

**AMENDMENT TO SENATE AMENDMENT
TO H.R. 3082**

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Full-Year Continuing
3 Appropriations Act, 2011”.

4 SEC. 2. TABLE OF CONTENTS.

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

DIVISION A—FULL-YEAR CONTINUING APPROPRIATIONS

TITLE I—GENERAL PROVISIONS

TITLE II—ADJUSTMENTS IN FUNDING AND OTHER PROVISIONS

DIVISION B—SURFACE TRANSPORTATION EXTENSION

DIVISION C—AIRPORT AND AIRWAY EXTENSION

DIVISION D—FOOD SAFETY

6 SEC. 3. REFERENCES.

7 Except as expressly provided otherwise, any reference
8 to “this Act” contained in any division of this Act shall
9 be treated as referring only to the provisions of that divi-
10 sion.

**11 DIVISION A—FULL-YEAR
12 CONTINUING APPROPRIATIONS**

13 The following sums are hereby appropriated, out of
14 any money in the Treasury not otherwise appropriated,

1 and out of applicable corporate or other revenues, receipts,
2 and funds, for the several departments, agencies, corpora-
3 tions, and other organizational units of Government for
4 fiscal year 2011, and for other purposes, namely:

5 TITLE I—GENERAL PROVISIONS

6 SEC. 1101. (a) Such amounts as may be necessary,
7 at the level specified in subsection (c) and under the au-
8 thority and conditions provided in applicable appropria-
9 tions Acts for fiscal year 2010, for projects or activities
10 (including the costs of direct loans and loan guarantees)
11 that are not otherwise specifically provided for, and for
12 which appropriations, funds, or other authority were made
13 available in the following appropriations Acts:

14 (1) The Agriculture, Rural Development, Food
15 and Drug Administration, and Related Agencies Ap-
16 propriations Act, 2010 (Public Law 111–80).

17 (2) Division A of the Department of Defense
18 Appropriations Act, 2010 (division A of Public Law
19 111–118).

20 (3) The Energy and Water Development and
21 Related Agencies Appropriations Act, 2010 (Public
22 Law 111–85).

23 (4) The Department of Homeland Security Ap-
24 propriations Act, 2010 (Public Law 111–83) and

1 section 601 of the Supplemental Appropriations Act,
2 2010 (Public Law 111–212).

3 (5) The Department of the Interior, Environ-
4 ment, and Related Agencies Appropriations Act,
5 2010 (division A of Public Law 111–88).

6 (6) The Legislative Branch Appropriations Act,
7 2010 (division A of Public Law 111–68).

8 (7) The Consolidated Appropriations Act, 2010
9 (Public Law 111–117).

10 (8) Chapter 3 of title I of the Supplemental Ap-
11 propriations Act, 2010 (Public Law 111–212), ex-
12 cept for appropriations under the heading “Oper-
13 ation and Maintenance” relating to Haiti following
14 the earthquake of January 12, 2010, or the Port of
15 Guam: *Provided*, That the amount provided for the
16 Department of Defense pursuant to this paragraph
17 shall not exceed \$29,387,401,000: *Provided further*,
18 That the Secretary of Defense shall allocate such
19 amount to each appropriation account, budget activ-
20 ity, activity group, and subactivity group, and to
21 each program, project, and activity within each ap-
22 propriation account, in the same proportions as such
23 appropriations for fiscal year 2010.

24 (b) For purposes of this Act, the term “level” means
25 an amount.

1 (c) The level referred to in subsection (a) shall be
2 the amounts appropriated in the appropriations Acts re-
3 ferred to in such subsection, including transfers and obli-
4 gation limitations, except that—

5 (1) such level shall not include any amount pre-
6 viously designated (other than amounts in section
7 1101(a)(8)) as an emergency requirement and nec-
8 essary to meet emergency needs pursuant to sections
9 403(a) and 423(b) of S. Con. Res. 13 (111th Con-
10 gress), the concurrent resolution on the budget for
11 fiscal year 2010; and

12 (2) such level shall be calculated without regard
13 to any rescission or cancellation of funds or contract
14 authority.

15 SEC. 1102. Appropriations made by section 1101
16 shall be available to the extent and in the manner that
17 would be provided by the pertinent appropriations Act.

18 SEC. 1103. Appropriations provided by this Act that,
19 in the applicable appropriations Act for fiscal year 2010,
20 carried a multiple-year or no-year period of availability
21 shall retain a comparable period of availability.

22 SEC. 1104. Except as otherwise expressly provided in
23 this Act, the requirements, authorities, conditions, limita-
24 tions, and other provisions of the appropriations Acts re-

1 ferred to in section 1101(a) shall continue in effect
2 through the date specified in section 1106.

3 SEC. 1105. No appropriation or funds made available
4 or authority granted pursuant to section 1101 shall be
5 used to initiate or resume any project or activity for which
6 appropriations, funds, or other authority were specifically
7 prohibited during fiscal year 2010.

8 SEC. 1106. Unless otherwise provided for in this Act
9 or in the applicable appropriations Act, appropriations and
10 funds made available and authority granted pursuant to
11 this Act shall be available through September 30, 2011.

12 SEC. 1107. Expenditures made pursuant to the Con-
13 tinuing Appropriations Act, 2011 (Public Law 111-242),
14 shall be charged to the applicable appropriation, fund, or
15 authorization provided by this Act.

16 SEC. 1108. Funds appropriated by this Act may be
17 obligated and expended notwithstanding section 10 of
18 Public Law 91-672 (22 U.S.C. 2412), section 15 of the
19 State Department Basic Authorities Act of 1956 (22
20 U.S.C. 2680), section 313 of the Foreign Relations Au-
21 thorization Act, Fiscal Years 1994 and 1995 (22 U.S.C.
22 6212), and section 504(a)(1) of the National Security Act
23 of 1947 (50 U.S.C. 414(a)(1)).

24 SEC. 1109. (a) With respect to any discretionary ac-
25 count for which advance appropriations were provided for

1 fiscal year 2011 or 2012 in an appropriations Act for fis-
2 cal year 2010, in addition to amounts otherwise made
3 available by this Act, advance appropriations are provided
4 in the same amount for fiscal year 2012 or 2013, respec-
5 tively, with a comparable period of availability.

6 (b) In addition to amounts provided by subsection
7 (a), an additional amount is provided for the following ac-
8 counts in the amounts specified:

9 (1) “Department of Veterans Affairs, Medical
10 Services”, \$2,513,985,000, which shall become avail-
11 able on October 1, 2011, and shall remain available
12 until September 30, 2012.

13 (2) “Department of Veterans Affairs, Medical
14 Support and Compliance”, \$228,000,000, which
15 shall become available on October 1, 2011, and shall
16 remain available until September 30, 2012.

17 (c) Notwithstanding subsection (a), amounts are pro-
18 vided for “Department of Veterans Affairs, Medical Fa-
19 cilities” in the amount of \$5,426,000,000, which shall be-
20 come available on October 1, 2011, and shall remain avail-
21 able until September 30, 2012.

22 SEC. 1110. (a) For entitlements and other mandatory
23 payments whose budget authority was provided in appro-
24 priations Acts for fiscal year 2010, and for activities under
25 the Food and Nutrition Act of 2008, the levels established

1 by section 1101 shall be the amounts necessary to main-
2 tain program levels under current law.

3 (b) In addition to the amounts otherwise provided by
4 section 1101, the following amounts shall be available for
5 the following accounts for advance payments for the first
6 quarter of fiscal year 2012:

7 (1) “Department of Labor, Employment Stand-
8 ards Administration, Special Benefits for Disabled
9 Coal Miners”, for benefit payments under title IV of
10 the Federal Mine Safety and Health Act of 1977,
11 \$41,000,000, to remain available until expended.

12 (2) “Department of Health and Human Serv-
13 ices, Centers for Medicare and Medicaid Services,
14 Grants to States for Medicaid”, for payments to
15 States or in the case of section 1928 on behalf of
16 States under title XIX of the Social Security Act,
17 \$86,445,289,000, to remain available until ex-
18 pended.

19 (3) “Department of Health and Human Serv-
20 ices, Administration for Children and Families, Pay-
21 ments to States for Child Support Enforcement and
22 Family Support Programs”, for payments to States
23 or other non-Federal entities under titles I, IV–D,
24 X, XI, XIV, and XVI of the Social Security Act and

1 the Act of July 5, 1960 (24 U.S.C. ch. 9),
2 \$1,200,000,000, to remain available until expended.

3 (4) “Department of Health and Human Serv-
4 ices, Administration for Children and Families, Pay-
5 ments to States for Foster Care and Permanency”,
6 for payments to States or other non-Federal entities
7 under title IV–E of the Social Security Act,
8 \$1,850,000,000.

9 (5) “Social Security Administration, Supple-
10 mental Security Income Program”, for benefit pay-
11 ments under title XVI of the Social Security Act,
12 \$13,400,000,000, to remain available until ex-
13 pended.

14 SEC. 1111. The following amounts are designated as
15 an emergency requirement and necessary to meet emer-
16 gency needs pursuant to sections 403(a) and 423(b) of
17 S. Con. Res. 13 (111th Congress), the concurrent resolu-
18 tion on the budget for fiscal year 2010:

19 (1) Amounts incorporated by reference in this
20 Act that were previously designated as available for
21 overseas deployments and other activities pursuant
22 to such concurrent resolution.

23 (2) Amounts made available pursuant to para-
24 graph (8) of section 1101(a) of this Act.

1 SEC. 1112. Any language specifying an earmark in
2 an appropriations Act for fiscal year 2010, or in a com-
3 mittee report or joint explanatory statement accom-
4 panying such an Act, shall have no legal effect with re-
5 spect to funds appropriated by this Act. For purposes of
6 this section, the term “earmark” means a congressional
7 earmark or congressionally directed spending item, as de-
8 fined in clause 9(e) of rule XXI of the Rules of the House
9 of Representatives and paragraph 5(a) of rule XLIV of
10 the Standing Rules of the Senate.

11 SEC. 1113. (a) Notwithstanding section 1101, user
12 fees for “Securities and Exchange Commission, Salaries
13 and Expenses” shall be available for obligation in the
14 amount of \$1,250,000,000: *Provided*, That the authority
15 provided in this subsection shall be deemed a regular ap-
16 propriation for purposes of section 6(b) of the Securities
17 Act of 1933 (15 U.S.C. 77f(b)) and sections 13(e), 14(g),
18 and 31 of the Securities Exchange Act of 1934 (15 U.S.C.
19 78m(e), 78n(g), and 78ee).

20 (b) Notwithstanding section 1101, the Federal Com-
21 munications Commission is authorized to assess and col-
22 lect pursuant to section 9 of title I of the Communications
23 Act of 1934 offsetting collections during fiscal year 2011
24 of \$350,634,000, and such amounts shall be available for
25 obligation until expended, of which not less than

1 \$8,279,115 shall be for the salaries and expenses of the
2 Office of Inspector General.

3 SEC. 1114. (a) For the purposes of this section—

4 (1) the term “employee”—

5 (A) means an employee as defined in sec-
6 tion 2105 of title 5, United States Code; and

7 (B) includes an individual to whom sub-
8 section (b), (c), or (f) of such section 2105 per-
9 tains (whether or not such individual satisfies
10 subparagraph (A));

11 (2) the term “senior executive” means—

12 (A) a member of the Senior Executive
13 Service under subchapter VIII of chapter 53 of
14 title 5, United States Code;

15 (B) a member of the FBI–DEA Senior
16 Executive Service under subchapter III of chap-
17 ter 31 of title 5, United States Code;

18 (C) a member of the Senior Foreign Serv-
19 ice under chapter 4 of title I of the Foreign
20 Service Act of 1980 (22 U.S.C. 3961 and fol-
21 lowing); and

22 (D) a member of any similar senior execu-
23 tive service in an Executive agency;

24 (3) the term “senior-level employee” means an
25 employee who holds a position in an Executive agen-

1 cy and who is covered by section 5376 of title 5,
2 United States Code, or any similar authority; and

3 (4) the term “Executive agency” has the mean-
4 ing given such term by section 105 of title 5, United
5 States Code.

6 (b)(1) Notwithstanding any other provision of law,
7 except as provided in subsection (e), no statutory pay ad-
8 justment which (but for this subsection) would otherwise
9 take effect during the period beginning on January 1,
10 2011, and ending on December 31, 2012, shall be made.

11 (2) For purposes of this subsection, the term “statu-
12 tory pay adjustment” means—

13 (A) an adjustment required under section 5303,
14 5304, 5304a, 5318, or 5343(a) of title 5, United
15 States Code; and

16 (B) any similar adjustment, required by stat-
17 ute, with respect to employees in an Executive agen-
18 cy.

19 (c) Notwithstanding any other provision of law, ex-
20 cept as provided in subsection (e), during the period begin-
21 ning on January 1, 2011, and ending on December 31,
22 2012, no senior executive or senior-level employee may re-
23 ceive an increase in his or her rate of basic pay absent
24 a change of position that results in a substantial increase
25 in responsibility, or a promotion.

1 (d) The President may issue guidance that Executive
2 agencies shall apply in the implementation of this section.

3 (e) The Non-Foreign Area Retirement Equity Assur-
4 ance Act of 2009 (5 U.S.C. 5304 note) shall be applied
5 using the appropriate locality-based comparability pay-
6 ments established by the President as the applicable com-
7 parability payments in section 1914(2) and (3) of such
8 Act.

9 SEC. 1115. (a) Amounts made available by this Act
10 shall be available for transfer by the head of the agency
11 to the extent necessary to avoid furloughs or reductions
12 in force, or to provide funding necessary for programs and
13 activities required by law: *Provided*, That such transfers
14 may not result in the termination of programs, projects
15 or activities: *Provided further*, That such transfers shall
16 be subject to the approval of the House and Senate Appro-
17 priations Committees.

