fees; and

14 (D) punitive damages in an amount not to
15 exceed the greater of 3 times the amount of any
16 compensatory damages awarded under this sec-
17 tion.

18 (d) STATE SECRETS PRIVILEGE.—If, in any action
19 brought under subsection (b)(1)(B), the Government as-
20 serts as a defense the privilege commonly referred to as
21 the “state secrets privilege” and the assertion of such
22 privilege prevents the plaintiff from establishing a prima
23 facie case in support of the plaintiff’s claim, the court shall
24 enter judgment for the plaintiff and shall determine the
25 relief to be granted.

1 (e) CRIMINAL PENALTIES.—

2 (1) IN GENERAL.—It shall be unlawful for any
3 person employing a covered individual to commit an
4 act prohibited by subsection (a). Any person vio-
5 lating this paragraph shall be fined under title 18 of
6 the United States Code, imprisoned not more than
7 10 years, or both.

8 (2) REPORTING REQUIREMENT.—The Depart-
9 ment of Justice shall submit to Congress an annual
10 report on the enforcement of paragraph (1). Each
11 such report shall (A) identify each case in which for-
12 mal charges under paragraph (1) were brought, (B)
13 describe the status or disposition of each such case,
14 and (C) in any actions under subsection (b)(1)(B) in
15 which the covered individual was the prevailing party
16 or the substantially prevailing party, indicate wheth-
17 er or not any formal charges under paragraph (1)
18 have been brought and, if not, the reasons therefor.

19 (f) RIGHTS RETAINED BY COVERED INDIVIDUAL.—
20 Nothing in this section shall be deemed to diminish the
21 rights, privileges, or remedies of any covered individual
22 under any Federal or State law, or under any collective
23 bargaining agreement. The rights and remedies in this
24 section may not be waived by any agreement, policy, form,
25 or condition of employment.

1 (g) DEFINITIONS.—For purposes of this section—

2 (1) the term “covered individual” means an em-
3 ployee of—

4 (A) the Department of Homeland Security
5 (which, for purposes of this section, includes the
6 Transportation Security Administration);

7 (B) a Federal contractor or subcontractor;
8 and

9 (C) an employer within the meaning of sec-
10 tion 701(b) of the Civil Rights Act of 1964 (42
11 U.S.C. 2000e(b));

12 (2) the term “lawful” means not specifically
13 prohibited by law, except that, in the case of any in-
14 formation the disclosure of which is specifically pro-
15 hibited by law or specifically required by Executive
16 order to be kept secret in the interest of national de-
17 fense or the conduct of foreign affairs, any disclo-
18 sure of such information to any Member of Con-
19 gress, committee of Congress, or other recipient au-
20 thorized to receive such information, shall be deemed
21 lawful;

22 (3) the term “Federal contractor” means a per-
23 son who has entered into a contract with the De-
24 partment of Homeland Security;

25 (4) the term “employee” means—

1 (A) with respect to an employer referred to
2 in paragraph (1)(A), an employee as defined by
3 section 2105 of title 5, United States Code; and

4 (B) with respect to an employer referred to
5 in subparagraph (A) or (B) of paragraph (1),
6 any officer, partner, employee, or agent;

7 (5) the term “subcontractor”—

8 (A) means any person, other than the Fed-
9 eral contractor, who offers to furnish or fur-
10 nishes any supplies, materials, equipment, or
11 services of any kind under a contract with the
12 Department of Homeland Security or a sub-
13 contract entered into in connection with such a
14 contract; and

15 (B) includes any person who offers to fur-
16 nish or furnishes general supplies to the Fed-
17 eral contractor or a higher tier subcontractor;
18 and

19 (6) the term “person” means a corporation,
20 partnership, State entity, business association of any
21 kind, trust, joint-stock company, or individual.

22 (h) AUTHORIZATION OF FUNDS.—Of the amounts
23 authorized under section 101, there is authorized to be
24 appropriated amounts necessary for carrying out this sec-

1 tion. Except as provided in the preceding sentence, this
2 section shall have no force or effect.

3 **SEC. 113. OFFICE OF TRIBAL SECURITY.**

4 The Homeland Security Act of 2002 (Public Law
5 107–296) is amended—

6 (1) by inserting after section 801 the following
7 new section:

8 **“SEC. 802. OFFICE OF TRIBAL SECURITY.**

9 “(a) **SHORT TITLE.**—This section may be cited as the
10 ‘Tribal Homeland Security Act’.