18 (b) The authorities provided by subsection (a) of this
19 section shall be in addition to any other transfer authority
20 provided elsewhere in this statute.

21 SEC. 1116. None of the funds made available in this
22 or any prior Act may be used to transfer, release, or assist
23 in the transfer or release to or within the United States,
24 its territories, or possessions Khalid Sheikh Mohammed
25 or any other detainee who—

1 (1) is not a United States citizen or a member
2 of the Armed Forces of the United States; and

3 (2) is or was held on or after June 24, 2009,
4 at the United States Naval Station, Guantanamo
5 Bay, Cuba, by the Department of Defense.

6 SEC. 1117. None of the funds appropriated or other-
7 wise made available by this Act may be obligated by any
8 covered executive agency in contravention of the certifi-
9 cation requirement of section 6(b) of the Iran Sanctions
10 Act of 1996, as included in the revisions to the Federal
11 Acquisition Regulation pursuant to such section.

12 TITLE II—ADJUSTMENTS IN FUNDING AND

13 OTHER PROVISIONS

14 CHAPTER 1—AGRICULTURE, RURAL DEVELOP-

15 MENT, FOOD AND DRUG ADMINISTRATION,

16 AND RELATED AGENCIES

17 SEC. 2101. Notwithstanding section 1101, the level
18 for each of the following accounts shall be as follows: “Ag-
19 ricultural Programs, Agricultural Research Service, Build-
20 ings and Facilities,” \$0; “Agricultural Programs, Agricul-
21 tural Marketing Service, Marketing Services”,
22 \$126,148,000; “Agricultural Programs, Grain Inspection,
23 Packers and Stockyards Administration, Limitation on In-
24 spection and Weighing Services Expenses”, \$50,000,000;
25 “Conservation Programs, Natural Resources Conservation

1 Service, Watershed and Flood Prevention Operations”,
2 \$0; “Rural Development Programs, Rural Housing Serv-
3 ice, Rental Assistance Program”, \$971,593,000; “Domes-
4 tic Food Programs, Food and Nutrition Service, Special
5 Supplemental Nutrition Program for Women, Infants, and
6 Children (WIC)”, \$6,773,372,000; “Domestic Food Pro-
7 grams, Food and Nutrition Service, Nutrition Programs
8 Administration”, \$150,801,000; “Foreign Assistance and
9 Related Programs, Foreign Agricultural Service, Salaries
10 and Expenses”, \$187,801,000; and “Related Agencies and
11 Food and Drug Administration, Independent Agencies,
12 Farm Credit Administration, Limitation on Administra-
13 tive Expenses”, \$59,400,000.

14 SEC. 2102. Notwithstanding section 1101, the level
15 for “Agricultural Programs, Agriculture Buildings and
16 Facilities and Rental Payments” shall be \$260,051,000,
17 of which \$178,470,000 shall be available for payments to
18 the General Services Administration for rent; of which
19 \$13,800,000 shall be for payment to the Department of
20 Homeland Security for building security activities; and of
21 which \$67,781,000 shall be for buildings operations and
22 maintenance expenses.

23 SEC. 2103. The amounts included under the heading
24 “Agricultural Programs, National Institute of Food and
25 Agriculture, Research and Education Activities” in Public

1 Law 111–80 shall be applied to funds appropriated by this
2 division as follows: by substituting “\$317,884,000” for
3 “\$215,000,000”; by substituting “\$34,816,000” for
4 “\$29,000,000”; by substituting “\$51,000,000” for
5 “\$48,500,000”; by substituting “\$268,957,000” for
6 “\$262,482,000”; by substituting “\$2,844,000” for
7 “\$89,029,000”; by substituting “\$2,173,000” for
8 “\$1,805,000”; by substituting “\$9,699,000” for
9 “\$9,237,000”; by substituting “\$19,100,000” for
10 “\$18,250,000”; by substituting “\$4,009,000” for
11 “\$3,342,000”; by substituting “\$3,232,000” for
12 “\$3,200,000”; and by substituting “\$11,253,000” for
13 “\$45,122,000”.

14 SEC. 2104. The amounts included under the heading
15 “Agricultural Programs, National Institute of Food and
16 Agriculture, Extension Activities” in Public Law 111–80
17 shall be applied to funds appropriated by this division as
18 follows: by substituting “\$306,227,000” for
19 “\$297,500,000”; by substituting “\$43,838,000” for
20 “\$42,677,000”; by substituting “\$69,131,000” for
21 “\$68,070,000”; by substituting “\$3,755,000” for
22 “\$3,045,000”; by substituting “\$19,886,000” for
23 “\$19,770,000”; by substituting “\$4,377,000” for
24 “\$4,321,000”; and by substituting “\$8,565,000” for
25 “\$20,396,000”.

1 SEC. 2105. The amounts included under the heading
2 “Agricultural Programs, Animal and Plant Health Inspec-
3 tion Services, Salaries and Expenses” in Public Law 111-
4 80 shall be applied to funds appropriated by this division
5 by substituting “\$45,219,000” for “\$60,243,000”.

6 SEC. 2106. In addition to amounts otherwise appro-
7 priated or made available by this Act, \$31,875,000 is ap-
8 propriated to the Secretary of Agriculture for the costs
9 of loan and loan guarantees under the heading “Agricul-
10 tural Programs, Farm Service Agency, Agricultural Credit
11 Insurance Fund Program Account” to ensure that the fis-
12 cal year 2010 program levels for such loan and loan guar-
13 antee programs are maintained for fiscal year 2011.
14 Funds appropriated by this Act to such heading for farm
15 ownership, operating and conservation direct loans and
16 guaranteed loans may be transferred among these pro-
17 grams. The Secretary of Agriculture shall notify the Com-
18 mittees on Appropriations of the House of Representatives
19 and Senate at least 15 days in advance of any transfer.

20 SEC. 2107. Notwithstanding section 1101, the level
21 for each of the following accounts under the heading
22 “Rural Development Programs” shall be as follows:
23 “Rural Housing Service, Rural Housing Insurance Fund
24 Program Account”, \$582,409,000; “Rural Housing Serv-
25 ice, Farm Labor Program Account”, \$20,358,000; “Rural

1 Housing Service, Rural Community Facilities Program
2 Account”, \$56,579,000; “Rural Business-Cooperative
3 Service, Rural Development Loan Fund Program Ac-
4 count”, \$17,879,000; “Rural Utilities Service, Rural
5 Water and Waste Disposal Program Account”,
6 \$579,361,000; “Rural Utilities Service, Rural Electrifica-
7 tion and Telecommunications Loans Program Account”,
8 \$40,659,000; and “Rural Utilities Service, Distance
9 Learning, Telemedicine, and Broadband Program”,
10 \$78,051,000: *Provided*, That these funds are appropriated
11 to the Secretary of Agriculture to ensure that the fiscal
12 year 2010 program levels for such loan and loan guarantee
13 programs are maintained for fiscal year 2011: *Provided*
14 *further*, That the amount provided in this Act for grants
15 and administrative expenses under these accounts shall re-
16 main unchanged from fiscal year 2010.

17 SEC. 2108. Notwithstanding section 1101, the level
18 for “Domestic Food Programs, Food and Nutrition Serv-
19 ice, Child Nutrition Programs” shall be \$17,319,981,000,
20 to remain available through September 30, 2012, for nec-
21 essary expenses to carry out the Richard B. Russell Na-
22 tional School Lunch Act (42 U.S.C. 1751 et seq.), except
23 section 21, and the Child Nutrition Act of 1966 (42
24 U.S.C. 1771 et seq.), except sections 17 and 21; of which
25 such sums as are made available under section

1 14222(b)(1) of the Food, Conservation, and Energy Act
2 of 2008 (Public Law 110–246), as amended by this Act,
3 shall be merged with and available for the same time pe-
4 riod and purposes as provided herein: *Provided*, That of
5 the total amount available, \$5,000,000 shall be available
6 to be awarded as competitive grants to implement section
7 4405 of the Food, Conservation, and Energy Act of 2008
8 (Public Law 110–246), and may be awarded notwith-
9 standing the limitations imposed by sections
10 4405(b)(1)(A) and 4405(c)(1)(A): *Provided further*, That
11 section 14222(b)(1) of the Food, Conservation, and En-
12 ergy Act of 2008 is amended by adding at the end before
13 the period, “except section 21, and the Child Nutrition
14 Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17
15 and 21”.

16 SEC. 2109. Notwithstanding section 1101, the level
17 for “Domestic Food Programs, Food and Nutrition Serv-
18 ice, Commodity Assistance Program”, shall be
19 \$253,358,000, of which \$176,788,000 shall be for the
20 Commodity Supplemental Food Program.

21 SEC. 2110. Notwithstanding section 1101, the level
22 for “Related Agencies and Food and Drug Administra-
23 tion, Food and Drug Administration, Salaries and Ex-
24 penses” shall be \$3,707,611,000: *Provided*, That of the
25 amount provided under this heading, \$667,057,000 shall

1 be derived from prescription drug user fees authorized by
2 section 736 of the Federal Food, Drug, and Cosmetic Act
3 (21 U.S.C. 379h), shall be credited to this account and
4 remain available until expended, and shall not include any
5 fees pursuant to paragraphs (2) and (3) of section 736(a)
6 of such Act (21 U.S.C. 379h(a)(2) and (a)(3)) assessed
7 for fiscal year 2012 but collected in fiscal year 2011;
8 \$61,860,000 shall be derived from medical device user fees
9 authorized by section 738 of such Act (21 U.S.C. 379j),
10 and shall be credited to this account and remain available
11 until expended; \$19,448,000 shall be derived from animal
12 drug user fees authorized by section 740 of such Act (21
13 U.S.C. 379j-12), and shall be credited to this account and
14 remain available until expended; \$5,397,000 shall be de-
15 rived from animal generic drug user fees authorized by
16 section 741 of such Act (21 U.S.C. 379j-21), and shall
17 be credited to this account and shall remain available until
18 expended; and \$450,000,000 shall be derived from tobacco
19 product user fees authorized by section 919 of such Act
20 (21 U.S.C. 387s) and shall be credited to this account and
21 remain available until expended: *Provided further*, That in
22 addition and notwithstanding any other provision under
23 this heading, amounts collected for prescription drug user
24 fees that exceed the fiscal year 2011 limitation are appro-
25 priated and shall be credited to this account and remain

1 available until expended: *Provided further*, That fees de-
2 rived from prescription drug, medical device, animal drug,
3 animal generic drug, and tobacco product assessments for
4 fiscal year 2011 received during fiscal year 2011, includ-
5 ing any such fees assessed prior to fiscal year 2011 but
6 credited for fiscal year 2011, shall be subject to the fiscal
7 year 2011 limitations: *Provided further*, That none of
8 these funds shall be used to develop, establish, or operate
9 any program of user fees authorized by 31 U.S.C. 9701:
10 *Provided further*, That of the total amount appropriated
11 under this heading: (1) \$856,383,000 shall be for the Cen-
12 ter for Food Safety and Applied Nutrition and related
13 field activities in the Office of Regulatory Affairs; (2)
14 \$963,311,000 shall be for the Center for Drug Evaluation
15 and Research and related field activities in the Office of
16 Regulatory Affairs; (3) \$328,234,000 shall be for the Cen-
17 ter for Biologics Evaluation and Research and for related
18 field activities in the Office of Regulatory Affairs; (4)
19 \$162,946,000 shall be for the Center for Veterinary Medi-
20 cine and for related field activities in the Office of Regu-
21 latory Affairs; (5) \$362,491,000 shall be for the Center
22 for Devices and Radiological Health and for related field
23 activities in the Office of Regulatory Affairs; (6)
24 \$60,975,000 shall be for the National Center for Toxi-
25 cological Research; (7) \$421,463,000 shall be for the Cen-

1 ter for Tobacco Products and for related field activities
2 in the Office of Regulatory Affairs; (8) not to exceed
3 \$141,724,000 shall be for Rent and Related activities, of
4 which \$41,951,000 is for White Oak Consolidation, other
5 than the amounts paid to the General Services Adminis-
6 tration for rent; (9) not to exceed \$185,983,000 shall be
7 for payments to the General Services Administration for
8 rent; and (10) \$224,101,000 shall be for other activities,
9 including the Office of the Commissioner of Food and
10 Drugs; the Office of Foods; the Office of the Chief Sci-
11 entist; the Office of Policy, Planning and Budget; the Of-
12 fice of International Programs; the Office of Administra-
13 tion; and central services for these offices: *Provided fur-*
14 *ther*, That none of the funds made available under this
15 heading shall be used to transfer funds under section
16 770(n) of the Federal Food, Drug, and Cosmetic Act (21
17 U.S.C. 379dd): *Provided further*, That not to exceed
18 \$25,000 of the amount provided under this heading shall
19 be for official reception and representation expenses, not
20 otherwise provided for, as determined by the Commis-
21 sioner: *Provided further*, That funds may be transferred
22 from one specified activity to another with the prior ap-
23 proval of the Committees on Appropriations of both
24 Houses of Congress.

1 SEC. 2111. Notwithstanding any other provision of
2 this Act, the following set-asides included in Public Law
3 111–80 for “Congressionally Designated Projects” in the
4 following accounts for the corresponding amounts shall
5 not apply to funds appropriated by this Act:

6 (1) “Agricultural Programs, Agricultural Re-
7 search Service, Salaries and Expenses”,
8 \$44,138,000.

9 (2) “Agricultural Programs, National Institute
10 of Food and Agriculture, Research and Education
11 Activities”, \$120,054,000.