11 “(b) **ESTABLISHMENT.**—There is established within
12 the Department of Homeland Security the Office of Tribal
13 Security.

14 “(c) **DIRECTOR.**—The Office of Tribal Security shall
15 be administered by a Director, who shall report to the Sec-
16 retary of Homeland Security.

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

22 “(1) Providing a point of contact within De-
23 partment of Homeland Security which shall be re-
24 sponsible for—

1 “(A) meeting the broad and complex Fed-
2 eral responsibilities owed to federally recognized
3 Indian tribes by the Department of Homeland
4 Security; and

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

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

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

16 “(4) Coordinating with the relevant offices
17 within the Department and tribal governments to
18 develop a comprehensive border security policy that
19 addresses law enforcement, personnel, and funding
20 issues in Indian country (as defined in section 1151
21 of title 18, United States Code) on the United
22 States borders with Canada and with Mexico.

23 “(5) Coordinating with the Assistant Secretary
24 for Infrastructure Protection and tribal governments
25 to develop appropriate policies for infrastructure

1 protection on Indian lands, as well as information
2 sharing mechanisms with tribal governments.

3 “(6) Coordinating with the relevant offices
4 within the Department to help ensure that tribal
5 governments are fully informed of, have access to,
6 and may apply for all Department of Homeland Se-
7 curity grant opportunities for emergency response
8 providers, and to develop and achieve preparedness
9 goals for tribal governments that are consistent with
10 national goals for terrorism preparedness, as deter-
11 mined by the Department.

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

17 “(8) Coordinating with U.S. Citizenship and
18 Immigration Services and other relevant entities
19 within the Department of Homeland Security having
20 immigration services- or enforcement-related func-
21 tions to develop policies on issues related to citizen-
22 ship and the movement of members of federally rec-
23 ognized Indian tribes across the United States bor-
24 der, taking into consideration the unique character-
25 istics of certain federally recognized Indian tribes

1 with jurisdiction over lands adjacent to the Canadian
2 and Mexican borders.

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

8 (2) in the table of sections, by inserting after
9 the item relating to section 801 the following new
10 item:

“Sec. 802. Office of Tribal Security.”.

11 **SEC. 114. ASSISTANT SECRETARY FOR CYBERSECURITY**
12 **AND TELECOMMUNICATIONS.**

13 (a) IN GENERAL.—Title V of the Homeland Security
14 Act of 2002 (6 U.S.C. 311 et seq.), as amended by section
15 108, is further amended by adding at the end the following
16 new section:

17 **“SEC. 513. ASSISTANT SECRETARY FOR CYBERSECURITY**
18 **AND TELECOMMUNICATIONS.**

19 “(a) IN GENERAL.—There shall be in the Directorate
20 for Preparedness and Response a National Cybersecurity
21 Office, which shall be headed by an Assistant Secretary
22 for Cybersecurity and Telecommunications, who shall be
23 appointed by the President.

24 “(b) GENERAL AUTHORITY.—Subject to the direction
25 and control of the Secretary, the Assistant Secretary for

1 Cybersecurity and Telecommunications shall have primary
2 authority within the Department for all critical infrastruc-
3 ture protection programs of the Department relating to
4 cybersecurity, including with respect to policy formulation
5 and program management.

6 “(c) RESPONSIBILITIES.—The Assistant Secretary
7 for Cybersecurity and Telecommunications shall assist the
8 Secretary in promoting national cybersecurity and tele-
9 communications security and the responsibilities of the As-
10 sistant Secretary shall include the following duties:

11 “(1) To establish and manage—

12 “(A) a national cybersecurity response sys-
13 tem that includes the ability to—

14 “(i) analyze the effect of cybersecurity
15 threat information on national critical in-
16 frastructure; and

17 “(ii) aid in the detection and warning
18 of attacks on cybersecurity infrastructure
19 and in the restoration of such infrastruc-
20 ture in the aftermath of an attack;

21 “(B) a national cybersecurity threat and
22 vulnerability reduction program to—