12 (3) “Agricultural Programs, National Institute
13 of Food and Agriculture, Extension Activities”,
14 \$11,831,000.

15 (4) “Agricultural Programs, Animal and Plant
16 Health Inspection Service, Salaries and Expenses”,
17 \$24,410,000.

18 (5) “Conservation Programs, Natural Re-
19 sources Conservation Service, Conservation Oper-
20 ations”, \$37,382,000.

21 SEC. 2112. Notwithstanding any other provision of
22 this Act, the following provisions included in Public Law
23 111–80 shall not apply to funds appropriated by this Act:

1 (1) The first proviso under the heading “Agri-
2 cultural Programs, Agriculture Buildings and Facili-
3 ties and Rental Payments”.

4 (2) The second proviso under the heading
5 “Conservation Programs, Natural Resources Con-
6 servation Service, Conservation Operations”.

7 (3) The set-aside of \$2,800,000 under the
8 heading “Rural Development Programs, Rural Busi-
9 ness—Cooperative Service, Rural Cooperative Devel-
10 opment Grants”.

11 (4) The second proviso under the heading
12 “Rural Development Programs, Rural Utilities Serv-
13 ice, Rural Water and Waste Disposal Account”.

14 (5) The first proviso under the heading “Do-
15 mestic Food Programs, Food and Nutrition Service,
16 Commodity Assistance Program”.

17 (6) The first proviso under the heading “For-
18 eign Assistance and Related Programs, Foreign Ag-
19 ricultural Service, McGovern-Dole International
20 Food for Education and Child Nutrition Program
21 Grants”.

22 SEC. 2113. The following sections of title VII of Pub-
23 lic Law 111–80 shall be applied to funds appropriated by
24 this division by substituting \$0 for the dollar amounts in-

1 cluded in those sections: section 718, section 723, section
2 727, section 728, and section 738.

3 SEC. 2114. The following sections of title VII of Pub-
4 lic Law 111–80 shall not apply for fiscal year 2011: sec-
5 tion 716, section 724, section 726, section 729, section
6 735, and section 748.

7 SEC. 2115. The following sections of title VII of Pub-
8 lic Law 111–80 that authorized or required certain actions
9 have been performed before the date of the enactment of
10 this division and need not reoccur: section 737, section
11 740, section 747, and section 749.

12 SEC. 2116. Appropriations to the Department of Ag-
13 riculture made available in fiscal year 2005 to carry out
14 section 601 of the Rural Electrification Act of 1936 (7
15 U.S.C. 950bb) for the cost of direct loans shall remain
16 available until expended to disburse valid obligations made
17 in fiscal years 2005 and 2006.

18 SEC. 2117. In the case of each program established
19 or amended by the Food, Conservation, and Energy Act
20 of 2008 (Public Law 110–246), other than by title I or
21 subtitle A of title III of such Act, or programs for which
22 indefinite amounts were provided in that Act that is au-
23 thorized or required to be carried out using funds of the
24 Commodity Credit Corporation (1) such funds shall be
25 available for salaries and related administrative expenses,

1 including technical assistance, associated with the imple-
2 mentation of the program, without regard to the limitation
3 on the total amount of allotments and fund transfers con-
4 tained in section 11 of the Commodity Credit Corporation
5 Charter Act (15 U.S.C. 714i); and (2) the use of such
6 funds for such purpose shall not be considered to be a
7 fund transfer or allotment for purposes of applying the
8 limitation on the total amount of allotments and fund
9 transfers contained in such section.

10 SEC. 2118. With respect to any loan or loan guar-
11 antee program administered by the Secretary of Agri-
12 culture that has a negative credit subsidy score for fiscal
13 year 2011, the program level for the loan or loan guar-
14 antee program, for the purposes of the Federal Credit Re-
15 form Act of 1990, shall be the program level established
16 pursuant to such Act for fiscal year 2010.

17 SEC. 2119. Notwithstanding section 1101, section
18 102(e) of chapter 1 of title I of the Supplemental Appro-
19 priations Act, 2010 (Public Law 111–212) that addresses
20 guaranteed loans in the rural housing insurance fund shall
21 remain in effect through the date specified in section
22 1106.

23 SEC. 2120. In paragraph (1) of section 721 of Public
24 Law 111–80, strike “\$1,180,000,000” and insert
25 “\$1,318,000,000”.

1 SEC. 2121. The following provisions of Public Law
2 111–80 shall be applied to funds appropriated by this divi-
3 sion by substituting “2010”, “2011” and “2012” for the
4 terms “2009”, “2010”, and “2011”, respectively, in each
5 instance that such terms appear:

6 (1) The second paragraph under the heading
7 “Agricultural Programs, Animal and Plant Health
8 Inspection Service, Salaries and Expenses”.

9 (2) The second proviso under the heading “Ag-
10 ricultural Programs, Food Safety and Inspection
11 Service”.

12 (3) The first proviso in the second paragraph
13 under the heading “Rural Development Programs,
14 Rural Housing Service, Rural Housing Insurance
15 Fund Program Account”.

16 (4) The fifth proviso under the heading “Rural
17 Development Programs, Rural Housing Service,
18 Rental Assistance Program”.

19 (5) The proviso under the heading “Rural De-
20 velopment Programs, Rural Housing Service, Mutual
21 and Self-Help Housing Grants”.

22 (6) The first proviso under the heading “Rural
23 Development Programs, Rural Housing Service,
24 Rural Housing Assistance Grants”.

1 (7) The seventh proviso under the heading
2 “Rural Development Programs, Rural Housing Serv-
3 ice, Rural Community Facilities Program Account”.

4 (8) The third proviso under the heading “Rural
5 Development Programs, Rural Business—Coopera-
6 tive Service, Rural Business Program Account”.

7 (9) The four availability of funds clauses under
8 the heading “Rural Development Programs, Rural
9 Business—Cooperative Service, Rural Development
10 Loan Fund Program Account”.

11 (10) The fifth proviso under the heading
12 “Rural Development Programs, Rural Utilities Serv-
13 ice, Rural Water and Waste Disposal Program Ac-
14 count”.

15 (11) Sections 713, 717, and 746.

16 SEC. 2122. Notwithstanding section 1101, the level
17 for “Commodity Futures Trading Commission” shall be
18 \$261,000,000, to remain available until September 30,
19 2012.

20 SEC. 2123. The proviso under the heading “Com-
21 modity Futures Trading Commission” in Public Law 111-
22 80 shall not apply to funds appropriated by this Act.

1 CHAPTER 2—COMMERCE, JUSTICE, SCIENCE,
2 AND RELATED AGENCIES

3 SEC. 2201. Notwithstanding section 1101, the level
4 for each of the following accounts shall be as follows: “De-
5 partment of Commerce, Bureau of the Census, Periodic
6 Censuses and Programs”, \$964,315,000; “Department of
7 Commerce, National Telecommunications and Information
8 Administration, Salaries and Expenses”, \$40,649,000;
9 “Department of Commerce, National Institute of Stand-
10 ards and Technology, Construction of Research Facili-
11 ties”, \$124,800,000; “Department of Commerce, National
12 Oceanic and Atmospheric Administration, Procurement,
13 Acquisition and Construction”, \$1,772,353,000; “Depart-
14 ment of Justice, General Administration, Detention Trust-
15 ee”, \$1,533,863,000; “Department of Justice, Legal Ac-
16 tivities, Salaries and Expenses, United States Attorneys”,
17 \$1,944,610,000; “Department of Justice, Federal Bureau
18 of Investigation, Salaries and Expenses”, \$7,703,387,000;
19 “Department of Justice, Federal Bureau of Investigation,
20 Construction”, \$107,310,000; “Department of Justice,
21 Drug Enforcement Administration, Salaries and Ex-
22 penses”, \$2,030,488,000; “Department of Justice, Bu-
23 reau of Alcohol, Tobacco, Firearms and Explosives, Sala-
24 ries and Expenses”, \$1,126,587,000; “Department of
25 Justice, Bureau of Alcohol, Tobacco, Firearms and Explo-

1 sives, Construction”, \$0; “Department of Justice, Federal
2 Prison System, Salaries and Expenses”, \$6,472,726,000;
3 and “Department of Justice, Federal Prison System,
4 Buildings and Facilities”, \$194,155,000.

5 SEC. 2202. Notwithstanding section 1101, the level
6 for “Department of Commerce, United States Patent and
7 Trademark Office, Salaries and Expenses” shall be
8 \$2,262,000,000, to remain available until expended: *Pro-*
9 *vided*, That the sum herein appropriated from the general
10 fund shall be reduced as offsetting collections assessed and
11 collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41
12 and 376 are received during fiscal year 2011, so as to re-
13 sult in a fiscal year 2011 appropriation from the general
14 fund estimated at \$0: *Provided further*, That during fiscal
15 year 2011, should the total amount of offsetting fee collec-
16 tions, and the surcharge provided herein, be less than
17 \$2,262,000,000, this amount shall be reduced accordingly:
18 *Provided further*, That any amount received in excess of
19 \$2,262,000,000 in fiscal year 2011, in an amount up to
20 \$200,000,000, shall remain available until expended: *Pro-*
21 *vided further*, That there shall be a surcharge of 15 per-
22 cent, rounded by standard arithmetic rules, on fees
23 charged or authorized by subsections (a), (b), and (d)(1)
24 of section 41 of title 35, United States Code, as adminis-
25 tered under Public Law 108–447 and this Act, and on

1 fees charged or authorized by section 132(b) of title 35,
2 United States Code: *Provided further*, That the surcharge
3 established under the previous proviso shall be separate
4 from, and in addition to, any other surcharge that may
5 be required pursuant to any provision of title 35, United
6 States Code: *Provided further*, That the surcharge estab-
7 lished in the previous 2 provisions shall take effect on the
8 date that is 10 days after the date of enactment of this
9 Act, and shall remain in effect during fiscal year 2011:
10 *Provided further*, That the receipts collected as a result
11 of these surcharges shall be available, within the amounts
12 provided herein, to the United States Patent and Trade-
13 mark Office without fiscal year limitation, for all author-
14 ized activities and operations of the Office: *Provided fur-*
15 *ther*, That within the amounts appropriated, \$1,000,000
16 shall be transferred to “Department of Commerce, De-
17 partmental Management, Office of Inspector General” for
18 activities associated with carrying out investigations and
19 audits related to the United States Patent and Trademark
20 Office.

21 SEC. 2203. Notwithstanding section 1101, the level
22 for “Department of Justice, Community Oriented Policing
23 Services” shall be \$597,500,000: *Provided*, That the
24 amounts included under that heading in division B of Pub-
25 lic Law 111–117 shall be applied in the same manner to

1 funds appropriated by this Act, except that
2 “\$15,000,000” shall be substituted for “\$40,385,000”,
3 “\$0” shall be substituted for “\$25,385,000”,
4 “\$1,500,000” shall be substituted for “\$170,223,000”,
5 and “\$0” shall be substituted for “\$168,723,000”.

6 SEC. 2204. Notwithstanding section 1101, the level
7 for “Department of Justice, Office of Justice Programs,
8 State and Local Law Enforcement Assistance” shall be
9 \$1,349,500,000: *Provided*, That the amounts included
10 under that heading in division B of Public Law 111–117
11 shall be applied in the same manner to funds appropriated
12 by this Act, except that “\$0” shall be substituted for
13 “\$185,268,000”.

14 SEC. 2205. Notwithstanding section 1101, the level
15 for “Department of Justice, Office of Justice Programs,
16 Juvenile Justice Programs” shall be \$332,500,000: *Pro-*
17 *vided*, That the amounts included under that heading in
18 division B of Public Law 111–117 shall be applied in the
19 same manner to funds appropriated by this Act, except
20 that “\$0” shall be substituted for “\$91,095,000”.

21 SEC. 2206. Notwithstanding section 1101, the level
22 for the following accounts of the National Aeronautics and
23 Space Administration shall be as follows: “Science”,
24 \$5,005,600,000; “Exploration”, \$3,706,000,000; “Space
25 Operations”, \$5,247,900,000; “Aeronautics”,

1 \$1,138,600,000; “Education”, \$180,000,000; “Cross
2 Agency Support”, \$3,085,700,000; “Construction and En-
3 vironmental Compliance and Remediation”,
4 \$528,700,000, of which \$20,000,000 shall be derived from
5 available unobligated balances previously appropriated for
6 construction of facilities; and “Office of Inspector Gen-
7 eral”, \$37,500,000: *Provided*, That within the funds pro-
8 vided for “Space Operations”, not less than \$989,100,000
9 shall be for Space Shuttle operations, production, re-
10 search, development, and support, \$2,745,000,000 shall
11 be for International Space Station operations, production,
12 research, development, and support, \$688,800,000 shall
13 be for Space and Flight Support, and \$825,000,000 shall
14 be for additional Space Shuttle costs, launch complex de-
15 velopment only for activities at the Kennedy Space Center
16 related to the civil, nondefense launch complex, use at
17 other National Aeronautics and Space Administration
18 flight facilities that are currently scheduled to launch
19 cargo to the International Space Station, and development
20 of ground operations for the heavy lift launch vehicle and
21 the Orion multipurpose crew vehicle: *Provided further*,
22 That within the funds provided for “Aeronautics”,
23 \$579,600,000 shall be for aeronautics research and devel-
24 opment activities, and \$559,000,000 shall be for space
25 technology activities proposed for “Aeronautics” and ex-

1 ploration technology and demonstration program activities
2 proposed for “Exploration” in the National Aeronautics
3 and Space Administration congressional justification that
4 accompanied the President’s Fiscal Year 2011 budget:
5 *Provided further*, That within the funds provided for “Ex-
6 ploration”, not less than \$1,200,000,000 shall be for the
7 Orion multipurpose crew vehicle, not less than
8 \$250,000,000 shall be for commercial crew, not less than
9 \$300,000,000 shall be for commercial cargo development,
10 and not less than \$1,800,000,000 shall be for the heavy
11 lift launch vehicle system: *Provided further*, That the ini-
12 tial lift capability for the heavy lift launch vehicle system
13 shall be not less than 130 tons and that the upper stage
14 and other core elements shall be simultaneously developed:
15 *Provided further*, That the provisos limiting the use of
16 funds under the heading “National Aeronautics and Space
17 Administration, Exploration” in division B of Public Law
18 111–117 shall not apply to funds appropriated by this Act:
19 *Provided further*, That within the funds provided for
20 “Construction and Environmental Compliance and
21 Remediation”, \$40,500,000 shall be available to support
22 science research and development activities; \$109,800,000
23 shall be available to support exploration research and de-
24 velopment activities; \$15,600,000 shall be available to
25 support space operations research and development activi-

1 ties; \$300,700,000 shall be available for institutional con-
2 struction of facilities; and \$62,100,00 shall be available
3 for environmental compliance and remediation: *Provided*
4 *further*, That of funds provided under the headings “Space
5 Operations” and “Exploration” in this Act, up to
6 \$60,000,000 may be transferred to “Department of Com-
7 merce, Economic Development Administration, Economic
8 Development Assistance Programs” to spur regional eco-
9 nomic growth in areas impacted by Shuttle retirement and
10 Exploration programmatic changes: *Provided further*,
11 That following the retirement of the space shuttle orbiters,
12 the National Aeronautics and Space Administration shall
13 bear any costs that normally would be associated with
14 surplusing the orbiters, including taking hazardous orbiter
15 systems offline, and any shuttle recipient other than the
16 Smithsonian Institution shall bear costs for transportation
17 and for preparing the surplus orbiter for display: *Pro-*
18 *vided further*, That should the Administrator determine
19 that the Smithsonian Institution is an appropriate venue
20 for an orbiter, such orbiter shall be made available to the
21 Smithsonian at no or nominal cost: *Provided further*, That
22 any funds received by the National Aeronautics and Space
23 Administration as a result of the disposition of any orbiter
24 shall be available only as provided in subsequent appro-
25 priations Acts: *Provided further*, That funds made avail-

1 able for “Space Operations” in excess of those specified
2 for Space Shuttle, International Space Station, and Space
3 and Flight support may be transferred to “Construction
4 and Environmental Compliance and Remediation” for con-
5 struction activities only at National Aeronautics and
6 Space Administration owned facilities: *Provided further*,
7 That funds so transferred shall not be subject to section
8 505(a)(1) of division B of Public Law 111–117 or to the
9 transfer limitations for the National Aeronautics and
10 Space Administration described in the Administrative Pro-
11 visions of that Act, and shall be available until September
12 30, 2015, only after notification of such transfers to the
13 House and Senate Committees on Appropriations.

14 SEC. 2207. Of the funds made available for “Depart-
15 ment of Commerce, Bureau of the Census, Periodic Cen-
16 suses and Programs” in division B of Public Law 111–
17 117, \$1,740,000,000 is rescinded.

18 SEC. 2208. Section 529 of division B of Public Law
19 111–117 shall not apply to this Act.

20 SEC. 2209. The Departments of Commerce and Jus-
21 tice, the National Aeronautics and Space Administration,
22 and the National Science Foundation are directed to sub-
23 mit spending plans, signed by the respective department
24 or agency head, to the House and Senate Committees on
25 Appropriations within 60 days of enactment of this Act.

1 SEC. 2210. None of the funds provided to the Depart-
2 ment of Justice in this or any prior Act shall be available
3 for the acquisition of any facility that is to be used wholly
4 or in part for the incarceration or detention of any indi-
5 vidual detained at Naval Station, Guantanamo Bay, Cuba,
6 as of June 24, 2009.

7 SEC. 2211. Notwithstanding any other provision of
8 this Act, the following set-asides included in division B
9 of Public Law 111–117 for projects specified in the ex-
10 planatory statement accompanying that Act in the fol-
11 lowing accounts for the corresponding amounts shall not
12 apply to funds appropriated by this Act: (1) “Department
13 of Commerce, International Trade Administration, Oper-
14 ations and Administration”, \$5,215,000; (2) “Department
15 of Commerce, Minority Business Development Agency,
16 Minority Business Development”, \$1,100,000; (3) “De-
17 partment of Commerce, National Institute of Standards
18 and Technology, Scientific and Technical Research and
19 Services”, \$10,500,000; (4) “Department of Commerce,
20 National Institute of Standards and Technology, Con-
21 struction of Research Facilities”, \$47,000,000; (5) “De-
22 partment of Commerce, National Oceanic and Atmos-
23 pheric Administration, Operations, Research and Facili-
24 ties”, \$99,295,000; (6) “Department of Commerce, Na-
25 tional Oceanic and Atmospheric Administration, Procure-

1 ment, Acquisition and Construction”, \$18,000,000; and
2 (7) “National Aeronautics and Space Administration,
3 Cross Agency Support”, \$63,000,000.

4 SEC. 2212. Of the unobligated balances available to
5 “Department of Justice, Legal Activities, Assets For-
6 feiture Fund”, \$500,000,000 is hereby rescinded.

7 CHAPTER 3—DEFENSE

8 SEC. 2301. Notwithstanding section 1101 of this Act,
9 the level for the “Defense Health Program” shall be
10 \$32,097,203,000; of which \$30,952,369,000 shall be for
11 operation and maintenance, of which not to exceed 2 per-
12 cent shall remain available until September 30, 2012, and
13 of which up to \$16,212,121,000 may be available for con-
14 tracts entered into under the TRICARE program; of
15 which \$519,921,000, to remain available for obligation
16 until September 30, 2013, shall be for procurement; and
17 of which \$624,913,000, to remain available for obligation
18 until September 30, 2012, shall be for research, develop-
19 ment, test and evaluation.

20 SEC. 2302. Amounts provided by section 1101 of this
21 Act for “Defense Health Program, Department of De-
22 fense” shall be available: (1) for the purposes provided
23 under section 1704 of the National Defense Authorization
24 Act for Fiscal Year 2010 (Public Law 111–84), (2) for
25 transfer to the Joint Department of Defense-Department

1 of Veterans Affairs Medical Facility Demonstration Fund
2 under such section 1704, and (3) for operations of the
3 integrated Captain James A. Lovell Federal Health Care
4 Center, consisting of the North Chicago Veterans Affairs
5 Medical Center, and Navy Ambulatory Care Center, and
6 supporting facilities designated as a combined federal
7 medical facility as described by section 706 of the Duncan
8 Hunter National Defense Authorization Act for Fiscal
9 Year 2009 (Public Law 110–417).

10 SEC. 2303. (a) The authority provided by section
11 1202 of the National Defense Authorization Act for Fiscal
12 Year 2006 (Public Law 109–163), as amended by section
13 1222 of the National Defense Authorization Act for Fiscal
14 Year 2010 (Public Law 111–84; 123 Stat. 2518), and the
15 authority provided by section 1222(e) of the National De-
16 fense Authorization Act for Fiscal Year 2010 (Public Law
17 111–84), shall continue in effect through the date speci-
18 fied in section 1106 of this Act.

19 (b) Notwithstanding section 1101 of this Act, the
20 level available for the “Commander’s Emergency Response
21 Program” shall be \$500,000,000: *Provided*, That projects
22 (including ancillary or related elements in connection with
23 each project) executed under this authority shall not ex-
24 ceed \$20,000,000: *Provided further*, That the Secretary of
25 Defense shall notify the congressional defense committees

1 in writing of any project with a total anticipated cost for
2 completion of \$5,000,000 not less than 15 days prior to
3 obligating funds.

4 SEC. 2304. The authority provided by section 1234
5 of the National Defense Authorization Act for Fiscal Year
6 2010 (Public Law 111–84; 123 Stat. 2532) shall continue
7 in effect through the earlier of the date of enactment of
8 the National Defense Authorization Act for Fiscal Year
9 2011 or December 31, 2011.

10 SEC. 2305. The authority provided by section 1224
11 of the National Defense Authorization Act for Fiscal Year
12 2010 (Public Law 111–84; 123 Stat. 2521) shall continue
13 in effect through the earlier of the date of enactment of
14 the National Defense Authorization Act for Fiscal Year
15 2011 or December 31, 2011.

16 SEC. 2306. Notwithstanding any other provision of
17 law, of the amount provided to the Department of Defense
18 by section 1101 of this Act for “Operation and Mainte-
19 nance”, up to \$75,000,000 may be obligated and expended
20 for purposes of building the capacity of Yemeni Ministry
21 of Interior forces to conduct counterterrorism operations,
22 subject to the direction and control of the Secretary of
23 Defense, with the concurrence of the Secretary of State:
24 *Provided*, That the Secretary of Defense shall, not fewer
25 than 15 days prior to providing assistance under this sec-

1 tion, submit to the congressional defense committees a no-
2 tice setting forth the assistance to be provided, including
3 the types of such assistance, the budget for such assist-
4 ance, and the completion date for the provision of such
5 assistance.

6 SEC. 2307. All funds provided by section 1101 of this
7 Act for the “Joint Improvised Explosive Device Defeat
8 Fund” may be used for staff and infrastructure costs.

9 SEC. 2308. The authority provided by section 1014
10 of the Duncan Hunter National Defense Authorization
11 Act for Fiscal Year 2009 (Public Law 110–417), shall
12 continue in effect through the earlier of the date of enact-
13 ment of the National Defense Authorization Act for Fiscal
14 Year 2011 or December 31, 2011.

15 SEC. 2309. Section 8905a(d)(4)(B) of title 5, United
16 States Code, is amended—

17 (1) in clause (i), by striking “October 1, 2010”
18 and inserting “December 31, 2011”; and

19 (2) in clause (ii)—

20 (A) by striking “February 1, 2011” and
21 inserting “February 1, 2012”; and

22 (B) by striking “October 1, 2010” and in-
23 serting “December 31, 2011”.

24 SEC. 2310. There is hereby established in the Treas-
25 ury of the United States the “Afghanistan Infrastructure

1 Fund”. Of the funds made available in section 1101 of
2 this Act, \$400,000,000 is available for the “Afghanistan
3 Infrastructure Fund”, to remain available until September
4 30, 2012: *Provided*, That such sums shall be available for
5 infrastructure projects in Afghanistan, notwithstanding
6 any other provision of law, which shall be undertaken by
7 the Secretary of State, unless the Secretary of State and
8 the Secretary of Defense jointly decide that a specific
9 project will be undertaken by the Department of Defense:
10 *Provided further*, That the infrastructure referred to in the
11 preceding proviso is in support of the counterinsurgency
12 strategy, requiring funding for facility and infrastructure
13 projects, including water, power, and transportation
14 projects and related maintenance and sustainment costs:
15 *Provided further*, That the authority to undertake such in-
16 frastructure projects is in addition to any other authority
17 to provide assistance to foreign nations: *Provided further*,
18 That any projects funded by this appropriation shall be
19 jointly formulated and concurred in by the Secretary of
20 State and Secretary of Defense: *Provided further*, That
21 funds may be transferred to the Department of State for
22 purposes of undertaking projects, which funds shall be
23 considered to be economic assistance under the Foreign
24 Assistance Act of 1961 for purposes of making available
25 the administrative authorities contained in that Act: *Pro-*

1 *vided further*, That the transfer authority in the preceding
2 proviso is in addition to any other authority available to
3 the Department of Defense to transfer funds: *Provided*
4 *further*, That any unexpended funds transferred to the
5 Secretary of State under this authority shall be returned
6 to the Afghanistan Infrastructure Fund if the Secretary
7 of State, in coordination with the Secretary of Defense,
8 determines that the project cannot be implemented for any
9 reason, or that the project no longer supports the
10 counterinsurgency strategy in Afghanistan: *Provided fur-*
11 *ther*, That any funds returned to the Secretary of Defense
12 under the previous proviso shall be available for use under
13 this section and shall be treated in the same manner as
14 funds not transferred to the Secretary of State: *Provided*
15 *further*, That contributions of funds for the purposes pro-
16 vided herein to the Secretary of State in accordance with
17 section 635(d) of the Foreign Assistance Act from any
18 person, foreign government, or international organization
19 may be credited to such Fund, to remain available until
20 expended, and used for such purposes: *Provided further*,
21 That not later than 45 days after the end of each fiscal
22 quarter, the Inspector General of the Department of State
23 or the Inspector General of the United States Agency for
24 International Development, as appropriate, shall provide
25 to the appropriate committees of Congress an assessment

1 in writing of whether the funds provided herein to the De-
2 partment of State or the United States Agency for Inter-
3 national Development are being used in the intended man-
4 ner: *Provided further*, That the Secretary of Defense shall,
5 not fewer than 15 days prior to making transfers to or
6 from, or obligations from, the Fund, notify the appro-
7 priate committees of Congress in writing of the details of
8 any such transfer: *Provided further*, That the “appropriate
9 committees of Congress” are the Committees on Armed
10 Services, Foreign Relations, and Appropriations of the
11 Senate and the Committees on Armed Services, Foreign
12 Affairs, and Appropriations of the House of Representa-
13 tives.

14 SEC. 2311. The authority provided by section 1021
15 of the Ronald W. Reagan National Defense Authorization
16 Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat.
17 2042), as amended by section 1011 of the National De-
18 fense Authorization Act for Fiscal Year 2010 (Public Law
19 111–84; 123 Stat. 2441), shall continue in effect through
20 the earlier of the date of enactment of the National De-
21 fense Authorization Act for Fiscal Year 2011 or the date
22 specified in section 1106 of this Act.