23 “(i) identify cybersecurity
24 vulnerabilities that effect critical national
25 infrastructure;

1 “(ii) perform vulnerability assess-
2 ments on information technologies; and

3 “(iii) coordinate the mitigation of
4 such vulnerabilities;

5 “(C) a national cybersecurity awareness
6 and training program to promote cybersecurity
7 awareness among the public and the private
8 sectors and cybersecurity training and edu-
9 cation programs;

10 “(D) a Government-wide cybersecurity pro-
11 gram to coordinate and consult with Federal,
12 State, and local governments to enhance their
13 cybersecurity programs; and

14 “(E) a national security and international
15 cybersecurity cooperation program to help fos-
16 ter Federal efforts to enhance international
17 cybersecurity awareness and cooperation.

18 “(2) To coordinate with the private sector as
19 appropriate and to promote cybersecurity informa-
20 tion sharing, vulnerability assessment, and threat
21 warning with respect to critical infrastructure.

22 “(3) To coordinate with other directorates and
23 offices within the Department on the cybersecurity
24 aspects of their missions.

1 “(4) To coordinate with the Under Secretary
2 for Policy to ensure that the national response plan
3 developed pursuant to section 502(6) includes appro-
4 priate measures for the recovery of the cybersecurity
5 elements of critical infrastructure.

6 “(5) To develop processes for information shar-
7 ing with the private sector, consistent with section
8 214, that—

9 “(A) promote voluntary cybersecurity best
10 practices, standards, and benchmarks that are
11 responsive to rapid technology changes and to
12 the security needs of critical infrastructure; and

13 “(B) consider roles of Federal, State, local,
14 and foreign governments and the private sector,
15 including the insurance industry and auditors.

16 “(6) To coordinate with the Chief Information
17 Officer in establishing a secure information sharing
18 architecture and information sharing processes, in-
19 cluding with respect to the operation centers of the
20 Department.

21 “(7) To consult with the Electronic Crimes
22 Task Force of the United States Secret Service on
23 private sector outreach and information activities.

24 “(8) To consult with the Director of the Office
25 for Domestic Preparedness to ensure that realistic

1 cybersecurity scenarios are incorporated into table-
2 top and recovery exercises.

3 “(9) To consult and coordinate, as appropriate,
4 with other Federal agencies on cybersecurity-related
5 programs, policies, and operations.

6 “(10) To consult and coordinate within the De-
7 partment and, where appropriate, with other rel-
8 evant Federal agencies, on security of digital control
9 systems, such as Supervisory Control and Data Ac-
10 quisition systems.

11 “(d) **AUTHORITY OVER THE NATIONAL COMMUNICA-**
12 **TIONS SYSTEM.**—The Assistant Secretary shall have pri-
13 mary authority within the Department over the National
14 Communications System.”.

15 (b) **CLERICAL AMENDMENT.**—The table of contents
16 in section 1(b) of such Act is amended by adding after
17 the items relating to title V the following new item:

“Sec. 513. Assistant Secretary for Cybersecurity and Telecommunications.”.

18 **SEC. 115. ASSISTANT SECRETARY FOR PHYSICAL INFRA-**
19 **STRUCTURE SECURITY.**

20 (a) **IN GENERAL.**—Title V of the Homeland Security
21 Act of 2002 (6 U.S.C. 311 et seq.), as amended by sec-
22 tions 108 and 114, is further amended by adding at the
23 end the following new section:

1 **“SEC. 514 ASSISTANT SECRETARY FOR PHYSICAL INFRA-**
2 **STRUCTURE SECURITY.**

3 “(a) IN GENERAL.—There shall be in the Directorate
4 for Preparedness and Response an Assistant Secretary for
5 Physical Infrastructure Security, who shall be appointed
6 by the President.

7 “(b) ASSISTANT SECRETARY FOR PHYSICAL INFRA-
8 STRUCTURE SECURITY.—

9 “(1) AUTHORITY.—Subject to the direction and
10 control of the Secretary, the Assistant Secretary for
11 Physical Infrastructure Security shall have primary
12 authority within the Department, including authority
13 with respect to policy formulation and program man-
14 agement, for all physical critical infrastructure pro-
15 tection programs of the Department, including the
16 following areas of responsibility:

17 “(A) Agriculture.

18 “(B) Food.