23 SEC. 2312. The authority provided by section 1022
24 of the National Defense Authorization Act for Fiscal Year
25 2004 (Public Law 108–136; 10 U.S.C. 371 note), as

1 amended by section 1012 of the National Defense Author-
2 ization Act for Fiscal Year 2010 (Public Law 111–84; 123
3 Stat. 2441), shall continue in effect through the earlier
4 of the date of enactment of the National Defense Author-
5 ization Act for Fiscal Year 2011 or the date specified in
6 section 1106 of this Act.

7 SEC. 2313. The authority provided by section 1033
8 of the National Defense Authorization Act for Fiscal Year
9 1998 (Public Law 105–85), as amended by section 1014
10 of the National Defense Authorization Act for Fiscal Year
11 2010 (Public Law 111–84; 123 Stat. 2442), shall continue
12 in effect through the earlier of the date of enactment of
13 the National Defense Authorization Act for Fiscal Year
14 2011 or the date specified in section 1106 of this Act.

15 SEC. 2314. The Secretary of the Navy may award
16 a contract or contracts for up to 20 Littoral Combat Ships
17 subject to the availability of appropriated funds for such
18 purpose.

19 SEC. 2315. In addition to amounts otherwise made
20 available by this Act, \$2,770,300,000, is hereby appro-
21 priated for title I of division A of the Department of De-
22 fense Appropriations Act, 2010 (division A of Public Law
23 111–118).

24 SEC. 2316. The authority provided by sections 611,
25 612, 613, 614, 615, and 616 of the National Defense Au-

1 thORIZATION Act for Fiscal Year 2010 (Public Law 111–
2 84) shall continue in effect through the earlier of the date
3 of enactment of the National Defense Authorization Act
4 for Fiscal Year 2011 or December 31, 2011.

5 SEC. 2317. The authority provided by section 631 of
6 the National Defense Authorization Act for Fiscal Year
7 2008 (Public Law 110–181) shall continue in effect
8 through the earlier of the date of enactment of the Na-
9 tional Defense Authorization Act for Fiscal Year 2011 or
10 December 31, 2011.

11 SEC. 2318. Notwithstanding subsection (b) of section
12 310 of the Supplemental Appropriations Act, 2009 (Public
13 Law 111–32; 123 Stat. 1870), a claim described in that
14 subsection that is submitted before the date specified in
15 section 1106 of this Act shall be treated as a claim for
16 which payment may be made under such section 310.

17 SEC. 2319. The authority provided by section 1071
18 of the National Defense Authorization Act for Fiscal Year
19 2010 (Public Law 111–84) shall continue in effect
20 through the earlier of the date of enactment of the Na-
21 tional Defense Authorization Act for Fiscal Year 2011 or
22 December 31, 2011.

23 SEC. 2320. The authority provided by section 931 of
24 the National Defense Authorization Act for Fiscal Year
25 2007 (Public Law 109–364) shall continue in effect

1 through the earlier of the date of enactment of the Na-
2 tional Defense Authorization Act for Fiscal Year 2011 or
3 December 31, 2011.

4 SEC. 2321. The authority provided by section 1106
5 of the National Defense Authorization Act for Fiscal Year
6 2010 (Public Law 111–84) shall continue in effect
7 through the earlier of the date of enactment of the Na-
8 tional Defense Authorization Act for Fiscal Year 2011 or
9 December 31, 2011.

10 SEC. 2322. (a) EXTENSION OF WAIVER.—Paragraph
11 (1) of section 941(b) of the Duncan Hunter National De-
12 fense Authorization Act for Fiscal Year 2009 (Public Law
13 110–417; 122 Stat. 4577; 10 U.S.C. 184 note) is amended
14 by striking “fiscal years 2009 and 2010” and inserting
15 “fiscal years 2009 through 2011.”

16 (b) ANNUAL REPORT.—Paragraph (3) of such sec-
17 tion 941(b) is amended by striking “in 2010 and 2011”
18 and inserting “in each year through 2012.”

19 SEC. 2323. Notwithstanding section 1101 of this Act,
20 sections 8006, 8076, and 8101 of the Department of De-
21 fense Appropriations Act, 2010 (division A of Public Law
22 111–118), shall not be applicable during the current fiscal
23 year.

24 SEC. 2324. Notwithstanding any other provision of
25 law, during fiscal year 2011, not more than \$150,000,000

1 of the funds made available for overseas contingency oper-
2 ations operation and maintenance may be obligated and
3 expended for purposes of the Task Force for Business and
4 Stability Operations, subject to the direction and control
5 of the Secretary of Defense, with concurrence of the Sec-
6 retary of State, to carry out strategic business and eco-
7 nomic assistance activities in support of Operation Endur-
8 ing Freedom: *Provided*, That the Secretary of Defense
9 shall, not fewer than 15 days prior to the use of the au-
10 thority provided in this section, submit to the congres-
11 sional defense committees a notice setting forth the
12 projects to be initiated, including the budget and the com-
13 pletion date for each project.

14 SEC. 2325. Subsection (a) of section 2808 of the Mili-
15 tary Construction Authorization Act for Fiscal Year 2004
16 (division B of Public Law 108–136; 117 Stat. 1723), as
17 amended by section 2806 of the Military Construction Au-
18 thorization Act for Fiscal Year 2010 (division B of Public
19 Law 111–84; 123 Stat. 2660), shall continue in effect
20 through the date specified in section 1106 of this Act.

21 SEC. 2326. Of the amounts made available to the De-
22 partment of Defense in section 1101 of this Act, the Sec-
23 retary of Defense shall provide \$205,000,000 to the gov-
24 ernment of Israel for the procurement of the Iron Dome
25 defense system to counter short-range rocket threats.

1 SEC. 2327. (a) None of the amounts made available
2 and no authority provided pursuant to section 1101 of this
3 Act to the Department of Defense shall be used for—

4 (1) the new production of items not funded for
5 production in fiscal year 2010 or prior years;

6 (2) the increase in production rates or levels of
7 effort above those sustained with amounts made
8 available for fiscal year 2010; or

9 (3) the initiation, resumption, or continuation
10 of any project, activity, operation, or organization
11 (defined as any project, subproject, activity, budget
12 activity, program element, and subprogram within
13 an O–1 line, R–1 program element and P–1 line
14 item in a budget activity within an appropriation ac-
15 count) for which appropriations, funds, or other au-
16 thority were not available during fiscal year 2010 ex-
17 cept as approved and described in subsection (b).

18 (b) The Secretary of Defense, with the approval of
19 the Director of the Office of Management and Budget,
20 may make a single transfer request to realign funds for
21 execution in fiscal year 2011, to include new starts, in-
22 creases in production or levels of effort, and other realign-
23 ments to meet military requirements for which funds were
24 not provided for during fiscal year 2010. The transfer of
25 funds for such purposes shall be accomplished using the

1 procedures established in section 8005 of the Department
2 of Defense Appropriations Act, 2010 (division A of Public
3 Law 111–118), by not later than 60 days after the date
4 of enactment of this Act: *Provided*, That with the excep-
5 tion of funding provided in title I of the Department of
6 Defense Appropriations Act, 2010 and for the “Defense
7 Health Program” in section 2301 of this Act, and section
8 2332 of this Act, the program base from which realign-
9 ments are proposed shall be the allocations as prescribed
10 in section 1101 of this Act: *Provided further*, That trans-
11 fers made in the realignment reprogramming shall not be
12 taken into account for purposes of the limitation on the
13 amount of funds that may be transferred under section
14 8005 of the Department of Defense Appropriation Act,
15 2010 (division A of Public Law 111–118).

16 (c) Subsequent to a transfer under subsection (b), the
17 Secretary of Defense shall submit to the congressional de-
18 fense committees reports on the baseline for application
19 of reprogramming and transfer authorities for fiscal year
20 2011 as provided in section 8007 of the Department of
21 Defense Appropriations Act, 2010 (division A of Public
22 Law 111–118).

23 SEC. 2328. None of the amounts appropriated or au-
24 thorities granted pursuant to section 1101 of this Act for
25 the National Intelligence Program shall be used for new

1 projects or sub-projects for which funds were not provided
2 for in fiscal year 2010 or for increases in level of effort
3 for previously funded projects or sub-projects above the
4 fiscal year 2010 funded level unless the congressional in-
5 telligence committees are notified in accordance with the
6 regular reprogramming procedures.

7 SEC. 2329. Of the funds available in section 1101 of
8 this Act, \$250,000,000 is hereby appropriated for “Oper-
9 ation and Maintenance, Defense-Wide”, to be available
10 until expended: *Provided*, That such funds shall only be
11 available to the Secretary of Defense, acting through the
12 Office of Economic Adjustment of the Department of De-
13 fense, or for transfer to the Secretary of Education, not-
14 withstanding any other provision of law, to make grants,
15 conclude cooperative agreements, or supplement other fed-
16 eral funds to construct, renovate, repair, or expand ele-
17 mentary and secondary public schools on military installa-
18 tions in order to address capacity or facility condition defi-
19 ciencies at such schools: *Provided further*, That in making
20 such funds available, the Office of Economic Adjustment
21 or the Secretary of Education shall give priority consider-
22 ation to those military installations with schools having
23 the most serious capacity or facility condition deficiencies,
24 as determined by the Secretary of Defense.

1 SEC. 2330. Of the amounts provided to the Depart-
2 ment of Defense in section 1101 of this Act for operation
3 and maintenance, \$300,000,000, shall be for “Operation
4 and Maintenance, Defense-Wide”, to remain available
5 until expended. Such funds may be available for the Office
6 of Economic Adjustment, notwithstanding any other pro-
7 vision of law, for transportation infrastructure improve-
8 ments associated with medical facilities related to rec-
9 ommendations of the Defense Base Closure and Realign-
10 ment Commission.

11 SEC. 2331. None of the amounts appropriated or oth-
12 erwise made available or authorities provided pursuant to
13 section 1101 of this Act for the Department of Defense
14 shall be used to initiate multi-year procurements.

15 SEC. 2332. In addition to amounts otherwise made
16 available by this Act, \$2,000,000 is appropriated for the
17 National Commission for the Review of the Research and
18 Development Programs of the United States Intelligence
19 Community.

20 SEC. 2333. For purposes of section 8089 of division
21 A of the Department of Defense Appropriations Act, 2010
22 (division A of Public Law 111–118), any funds trans-
23 ferred shall retain the same period of availability as when
24 originally appropriated.

1 SEC. 2334. (a) The amount provided by section 1101
2 of this Act for title II of division A of the Department
3 of Defense Appropriations Act, 2010 (division A of Public
4 Law 111–118) is hereby reduced to reflect excess cash bal-
5 ances in Department of Defense Working Capital Funds,
6 as follows: From “Operation and Maintenance, Army”,
7 \$483,000,000.

8 (b) Of the funds appropriated in Department of De-
9 fense Appropriations Acts, the following funds are hereby
10 rescinded from the following accounts and programs in the
11 specified amounts:

12 (1) “Aircraft Procurement, Navy, 2010/2012”,
13 \$168,000,000;

14 (2) “Aircraft Procurement, Air Force, 2010/
15 2012”, \$136,000,000; and

16 (3) “Research, Development, Test and Evalua-
17 tion, Air Force 2010/2011”, \$182,000,000.

18 CHAPTER 4—ENERGY AND WATER
19 DEVELOPMENT, AND RELATED AGENCIES

20 SEC. 2401. Sections 106, 107, 109 through 125, 203,
21 205 through 211, and 314 of the Energy Water and De-
22 velopment and Related Agencies Appropriations Act, 2010
23 (Public Law 111–85) shall not apply to funds appro-
24 priated in this Act.

1 SEC. 2402. The Secretary of the Army, acting
2 through the Chief of Engineers, may waive the limitation
3 concerning total project costs in section 902 of the Water
4 Resources Development Act of 1986 (33 U.S.C. 2280), if
5 such limitation would be exceeded during fiscal year 2011
6 for any project that receives funds provided in this Act.

7 SEC. 2403. Notwithstanding section 1101, the level
8 for “Corps of Engineers, Civil, Construction” shall be
9 \$1,837,000,000.

10 SEC. 2404. All of the provisos under the heading
11 “Corps of Engineers, Civil, Construction” in Public Law
12 111–85 shall not apply to funds appropriated in this Act.

13 SEC. 2405. The proviso under the heading “Corps of
14 Engineers, Civil, Mississippi River and Tributaries” in
15 Public Law 111–85 shall not apply to funds appropriated
16 in this Act.

17 SEC. 2406. The authority provided by section 126 of
18 Public Law 111–85, which continues in effect through the
19 date specified in section 1106 of this Act, shall include
20 the authority to undertake such modifications or emer-
21 gency measures as the Secretary of the Army determines
22 to be appropriate to prevent aquatic nuisance species from
23 dispersing into the Great Lakes by way of any hydrologic
24 connection between the Great Lakes and the Mississippi
25 River.

1 SEC. 2407. The last four provisos under the heading
2 “Department of the Interior, Bureau of Reclamation,
3 Water and Related Resources” in Public Law 111–85
4 shall not apply to funds appropriated in this Act.

5 SEC. 2408. Notwithstanding section 1101, the level
6 for each of the following accounts under the heading “De-
7 partment of Energy, Energy Programs” shall be as fol-
8 lows: “Advanced Technology Vehicles Manufacturing
9 Loan Program”, \$9,998,000; “Office of the Inspector
10 General”, \$42,850,000; “Electricity Delivery and Energy
11 Reliability”, \$158,982,000; “Nuclear Energy”,
12 \$768,637,000; and “Strategic Petroleum Reserve”,
13 \$209,861,000.

14 SEC. 2409. The first proviso under the heading “De-
15 partment of Energy, Energy Programs, Science” in title
16 III of the Energy and Water Development Appropriations
17 Act, 2010 (Public Law 111–85) shall not apply to funds
18 appropriated in this Act.

19 SEC. 2410. Up to a total of \$300,000,000 of funds
20 provided by section 1101 for “Department of Energy, En-
21 ergy Programs, Energy Efficiency and Renewable En-
22 ergy” and “Department of Energy, Energy Programs,
23 Science” may be transferred by the Secretary of Energy
24 to “Advanced Research Projects Agency—Energy”: *Pro-*
25 *vided*, That of the funds transferred, the Director of the

1 Advanced Research Projects Agency—Energy shall have
2 the authority to fix basic pay and payments in addition
3 to basic pay without regard to the civil service laws, pro-
4 vided that aggregate pay does not exceed the Vice Presi-
5 dent’s salary as specified in 3 U.S.C. 104.

6 SEC. 2411. Notwithstanding section 1101, subject to
7 section 502 of the Congressional Budget Act of 1974,
8 amounts necessary to support commitments to guarantee
9 loans under title XVII of the Energy Policy Act of 2005,
10 not to exceed a total principal amount of
11 \$10,000,000,000, to remain available until committed:
12 *Provided*, That of such amount \$7,000,000,000 is for nu-
13 clear power facilities and \$3,000,000,000 is for fossil en-
14 ergy technologies: *Provided further*, That these amounts
15 are in addition to authorities provided in any other Act:
16 *Provided further*, That for amounts collected pursuant to
17 section 1702(b)(2) of the Energy Policy Act of 2005, the
18 source of such payment received from borrowers may not
19 be a loan or other debt obligation that is guaranteed by
20 the Federal Government: *Provided further*, That pursuant
21 to section 1702(b)(2) of the Energy Policy Act of 2005,
22 no appropriations are available to pay the subsidy cost of
23 such guarantees for nuclear power facilities or fossil en-
24 ergy technologies: *Provided further*, That none of the loan
25 guarantee authority made available in this Act shall be

1 available for commitments to guarantee loans for any
2 projects with respect to which funds, personnel, or prop-
3 erty (tangible or intangible) of any Federal agency, instru-
4 mentality, personnel, or affiliated entity are expected to
5 be used (directly or indirectly) through acquisitions, con-
6 tracts, demonstrations, exchanges, grants, incentives,
7 leases, procurements, sales, other transaction authority, or
8 other arrangements, to support the project or to obtain
9 goods or services from the project: *Provided further*, That
10 the previous proviso shall not be interpreted as precluding
11 the use of the loan guarantee authority in this Act for
12 commitments to guarantee loans for (1) projects as a re-
13 sult of such projects benefitting from otherwise allowable
14 Federal income tax benefits; (2) projects as a result of
15 such projects benefitting from being located on Federal
16 land pursuant to a lease or right-of-way agreement for
17 which all consideration for all uses is (A) paid exclusively
18 in cash, (B) deposited in the Treasury as offsetting re-
19 ceipts, and (C) equal to the fair market value as deter-
20 mined by the head of the relevant Federal agency; (3)
21 projects as a result of such projects benefitting from Fed-
22 eral insurance programs, including under section 170 of
23 the Atomic Energy Act of 1954 (42 U.S.C. 2210; com-
24 monly known as the “Price-Anderson Act”); or (4) electric
25 generation projects using transmission facilities owned or

1 operated by a Federal Power Marketing Administration
2 or the Tennessee Valley Authority that have been author-
3 ized, approved, and financed independent of the project
4 receiving the guarantee: *Provided further*, That none of the
5 loan guarantee authority made available in this Act shall
6 be available for any project unless the Director of the Of-
7 fice of Management and Budget has certified in advance
8 in writing that the loan guarantee and the project comply
9 with the provisos under this section: *Provided further*,
10 That in addition to amounts otherwise made available by
11 this Act, \$306,000,000 is appropriated, to remain avail-
12 able until expended, for the cost of loan guarantees for
13 projects that employ: (1) new or significantly improved
14 technologies of renewable energy systems or efficient end-
15 use energy technologies under section 1703 of the Energy
16 Policy Act of 2005; or (2) notwithstanding section
17 1703(a)(2), commercial technologies of renewable energy
18 systems, efficient end-use energy technologies, or leading
19 edge biofuel projects: *Provided further*, That of the author-
20 ity provided for commitments to guarantee loans under
21 “Department of Energy, Energy Programs, Title 17 Inno-
22 vative Technology Loan Guarantee Program” in title III
23 of division C of Public Law 111–8 and title III of division
24 C of Public Law 110–161, \$18,000,000,000 is rescinded:
25 *Provided further*, That an additional amount for necessary

1 administrative expenses to carry out this Loan Guarantee
2 program, \$58,000,000 is appropriated, to remain available
3 until expended: *Provided further*, That \$58,000,000 of the
4 fees collected pursuant to section 1702(h) of the Energy
5 Policy Act of 2005 shall be credited as offsetting collec-
6 tions to this account to cover administrative expenses and
7 shall remain available until expended, so as to result in
8 a final fiscal year 2011 appropriations from the general
9 fund estimated at not more than \$0: *Provided further*,
10 That fees collected under such section 1702(h) in excess
11 of the amount appropriated for administrative expenses
12 shall not be available until appropriated.

13 SEC. 2412. Notwithstanding section 1101, the level
14 for “Atomic Energy Defense Activities, National Nuclear
15 Security Administration, Weapons Activities” shall be
16 \$7,008,835,000: *Provided*, That \$624,000,000 of such
17 amount shall be available only upon the Senate giving its
18 advice and consent to the ratification of the Treaty be-
19 tween the United States of America and the Russian Fed-
20 eration on Measures for the Further Reduction and Limi-
21 tation of Strategic Offensive Arms (commonly known as
22 the “New START Treaty”).

23 SEC. 2413. All of the provisos under the heading
24 “Atomic Energy Defense Activities, National Nuclear Se-
25 curity Administration, Weapons Activities” in title III of

1 the Energy and Water Development Appropriations Act,
2 2010 (Public Law 111–85) shall not apply to funds appro-
3 priated in this Act.

4 SEC. 2414. Notwithstanding section 1101, the level
5 for “Atomic Energy Defense Activities, National Nuclear
6 Security Administration, Defense Nuclear Nonprolifera-
7 tion” shall be \$2,575,000,000.

8 SEC. 2415. The first proviso under the heading
9 “Atomic Energy Defense Activities, National Nuclear Se-
10 curity Administration, Office of the Administrator” in title
11 III of the Energy and Water Development Appropriations
12 Act, 2010 (Public Law 111–85) shall not apply to funds
13 appropriated in this Act.

14 SEC. 2416. Notwithstanding section 1101, the level
15 for “Department of Energy, Environmental and Other
16 Defense Activities, Defense Environmental Cleanup” shall
17 be \$5,263,031,000, of which \$33,700,000 shall be trans-
18 ferred to the “Uranium Enrichment Decontamination and
19 Decommissioning Fund”.

20 SEC. 2417. (a) Notwithstanding any other provision
21 of law, no funds appropriated in this or any other Act
22 may be used in fiscal year 2011 to transfer, sell, barter,
23 distribute, or otherwise provide more than 3,300,000
24 pounds of natural uranium equivalent of uranium in any
25 form from the Department of Energy’s inventory.

1 (b) Any transfer, sale, barter, distribution, or other
2 provision of uranium in any form under subsection (a)
3 shall be carried out consistent with the Department of En-
4 ergy's Excess Uranium Inventory Management Plan,
5 dated December 16, 2008.

6 (c) The prohibition in subsection (a) shall not apply
7 to the transfer, sale, barter, distribution, or other provi-
8 sion of uranium in any form for use in initial reactor
9 cores.

10 (d) Not less than 30 days prior to the transfer, sale,
11 barter, distribution, or other provision of uranium in any
12 form in accordance with this section, the Secretary of En-
13 ergy shall notify the Committees on Appropriations of the
14 House of Representatives and the Senate. Such notifica-
15 tion shall include the following information:

16 (1) The amount of uranium to be transferred,
17 sold, bartered, distributed, or otherwise provided.

18 (2) The estimated market value of the uranium.

19 (3) The expected date of the transfer, sale, bar-
20 ter, distribution, or provision of the uranium.

21 (4) The recipient of uranium.

22 SEC. 2418. Notwithstanding section 1105, no appro-
23 priation, funds, or authority made available pursuant to
24 section 1101 for the Department of Energy shall be used
25 to initiate or resume any project or activity or to initiate

1 Requests For Proposals or similar arrangements (includ-
2 ing Requests for Quotations, Requests for Information,
3 and Funding Opportunity Announcements) for a program
4 or activity if the program or activity has not been funded
5 by Congress, unless prior approval is received from the
6 Committees on Appropriations of the House of Represent-
7 atives and the Senate.

8 SEC. 2419. During the period specified in section
9 1106 of this Act, section 15751(b) of title 40, United
10 States Code, shall not apply to the Northern Border Re-
11 gional Commission.

12 SEC. 2420. Within 30 days of enactment of this Act,
13 the Department of Energy, Corps of Engineers, Civil, and
14 Bureau of Reclamation shall submit to the Committees on
15 Appropriations of the House of Representatives and the
16 Senate a spending, expenditure, or operating plan for fis-
17 cal year 2011 at a level of detail below the account level.

18 CHAPTER 5—FINANCIAL SERVICES AND

19 GENERAL GOVERNMENT

20 SEC. 2501. Notwithstanding section 1101, the level
21 for each of the following accounts of the Department of
22 the Treasury shall be as follows: “Departmental Offices,
23 Salaries and Expenses”, \$320,088,000; “Special Inspector
24 General for the Troubled Asset Relief Program, Salaries
25 and Expenses”, \$36,300,000; “Treasury Inspector Gen-

1 eral for Tax Administration, Salaries and Expenses”,
2 \$155,452,000; “Financial Management Service, Salaries
3 and Expenses”, \$235,253,000; “Alcohol and Tobacco Tax
4 and Trade Bureau, Salaries and Expenses”,
5 \$101,000,000; and “Bureau of the Public Debt, Admin-
6 istering the Public Debt”, \$185,985,000.

7 SEC. 2502. Notwithstanding section 1101, under the
8 heading “Department of the Treasury, Departmental Of-
9 fices, Salaries and Expenses” in division C of Public Law
10 111–117, the requirement to transfer funds to the Na-
11 tional Academy of Sciences for a carbon audit of the tax
12 code shall not apply to funds appropriated by this Act.

13 SEC. 2503. Notwithstanding section 1101, under the
14 heading “Department of the Treasury, Department-wide
15 Systems and Capital Investments Programs” in division
16 C of Public Law 111–117, the first proviso shall not apply
17 to funds appropriated by this Act.

18 SEC. 2504. Notwithstanding section 1101, under the
19 heading “Alcohol and Tobacco Tax and Trade Bureau”
20 in division C of Public Law 111–117, the first proviso
21 shall not apply to funds appropriated by this Act.

22 SEC. 2505. Of the unobligated balances available
23 under the heading “Treasury Forfeiture Fund”,
24 \$350,000,000 is rescinded.

1 SEC. 2506. Notwithstanding section 1101, the re-
2 quirement to transfer funds to the Capital Magnet Fund
3 under the heading “Department of the Treasury, Commu-
4 nity Development Financial Institutions Fund Program
5 Account” in title I of division C of Public Law 111–117
6 shall not apply to funds appropriated by this Act, and the
7 funds subject to such transfer shall remain with the aggre-
8 gate amount of funds provided under the first paragraph
9 under such heading in such Public Law.

10 SEC. 2507. Notwithstanding section 1101, the level
11 for each of the following accounts of the Internal Revenue
12 Service shall be as follows: “Taxpayer Services”,
13 \$2,338,215,000; “Operations Support”, \$4,159,884,000;
14 “Business Systems Modernization”, \$363,897,000; and
15 “Health Insurance Tax Credit Administration”,
16 \$18,987,000.

17 SEC. 2508. Notwithstanding section 1101, the level
18 for “Internal Revenue Service, Enforcement” shall be
19 \$5,629,500,000, of which not less than \$125,500,000
20 shall be for enforcement related to offshore tax evasion.

21 SEC. 2509. Notwithstanding section 1101, the level
22 for each of the following accounts shall be \$0: “Executive
23 Office of the President and Funds Appropriated to the
24 President, Partnership Fund for Program Integrity Inno-
25 vation”; “Office of National Drug Control Policy,

1 Counterdrug Technology Assessment Center”; “District of
2 Columbia, Federal Payment for Consolidated Laboratory
3 Facility”; and “Election Assistance Commission, Election
4 Reform Programs”.

5 SEC. 2510. Notwithstanding section 1101, the level
6 for each of the following accounts shall be as follows: “Ex-
7 ecutive Office of the President and Funds Appropriated
8 to the President, White House Repair and Restoration”,
9 \$2,005,000; “Executive Office of the President and Funds
10 Appropriated to the President, National Security Council
11 and Homeland Security Council”, \$13,984,000; “The Ju-
12 diciary, Fees of Jurors and Commissioners”, \$52,410,000;
13 “The Judiciary, Vaccine Injury Compensation Trust
14 Fund”, \$4,785,000; “Administrative Conference of the
15 United States”, \$2,750,000; “Federal Deposit Insurance
16 Corporation, Office of the Inspector General”,
17 \$47,916,000; “Harry S Truman Scholarship Founda-
18 tion”, \$1,010,000; and “Office of Special Counsel, Sala-
19 ries and Expenses”, \$19,435,000.