19 “(C) Water.

20 “(D) Public Health.

21 “(E) Emergency Services.

22 “(F) Government.

23 “(G) Defense Industrial Base.

24 “(H) Energy.

25 “(I) Transportation.

26 “(J) Banking and Finance.

1 “(K) Chemical Industry and Hazardous
2 Materials.

3 “(L) Postal and Shipping.

4 “(M) National Icons and Monuments.

5 “(N) Commercial Assets.

6 “(O) Dams.

7 “(P) Nuclear Power Plants.

8 “(Q) Structures housing a significant num-
9 ber of people.

10 “(2) RESPONSIBILITIES.—The Assistant Sec-
11 retary for Physical Infrastructure Security shall as-
12 sist the Under Secretary for Preparedness and Re-
13 sponse in discharging the responsibilities of the
14 Under Secretary under this section. Subject to the
15 direction and control of the Secretary, the respon-
16 sibilities of the Assistant Secretary for Physical In-
17 frastructure Security shall be as follows:

18 “(A) To establish and manage—

19 “(i) a national physical infrastructure
20 security system to—

21 “(I) analyze the effect of physical
22 infrastructure threats on the popu-
23 lation, national economy, and other
24 critical infrastructure; and

1 “(II) aid in the detection and
2 warning of attacks on, and in the res-
3 toration of, physical security infra-
4 structure in the aftermath of attacks
5 on the national physical infrastruc-
6 ture;

7 “(ii) a national physical infrastructure
8 vulnerability reduction program that iden-
9 tifies vulnerabilities of critical infrastruc-
10 ture, performs vulnerability assessments on
11 infrastructure systems and technologies,
12 and coordinates the mitigation of such
13 vulnerabilities; and

14 “(iii) a program to coordinate and
15 consult with Federal, State, and local gov-
16 ernments to enhance their physical security
17 programs.

18 “(B) To coordinate with other directorates
19 and offices within the Department on infra-
20 structure security.

21 “(C) To coordinate with the Under Sec-
22 retary for Preparedness and Response to ensure
23 that the National Response Plan developed pur-
24 suant to section 502(6) includes appropriate

1 measures for the recovery of the physical infra-
2 structure elements.

3 “(D) To develop processes for sharing in-
4 formation with state and local governments,
5 and, if appropriate, the private sector, to—

6 “(i) promote voluntary infrastructure
7 security best practices, standards, and
8 benchmarks that are responsive to rapid
9 technology changes and to the security
10 needs of critical infrastructure; and

11 “(ii) consider the roles of Federal,
12 State, local, and foreign governments and
13 the private sector, including the insurance
14 industry and auditors.

15 “(E) To consult with the Under Secretary
16 for Preparedness and Response to ensure that
17 realistic infrastructure security scenarios are in-
18 corporated into tabletop and recovery exercises.

19 “(F) To consult and coordinate, as appro-
20 priate, with other Federal agencies on pro-
21 grams, policies, and operations related to infra-
22 structure security.

23 “(G) To advise the Under Secretary for
24 Preparedness and Response on any regulatory

1 authority that is needed in order to fulfill the
2 responsibilities listed in this section.

3 “(H) To carry out comprehensive assess-
4 ments of the vulnerabilities of the key resources
5 and critical infrastructure of the United States,
6 including the performance of risk assessments
7 to determine the risks posed by particular types
8 of terrorist attacks within the United States
9 (including an assessment of the probability of
10 success of such attacks and the feasibility and
11 potential efficacy of various countermeasures to
12 such attacks).

13 “(I) To develop a comprehensive national
14 plan for securing the key resources and critical
15 infrastructure of the United States, including
16 power production, generation, and distribution
17 systems, information technology and tele-
18 communications systems (including satellites),
19 electronic financial and property record storage
20 and transmission systems, emergency prepared-
21 ness communications systems, and the physical
22 and technological assets that support such sys-
23 tems.

24 “(J) To recommend measures necessary to
25 protect the key resources and critical infra-

1 structure of the United States in coordination
2 with other agencies of the Federal Government
3 and in cooperation with State and local govern-
4 ment agencies and authorities, the private sec-
5 tor, and other entities.

6 “(K) To perform such other duties relating
7 to such responsibilities as the Secretary may
8 provide.