20 SEC. 2511. Any expenses incurred by the Election
21 Assistance Commission using amounts appropriated under
22 the heading “Election Assistance Commission, Election
23 Reform Programs” in the Transportation, Treasury, and
24 Independent Agencies Appropriations Act, 2004 (Public
25 Law 108–199; 118 Stat. 327) for any program or activity

1 which the Commission is authorized to carry out under
2 the Help America Vote Act of 2002 shall be considered
3 to have been incurred for the programs and activities de-
4 scribed under such heading.

5 SEC. 2512. Notwithstanding section 1101, the level
6 for “The Judiciary, Courts of Appeals, District Courts,
7 and Other Judicial Services, Salaries and Expenses” shall
8 be \$5,137,236,000; *Provided*, That notwithstanding sec-
9 tion 302 of division C of Public Law 111–117, not to ex-
10 ceed \$101,962,000 shall be available for transfer between
11 accounts to maintain fiscal year 2010 operating levels.

12 SEC. 2513. Section 203(c) of the Judicial Improve-
13 ments Act of 1990 (Public Law 101–650; 28 U.S.C. 133
14 note), is amended—

15 (1) in the third sentence (relating to the Dis-
16 trict of Kansas), by striking “19 years” and insert-
17 ing “20 years”;

18 (2) in the sixth sentence (relating to the North-
19 ern District of Ohio), by striking “19 years” and in-
20 sserting “20 years”; and

21 (3) in the seventh sentence (relating to the Dis-
22 trict of Hawaii), by striking “16 years” and insert-
23 ing “17 years”.

24 SEC. 2514. Notwithstanding any other provision of
25 this Act, except section 1106, the District of Columbia

1 may expend local funds for programs and activities under
2 the heading “District of Columbia Funds” for such pro-
3 grams and activities under title IV of S. 3677 (111th Con-
4 gress), as reported by the Committee on Appropriations
5 of the Senate, at the rate set forth under “District of Co-
6 lumbia Funds” as included in the Fiscal Year 2011 Budg-
7 et Request Act (D.C. Act 18–448), as modified as of the
8 date of the enactment of this Act.

9 SEC. 2515. Notwithstanding section 1101, the limits
10 set forth in section 702 of division C of Public Law 111–
11 117 shall not apply to any vehicle that is a commercial
12 item and which operates on emerging motor vehicle tech-
13 nology, including electric, plug-in hybrid electric, and hy-
14 drogen fuel cell vehicles.

15 SEC. 2516. Notwithstanding section 1101, the aggre-
16 gate amount of new obligational authority provided under
17 the heading “General Services Administration, Real Prop-
18 erty Activities, Federal Buildings Fund, Limitations on
19 Availability of Revenue” for Federal buildings and court-
20 houses and other purposes of the Fund shall be
21 \$8,228,561,000, of which \$492,722,000 is provided for
22 “Construction and Acquisition” and \$500,067,000 is pro-
23 vided for “Repairs and Alterations”: *Provided*, That the
24 Administrator of General Services is authorized to initiate
25 design, construction, repair, alteration, leasing, and other

1 projects through existing authorities of the Administrator:
2 *Provided further*, That the General Services Administra-
3 tion shall submit a detailed plan, by project, regarding the
4 use of funds to the Committees on Appropriations of the
5 House of Representatives and the Senate within 30 days
6 of enactment of this section and will provide notification
7 to the Committees within 15 days prior to any changes
8 regarding the use of these funds.

9 SEC. 2517. The matter pertaining to the amount of
10 \$1,000,000 under the heading “General Services Adminis-
11 tration, Operating Expenses” in division C of Public Law
12 111–117 (123 Stat. 3190) shall not apply to funds appro-
13 priated by this Act.

14 SEC. 2518. Notwithstanding section 1101, the level
15 for each of the following accounts of the National Archives
16 and Records Administration shall be as follows: “Oper-
17 ating Expenses”, \$348,689,000; “Office of Inspector Gen-
18 eral”, \$4,250,000; “Electronic Records Archives”,
19 \$72,000,000, of which \$52,500,000 shall remain available
20 until September 30, 2013; “Repairs and Restoration” ,
21 \$11,848,000; and “National Historical Publications and
22 Records Commission, Grants Program”, \$10,000,000.

23 SEC. 2519. Public Law 109–115 is amended, under
24 the heading “National Archives and Records Administra-
25 tion, Repairs and Restoration”, by striking “of which

1 \$1,500,000 is to construct a new regional archives and
2 records facility in Anchorage, Alaska,”.

3 SEC. 2520. Division H of Public Law 108–447 is
4 amended, under the heading “National Archives and
5 Records Administration, Repairs and Restoration”, by
6 striking “of which \$3,000,000 is for site preparation and
7 construction management to construct a new regional ar-
8 chives and records facility in Anchorage, Alaska, and”.

9 SEC. 2521. Public Law 111–240 is amended in sec-
10 tion 1114 and section 1704 by striking “December 31,
11 2010” and inserting “September 30, 2011” each time it
12 appears and in section 1704 by adding at the end the fol-
13 lowing: “(c) For purposes of the loans made under this
14 section, the maximum guaranteed amount outstanding to
15 the borrower may not exceed \$4,500,000.”.

16 SEC. 2522. Notwithstanding section 1101, the level
17 for “United States Postal Service, Payment to the Postal
18 Service Fund” shall be \$29,000,000; and, notwithstanding
19 section 1109, an additional \$74,905,000 shall be available
20 for obligation on October 1, 2011.

21 SEC. 2523. Of the unobligated balances of prior year
22 appropriations available under the heading “Privacy and
23 Civil Liberties Oversight Board”, \$1,500,000 is rescinded.

1 SEC. 2524. Section 617 of division C of Public Law
2 111–117 is amended by striking “December 31, 2009”
3 and inserting “December 31, 2010”.

4 SEC. 2525. Of the unobligated balances of prior year
5 appropriations available under the heading “Federal Com-
6 munications Commission, Salaries and Expenses”,
7 \$2,800,000 is rescinded.

8 SEC. 2526. Section 710 of division C of Public Law
9 111–117 is amended in subsection (c) by striking “Sep-
10 tember 30, 2009” and inserting “September 30, 2010”
11 and in subsection (e) by striking “September 30, 2009”
12 and inserting “September 30, 2010”.

13 SEC. 2527. Section 805(b) of division C of Public
14 Law 111–117 is amended by striking “November 1,
15 2010” and inserting “November 1, 2011”.

16 SEC. 2528. Section 302 of the Universal Service
17 Antideficiency Temporary Suspension Act is amended by
18 striking “December 31, 2010” each place it appears and
19 inserting “December 31, 2011.”

20 CHAPTER 6—HOMELAND SECURITY

21 SEC. 2601. Within 30 days after the date of enact-
22 ment of this Act, the Department of Homeland Security
23 shall submit to the Committees on Appropriations of the
24 House of Representatives and the Senate an expenditure
25 plan for fiscal year 2011 at a level of specificity below

1 the account level for the activities listed in the detailed
2 funding table contained in Public Law 111-83.

3 SEC. 2602. Notwithstanding section 1101, the level
4 for “Office of the Under Secretary for Management” shall
5 be \$366,617,000, of which \$129,384,000 shall remain
6 available until expended for headquarters consolidation
7 and improvements.

8 SEC. 2603. Notwithstanding section 1101, the level
9 for “Office of the Federal Coordinator for Gulf Coast Re-
10 building” shall be \$0.

11 SEC. 2604. Notwithstanding section 1101, the level
12 for each of the following accounts shall be as follows:
13 “U.S. Customs and Border Protection, Salaries and Ex-
14 penses”, \$8,208,013,000; “U.S. Customs and Border Pro-
15 tection, Automation Modernization”, \$347,575,000; “U.S.
16 Customs and Border Protection, Border Security Fencing,
17 Infrastructure, and Technology”, \$574,173,000; and
18 “U.S. Customs and Border Protection, Construction and
19 Facilities Management”, \$275,740,000.

20 SEC. 2605. Notwithstanding section 1101, the level
21 for each of the following accounts shall be as follows:
22 “U.S. Immigration and Customs Enforcement, Salaries
23 and Expenses”, \$5,437,834,000; and “U.S. Immigration
24 and Customs Enforcement, Automation Modernization”,
25 \$84,700,000.

1 SEC. 2606. Notwithstanding section 1101, the level
2 for each of the following accounts shall be as follows:
3 “Transportation Security Administration, Aviation Secu-
4 rity”, \$5,269,490,000, of which \$320,000,000 shall be for
5 the purchase and installation of explosives detection sys-
6 tems; “Transportation Security Administration, Surface
7 Transportation Security”, \$137,558,000; and “Transpor-
8 tation Security Administration, Federal Air Marshals”,
9 \$926,711,000: *Provided*, That in applying the second pro-
10 viso under the Aviation Security heading with respect to
11 amounts made available by this Act, “9 percent” shall be
12 substituted for “28 percent”: *Provided further*, That secu-
13 rity service fees authorized under section 44940 of title
14 49, United States Code, shall be credited to the “Aviation
15 Security” appropriation as offsetting collections and shall
16 be available only for aviation security: *Provided further*,
17 That the sum appropriated under the Aviation Security
18 heading from the general fund shall be reduced on a dol-
19 lar-for-dollar basis as such offsetting collections are re-
20 ceived during fiscal year 2011, so as to result in a final
21 fiscal year appropriation from the general fund estimated
22 at not more than \$3,169,490,000.

23 SEC. 2607. Section 514 of Public Law 111–83 is
24 amended to read as follows:

1 “SEC. 514. (a) The Assistant Secretary of Homeland
2 Security (Transportation Security Administration) shall
3 work with air carriers and airports to ensure that screen-
4 ing (as that term is defined in section 44901(g)(5) of title
5 49, United States Code), increases incrementally each
6 quarter until the requirement under section
7 44901(g)(2)(B) of such title is met.

8 “(b) Not later than 120 days after the end of each
9 quarter, the Assistant Secretary shall submit to the Com-
10 mittees on Appropriations of the Senate and the House
11 of Representatives a report on air cargo inspection statis-
12 tics by airport and air carrier detailing the incremental
13 progress being made to meet the requirement of section
14 44901(g)(2)(B) of title 49, United States Code.

15 “(c) Not later than 180 days after the date of the
16 enactment of the Full-Year Continuing Appropriations
17 Act, 2011, the Assistant Secretary shall submit to the
18 Committees on Appropriations of the Senate and the
19 House of Representatives, a report that either—

20 “(1) certifies that the requirement for screening
21 all air cargo on passenger aircraft by the deadline
22 under section 44901(g) of title 49, United States
23 Code has been met; or

1 “(2) includes a strategy to comply with the re-
2 quirements under section 44901(g) of title 49,
3 United States Code, including—

4 “(A) a plan to meet the requirement under
5 section 44901(g) of title 49, United States
6 Code, to screen 100 percent of air cargo trans-
7 ported on passenger aircraft arriving in the
8 United States in foreign air transportation (as
9 that term is defined in section 40102 of that
10 title); and

11 “(B) specification of—

12 “(i) the percentage of such air cargo
13 that is being screened; and

14 “(ii) the schedule for achieving screen-
15 ing of 100 percent of such air cargo.

16 “(d) The Assistant Secretary shall continue to submit
17 reports described in subsection (c)(2) every 180 days
18 thereafter until the Assistant Secretary certifies that the
19 Transportation Security Administration has achieved
20 screening of 100 percent of such air cargo.”.

21 SEC. 2608. (a) CIVIL PENALTIES.—Section
22 46301(a)(5)(A)(i) of title 49, United States Code, is
23 amended—

24 (1) by striking “or chapter 449” and inserting
25 “chapter 449”; and

1 (2) by inserting “, or section 46314(a)” after
2 “44909”).

3 (b) CRIMINAL PENALTIES.—Section 46314(b) of title
4 49, United States Code, is amended to read as follows:

5 “(b) CRIMINAL PENALTY.—A person violating sub-
6 section (a) of this section shall be fined under title 18,
7 imprisoned for not more than 10 years, or both.”.

8 (c) NOTICE OF PENALTIES.—Section 46314 of title
9 49, United States Code, is amended by adding at the end
10 the following new subsection:

11 “(c) NOTICE OF PENALTIES.—

12 “(1) IN GENERAL.—Each operator of an air-
13 port in the United States that is required to estab-
14 lish an air transportation security program pursuant
15 to section 44903(c) shall ensure that signs that meet
16 such requirements as the Secretary of Homeland Se-
17 curity may prescribe providing notice of the pen-
18 alties imposed under sections 46301(a)(5)(A)(i) and
19 subsection (b) of this section, are displayed near all
20 screening locations, all locations where passengers
21 exit the sterile area, and such other locations at the
22 airport as the Secretary of Homeland Security deter-
23 mines appropriate.

24 “(2) EFFECT OF SIGNS ON PENALTIES.—An in-
25 dividual shall be subject to the penalty provided for

1 under section 46301(a)(5)(A)(i) and subsection (b)
2 of this section without regard to whether or not
3 signs are displayed at an airport as required by
4 paragraph (1).”.

5 SEC. 2609. Notwithstanding section 1101, the level
6 for “Coast Guard, Operating Expenses” shall be
7 \$6,913,113,000, of which \$241,503,000 made available
8 for overseas deployments and other activities is designated
9 as an emergency requirement and necessary to meet emer-
10 gency needs pursuant to sections 403(a) and 423(b) of
11 S. Con. Res. 13 (111th Congress), the concurrent resolu-
12 tion on the budget for fiscal year 2010: *Provided*, That
13 the Coast Guard may decommission one Medium Endur-
14 ance Cutter, two High Endurance Cutters, four HU-25
15 aircraft, the Maritime Intelligence Fusion Center, and one
16 Maritime Safety and Security Team, and make staffing
17 changes at the Coast Guard Investigative Service, as out-
18 lined in its budget justification documents for fiscal year
19 2011 as submitted to the Committees on Appropriations
20 of the Senate and House of Representatives.