9 “(3) CONSULTATION WITH CHIEF INTEL-
10 LIGENCE OFFICER.—Subject to the direction and
11 control of the Secretary, the Assistant Secretary for
12 Physical Infrastructure Security shall consult with
13 the Chief Intelligence Officer on the following re-
14 sponsibilities:

15 “(A) To integrate relevant information,
16 analyses, and vulnerability assessments (wheth-
17 er such information, analyses, or assessments
18 are provided or produced by the Department or
19 others) in order to identify priorities for protec-
20 tive and support measures by the Department,
21 other agencies of the Federal Government,
22 State and local government agencies.

23 “(B) To ensure, in conjunction with the
24 Chief Information Officer of the Department,

1 that any information databases and analytical
2 tools developed or utilized by the Department—

3 “(i) are compatible with one another
4 and with relevant information databases of
5 other agencies of the Federal Government;
6 and

7 “(ii) treat information in such data-
8 bases in a manner that complies with ap-
9 plicable Federal law on privacy.

10 “(C) To coordinate with elements of the
11 intelligence community and with Federal, State,
12 and local law enforcement agencies, and the pri-
13 vate sector, as appropriate.”.

14 (b) REPORTS REQUIRED.—

15 (1) REPORT ON CERTAIN VULNERABILITIES.—

16 (A) IN GENERAL.—Not later than Decem-
17 ber 30, 2005, the Assistant Secretary for Phys-
18 ical Infrastructure Security of the Department
19 of Homeland Security, in coordination with the
20 Chief Intelligence Officer of the Department of
21 Homeland Security and appropriate personnel
22 charged with infrastructure protection and
23 emergency preparedness and response for the
24 Department, shall submit to the President and
25 Congress a comprehensive report assessing the

1 vulnerabilities of the key resources and critical
2 infrastructure of the United States.

3 (B) METHODOLOGY.—The report shall be
4 based on commonly accepted risk-assessment
5 methodologies and shall prioritize vulnerabilities
6 based upon actual and prospective threats so
7 that appropriate protective and support meas-
8 ures can be taken. To the extent possible, the
9 report should include not only a general
10 prioritization of vulnerabilities but also a
11 prioritization of vulnerabilities by resource and
12 infrastructure sector.

13 (c) CLERICAL AMENDMENT.—The table of contents
14 in section 1(b) of such Act is amended by adding after
15 the items relating to title V the following new item:

“Sec. 514. Assistant Secretary for Physical Infrastructure Security.”.

16 **SEC. 116. UNDER SECRETARY FOR POLICY.**

17 Section 103(a) of such Act is amended—

18 (1) by redesignating paragraphs (6) through
19 (10) as paragraphs (7) through (11), accordingly;
20 and

21 (2) by inserting after paragraph (5) the fol-
22 lowing new paragraph (6):

23 “(6) An Under Secretary for Policy.”.

1 **TITLE II—SECURE HANDLING OF**
2 **AMMONIUM NITRATE**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Secure Handling of
5 Ammonium Nitrate Act of 2005”.

6 **SEC. 202. FINDINGS.**

7 Congress finds the following:

8 (1) Although ammonium nitrate is an impor-
9 tant fertilizer used in agricultural production, in the
10 wrong hands, ammonium nitrate can be used to cre-
11 ate explosives and was so used in terrorist attacks
12 conducted in in Oklahoma City, Bali, and Istanbul.

13 (2) The production, importation, storage, sale,
14 and distribution of ammonium nitrate affects inter-
15 state and intrastate commerce.

16 (3) It is necessary for the Secretary of Home-
17 land Security to regulate the production, storage,
18 sale, and distribution of ammonium nitrate on ac-
19 count of the prior use of ammonium nitrate to cre-
20 ate explosives used in acts of terrorism and the pre-
21 vent terrorists from acquiring ammonium nitrate to
22 create explosives.

23 **SEC. 203. DEFINITIONS.**

24 In this title:

1 (1) TITLE.—The term “this title” includes reg-
2 ulations issued under this title.

3 (2) AMMONIUM NITRATE.—The term “ammo-
4 nium nitrate” means solid ammonium nitrate that is
5 chiefly the ammonium salt of nitric acid and con-
6 tains not less than 33 percent nitrogen, of which—

7 (A) 50 percent is in ammonium form; and

8 (B) 50 percent is in nitrate form.

9 (3) FACILITY.—The term “facility” means any
10 site where ammonium nitrate is produced, stored, or
11 held for distribution, sale, or use. The term in-
12 cludes—

13 (A) all buildings or structures used to
14 produce, store, or hold ammonium nitrate for
15 distribution, sale, or use at a single site; and

16 (B) multiple sites described in subpara-
17 graph (A), if the sites are—

18 (i) contiguous or adjacent; and

19 (ii) owned or operated by the same
20 person.

21 (4) HANDLE.—The term “handle” means to
22 produce, store, sell, or distribute ammonium nitrate.

23 (5) HANDLER.—The term “handler” means
24 any person that produces, stores, sells, or distributes
25 ammonium nitrate.

1 (6) PURCHASER.—The term “purchaser”
2 means any person that purchases ammonium ni-
3 trate.

4 (7) TERRORISM.—The term “terrorism” has
5 the meaning given that term in section 2(15) of the
6 Homeland Security Act of 2002 (6 U.S.C. 101(15)).

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

9 **SEC. 204. REGULATION OF HANDLING AND PURCHASE OF**
10 **AMMONIUM NITRATE.**

11 (a) IN GENERAL.—The Secretary may regulate the
12 handling and purchase of ammonium nitrate to prevent
13 the misappropriation or use of ammonium nitrate in an
14 act of terrorism.

15 (b) REGULATIONS.—The Secretary may promulgate
16 regulations that require—

17 (1) handlers—

18 (A) to register facilities;

19 (B) to sell or distribute ammonium nitrate
20 only to handlers and purchasers registered
21 under this title; and

22 (C) to maintain records of sale or distribu-
23 tion that include the name, address, telephone
24 number, and registration number of the imme-

1 diate subsequent purchaser of ammonium ni-
2 trate; and

3 (2) purchasers to be registered.

4 (c) USE OF PREVIOUSLY SUBMITTED INFORMA-
5 TION.—Prior to requiring a facility or handler to submit
6 new information for registration under this section, the
7 Secretary shall—

8 (1) request from the Attorney General, and the
9 Attorney General shall provide, any information pre-
10 viously submitted to the Attorney General by the fa-
11 cility or handler under section 843 of title 18,
12 United States Code; and

13 (2) at the election of the facility or handler—

14 (A) use the license issued under that sec-
15 tion in lieu of requiring new information for
16 registration under this section; and

17 (B) consider the license to fully comply
18 with the requirement for registration under this
19 section.

20 (d) CONSULTATION.—In promulgating regulations
21 under this section, the Secretary shall consult with the
22 Secretary to Agriculture to ensure that the access of agri-
23 cultural producers to ammonium nitrate is not unduly bur-
24 dened.

1 (e) DATA CONFIDENTIALITY.—Notwithstanding sec-
2 tion 552 of title 5, United States Code, or the USA PA-
3 TRIOT ACT (Public Law 107–56; 115 Stat. 272) or an
4 amendment made by that Act, the Secretary may not dis-
5 close to any person any information obtained from any fa-
6 cility, handler, or purchaser—

7 (1) regarding any action taken, or to be taken,
8 at the facility or by the handler or purchaser to en-
9 sure the secure handling of ammonium nitrate; or

10 (2) that would disclose—

11 (A) the identity or address of any purchase
12 of ammonium nitrate;

13 (B) the quantity of ammonium nitrate pur-
14 chased; or

15 (C) the details of the purchase transaction.

16 (f) EXCEPTIONS TO DATA CONFIDENTIALITY.—The
17 Secretary may disclose any information described in sub-
18 section (e)—

19 (1) to an officer or employee of the United
20 States, or a person that has entered into a contract
21 with the United States, who needs to know the infor-
22 mation to perform the duties of the officer, em-
23 ployee, or person, or to a State agency pursuant to
24 an arrangement under section 206, under appro-

1 appropriate arrangements to ensure the protection of the
2 information;

3 (2) to the public, to the extent the Secretary
4 specifically finds that disclosure of particular infor-
5 mation is required in the public interest; or

6 (3) to the extent required by order of a Federal
7 court in a proceeding in which the Secretary is a
8 party, under such protective measures as the court
9 may prescribe.

10 **SEC. 205. ENFORCEMENT.**

11 (a) **INSPECTIONS.**—The Secretary, without a war-
12 rant, may enter any place during business hours that the
13 Secretary believes may handle ammonium nitrate to deter-
14 mine whether the handling is being conducted in accord-
15 ance with this title.

16 (b) **PREVENTION OF SALE OR DISTRIBUTION**
17 **ORDER.**—In any case in which the Secretary has reason
18 to believe that ammonium nitrate has been handled other
19 than in accordance with this title, the Secretary may issue
20 a written order preventing any person that owns, controls,
21 or has custody of the ammonium nitrate from selling or
22 distributing the ammonium nitrate.

23 (c) **APPEAL PROCEDURES.**—

24 (1) **IN GENERAL.**—A person subject to an order
25 under subsection (b) may request a hearing to con-

1 test the order, under such administrative adjudica-
2 tion procedures as the Secretary may establish.

3 (2) RESCISSION.—If an appeal under para-
4 graph (1) is successful, the Secretary shall rescind
5 the order.

6 (d) IN REM PROCEEDINGS.—The Secretary may in-
7 stitute in rem proceedings in the United States district
8 court for the district in which the ammonium nitrate is
9 located to seize and confiscate ammonium nitrate that has
10 been handled in violation of this title.

11 **SEC. 206. ADMINISTRATIVE PROVISIONS.**

12 (a) COOPERATIVE AGREEMENTS.—The Secretary
13 may enter into a cooperative agreement with the Secretary
14 of Agriculture, or the head of any State department of
15 agriculture or other State agency that regulates plant nu-
16 trients, to carry out this title, including cooperating in the
17 enforcement of this title through the use of personnel or
18 facilities.

19 (b) DELEGATION.—

20 (1) IN GENERAL.—The Secretary may delegate
21 to a State the authority to assist the Secretary in
22 the administration and enforcement of this title.

23 (2) DELEGATION REQUIRED.—On the request
24 of a Governor of a State, the Secretary shall dele-
25 gate to the State the authority to carry out section

1 204 or 205, on a determination by the Secretary
2 that the State is capable of satisfactorily carrying
3 out that section.

4 (3) FUNDING.—If the Secretary enters into an
5 agreement with a State under this subsection to del-
6 egate functions to the State, the Secretary shall pro-
7 vide to the State adequate funds to enable the State
8 to carry out the functions.

9 (4) INAPPLICABILITY.—Notwithstanding any
10 other provision of this subsection, this subsection
11 does not authorize a State to carry out a function
12 under section 204 or 205 relating to a facility or
13 handler in the State that makes the election de-
14 scribed in section 204(c)(2).

15 **SEC. 207. CIVIL LIABILITY.**

16 (a) UNLAWFUL ACTS.—It is unlawful for any per-
17 son—

18 (1) to fail to perform any duty required by this
19 title;

20 (2) to violate the terms of registration under
21 this title;

22 (3) to fail to keep any record, make any report,
23 or allow any inspection required by this title; or

24 (4) to violate any sale or distribution order
25 issued under this title.

1 (b) PENALTIES.—

2 (1) IN GENERAL.—A person that violates this
3 title may only be assessed a civil penalty by the Sec-
4 retary of not more than \$50,000 per violation.

5 (2) NOTICE AND OPPORTUNITY FOR A HEAR-
6 ING.—No civil penalty shall be assessed under this
7 title unless the person charged has been given notice
8 and opportunity for a hearing on the charge in the
9 county, parish, or incorporated city of residence of
10 the person charged.

11 (c) JURISDICTION OVER ACTIONS FOR CIVIL DAM-
12 AGES.—The district courts of the United States shall have
13 exclusive jurisdiction over any action for civil damages
14 against a handler for any harm or damage that is alleged
15 to have resulted from the use of ammonium nitrate in vio-
16 lation of law that occurred on or after the date of enact-
17 ment of this title.

18 **SEC. 208. STATE LAW PREEMPTION.**

19 This title preempts any State law that regulates the
20 handling of ammonium nitrate to prevent the misappro-
21 priation or use of ammonium nitrate in an act of ter-
22 rorism.

○