21 SEC. 2610. Notwithstanding section 1101, the level
22 for “Coast Guard, Acquisition, Construction, and Im-
23 provements” shall be \$1,477,985,000, of which
24 \$2,000,000 shall be derived from the Coast Guard Hous-
25 ing Fund, established by section 687 of title 14, United

1 States Code, and shall remain available until expended for
2 military family housing; of which \$73,200,000 shall be for
3 vessels, small boats, critical infrastructure and related
4 equipment; of which \$36,000,000 shall be for other equip-
5 ment; of which \$69,200,000 shall be for shore facilities
6 and aids to navigation facilities; of which \$106,083,000
7 shall be available for personnel compensation and benefits
8 and related costs; and of which \$1,191,502,000 shall be
9 for the Integrated Deepwater Systems program: *Provided*,
10 That of the funds made available for the Integrated Deep-
11 water Systems program, \$103,000,000 is for aircraft and
12 \$933,002,000 is for surface ships.

13 SEC. 2611. Notwithstanding section 1101, the level
14 for “Coast Guard, Alteration of Bridges” shall be \$0.

15 SEC. 2612. (a) Subject to subsection (b), for fiscal
16 year 2011, the Coast Guard may enter into agreements
17 under section 1535 of title 31, United States Code, with
18 the Secretary of the Navy for the disposal of Coast Guard
19 vessels in accordance with sections 7305 and 7305a of title
20 10, United States Code.

21 (b) Any agreement entered into under subsection (a)
22 shall be at no additional cost to the United States Navy.

23 SEC. 2613. In addition to amounts otherwise made
24 available by this Act to “United States Secret Service, Sal-
25 aries and Expenses”, \$14,000,000 is appropriated for

1 costs associated with protection to be provided to can-
2 didates in the 2012 presidential campaign and \$7,000,000
3 is appropriated for costs associated with implementation
4 of the United States Secret Service Uniformed Division
5 Modernization Act of 2010 (Public Law 111–282).

6 SEC. 2614. Notwithstanding section 1101, the level
7 for “National Protection and Programs Directorate, In-
8 frastructure Protection and Information Security” shall be
9 \$878,316,000.

10 SEC. 2615. Notwithstanding section 1101, the level
11 for “United States Visitor and Immigrant Status Indi-
12 cator Technology” shall be \$339,263,000.

13 SEC. 2616. Notwithstanding section 1101, the level
14 for “Federal Emergency Management Agency, State and
15 Local Programs” shall be \$2,913,058,000: *Provided*, That
16 4.5 percent of the amount provided shall be transferred
17 to the Federal Emergency Management Agency “Manage-
18 ment and Administration” account for program adminis-
19 tration: *Provided further*, That paragraph (10) and sub-
20 paragraphs (B) and (C) of paragraph (13) under the
21 heading “Federal Emergency Management Agency, State
22 and Local Programs” in Public Law 111–83 shall not
23 apply to funds appropriated by this Act: *Provided further*,
24 That \$12,558,000 is available under paragraph (12)

1 under such heading in such public law, to be competitively
2 awarded.

3 SEC. 2617. Notwithstanding section 1101, in fiscal
4 year 2011, funds shall not be available from the National
5 Flood Insurance Fund under section 1310 of the National
6 Flood Insurance Act of 1968 (42 U.S.C. 4017) for oper-
7 ating expenses in excess of \$110,000,000, and for agents'
8 commissions and taxes in excess of \$963,339,000: *Pro-*
9 *vided*, That notwithstanding section 1101, for activities
10 under the National Flood Insurance Act of 1968 (42
11 U.S.C. 4001 et seq.) and the Flood Disaster Protection
12 Act of 1973 (42 U.S.C. 4001 et seq.), the level shall be
13 \$169,000,000, which shall be derived from offsetting col-
14 lections assessed and collected under 1308(d) of the Na-
15 tional Flood Insurance Act of 1968 (42 U.S.C. 4015(d)),
16 of which not to exceed \$22,145,000 shall be available for
17 salaries and expenses associated with flood mitigation and
18 flood insurance operations; and not less than
19 \$146,855,000 shall be available for flood plain manage-
20 ment and flood mapping, which shall remain available
21 until September 30, 2012.

22 SEC. 2618. Notwithstanding the requirement under
23 section 34(a)(1)(A) of the Federal Fire Prevention and
24 Control Act of 1974 (15 U.S.C. 2229a(a)(1)(A)) that
25 grants must be used to increase the number of firefighters

1 in fire departments, the Secretary of Homeland Security,
2 in making grants under section 34 of such Act using the
3 funds appropriated for fiscal year 2011, shall grant waiv-
4 ers from the requirements of subsections (a)(1)(B), (c)(1),
5 (c)(2), and (c)(4)(A) of such section: *Provided further*,
6 That section 34(a)(1)(E) of such Act shall not apply with
7 respect to funds appropriated for fiscal year 2011 for
8 grants under section 34 of such Act: *Provided further*,
9 That the Secretary of Homeland Security, in making
10 grants under section 34 of such Act, shall ensure that
11 funds appropriated for fiscal year 2011 are made available
12 for the retention of firefighters.

13 SEC. 2619. Notwithstanding section 1101, the level
14 for “Federal Emergency Management Agency, National
15 Predisaster Mitigation Fund” shall be \$85,000,000.

16 SEC. 2620. Notwithstanding section 1101, the level
17 for “Federal Emergency Management Agency, Disaster
18 Relief” shall be increased by \$130,000,000.

19 SEC. 2621. Section 203 (m) of the Robert T. Stafford
20 Disaster Relief and Emergency Assistance Act (42 U.S.C.
21 5133(m)) is amended by striking “September 30, 2010”
22 and inserting “September 30, 2011”.

23 SEC. 2622. Notwithstanding section 1101, the level
24 for “United States Citizenship and Immigration Services”
25 shall be \$306,400,000, of which \$176,000,000 shall be for

1 processing applications for asylum or refugee status, and
2 of which \$103,400,000 is for the E-Verify Program, as
3 authorized by section 402 of the Illegal Immigration Re-
4 form and Immigrant Responsibility Act (8 U.S.C. 1324a
5 note): *Provided*, That none of the funds made available
6 in this section shall be available for development of the
7 system commonly known as the “REAL ID hub”.

8 SEC. 2623. Notwithstanding section 1101, the level
9 for “Federal Law Enforcement Training Center, Acquisi-
10 tion, Construction, Improvements, and Related Expenses”
11 shall be \$38,456,000.

12 SEC. 2624. Notwithstanding section 1101, the level
13 for “Science and Technology, Research, Development, Ac-
14 quisition, and Operations” shall be \$821,906,000: *Pro-*
15 *vided*, That the final proviso under this heading in Public
16 Law 111–83 (related to the National Bio- and Agro-de-
17 fense Facility) shall have no effect with respect to all
18 amounts available under this heading.

19 SEC. 2625. Notwithstanding section 1101, the level
20 for “Domestic Nuclear Detection Office, Research, Devel-
21 opment, and Operations” shall be \$299,537,000.

22 SEC. 2626. Section 560 of Public Law 111–83 (123
23 Stat. 2181) is amended to read as follows:

24 “SEC. 560. (a) No funding provided in this or pre-
25 vious appropriations Acts shall be used for construction

1 of the National Bio- and Agro-defense Facility in Manhat-
2 tan, Kansas until—

3 “(1) the Department of Homeland Security has
4 completed 50 percent of National Bio- and Agro-de-
5 fense Facility design planning and submitted a re-
6 vised site-specific biosafety and biosecurity mitiga-
7 tion risk assessment that describes how to signifi-
8 cantly reduce risks of conducting essential research
9 and diagnostic testing at the National Bio- and
10 Agro-defense Facility and addresses shortcomings
11 identified in the National Academy of Sciences’ eval-
12 uation of the initial site-specific biosafety and bio-
13 security mitigation risk assessment; and

14 “(2) the National Academy of Sciences submits
15 an evaluation of the revised site-specific biosafety
16 and biosecurity mitigation risk assessment.

17 “(b) The revised site-specific biosafety and biosecu-
18 rity mitigation risk assessment required by subsection (a)
19 shall—

20 “(1) include a quantitative risk assessment for
21 foot-and-mouth disease virus, in particular epidemio-
22 logical and economic impact modeling to determine
23 the overall risk of operating the facility for its ex-
24 pected 50-year life span, taking into account strate-
25 gies to mitigate risk of foot-and-mouth disease virus

1 release from the laboratory and ensure safe oper-
2 ations at the approved National Bio- and Agro-de-
3 fense Facility site;

4 “(2) address the impact of surveillance, re-
5 sponse, and mitigation plans (developed in consulta-
6 tion with local, State, and national authorities and
7 appropriate stakeholders) if a release occurs, to de-
8 tect and control the spread of disease; and

9 “(3) include overall risks of the most dangerous
10 pathogens the Department of Homeland Security ex-
11 pects to hold in the National Bio- and Agro-defense
12 Facility’s biosafety level 4 facility, and effectiveness
13 of mitigation strategies to reduce those risks.

14 “(c) The Secretary of Homeland Security shall enter
15 into a contract with the National Academy of Sciences to
16 evaluate the adequacy and validity of the risk assessment
17 required by subsection (a). The National Academy of
18 Sciences shall submit a report on such evaluation within
19 4 months after the date the Department of Homeland Se-
20 curity concludes its risk assessment.”.

21 SEC. 2627. From the unobligated balances for “Oper-
22 ations” of funds transferred to the Department of Home-
23 land Security when it was created in 2003, \$1,891,657
24 is rescinded.

1 SEC. 2628. From the unobligated balances available
2 for prior fiscal years for “U.S. Customs and Border Pro-
3 tection, Construction” for construction projects,
4 \$99,772,000 is rescinded: *Provided*, That the amounts re-
5 scinded under this section shall be limited to amounts
6 available for Border Patrol projects and facilities.

7 SEC. 2629. From the unobligated balances of funds
8 for the “Violent Crime Reduction Program” transferred
9 to the Department of Homeland Security when it was es-
10 tablished in 2003, \$4,912,245 is rescinded.

11 SEC. 2630. From the unobligated balances of prior
12 year appropriations made available for “U.S. Customs and
13 Border Protection, Salaries and Expenses” transferred to
14 the Department of Homeland Security when it was estab-
15 lished in 2003, \$18,122,393 is rescinded.

16 SEC. 2631. From the unobligated balances of prior
17 year appropriations made available for “Federal Emer-
18 gency Management Agency, National Pre-Disaster Mitiga-
19 tion Fund”, \$18,173,641 is rescinded.

20 SEC. 2632. From the unobligated balances of funds
21 for the “Office for Domestic Preparedness” transferred to
22 the Department of Homeland Security when it was estab-
23 lished, \$10,568,964 is rescinded.

24 SEC. 2633. From unobligated balances of prior year
25 appropriations made available for United States Citizen-

1 ship and Immigration Services for the program commonly
2 known as the “REAL ID hub”, \$16,500,000 is rescinded.

3 SEC. 2634. From the unobligated balances of prior
4 year appropriations made available for “Science and Tech-
5 nology, Research, Development, Acquisition, and Oper-
6 ations”, \$32,000,000 is rescinded.

7 SEC. 2635. From the unobligated balances of funds
8 made available in the Department of the Treasury For-
9 feiture Fund established by section 9703 of title 31,
10 United States Code, that was added to such title by sec-
11 tion 638 of Public Law 102–393, \$22,600,000 is re-
12 scinded.

13 SEC. 2636. Section 550(b) of the Department of
14 Homeland Security Appropriations Act, 2007 (Public Law
15 109–295; 6 U.S.C. 121 note), is amended by striking “on
16 October 4, 2010” and inserting “on October 4, 2011”.

17 SEC. 2637. Section 532(a) of Public Law 109–295
18 (120 Stat. 1384), as amended by section 519 of Public
19 Law 111–83 (123 Stat 2171), is amended by striking
20 “2010” and inserting “2011”.

21 SEC. 2638. Section 831 of the Homeland Security
22 Act of 2002 (6 U.S.C. 391), as amended by section 531
23 of Public Law 111–83 (123 Stat 2174), is amended—

1 (1) in subsection (a), by striking “Until Sep-
2 tember 30, 2010” and inserting “Until September
3 30, 2011,”; and

4 (2) in subsection (d)(1), by striking “September
5 30, 2010,” and inserting “September 30, 2011,”.

6 CHAPTER 7—INTERIOR, ENVIRONMENT, AND
7 RELATED AGENCIES

8 SEC. 2701. Notwithstanding section 1101, the level
9 for each of the following accounts shall be as follows: “Bu-
10 reau of Land Management, Management of Lands and
11 Resources”, \$971,306,000; “National Park Service, Na-
12 tional Recreation and Preservation”, \$62,586,000; “Min-
13 erals Management Service, Oil Spill Research”,
14 \$11,768,000; “Indian Health Service, Indian Health Fa-
15 cilities”, \$443,320,000; “Smithsonian Institution, Legacy
16 Fund”, \$0; “Dwight D. Eisenhower Memorial Commis-
17 sion, Salaries and Expenses”, \$0; and “Dwight D. Eisen-
18 hower Memorial Commission, Capital Construction”, \$0.

19 SEC. 2702. Notwithstanding any other provision of
20 this Act, the funding level for “National Park Service,
21 Park Partnership Project Grants” shall be \$0 and the
22 matter pertaining to such account in division A of Public
23 Law 111–88 shall not apply to funds appropriated by this
24 Act.

1 SEC. 2703. Notwithstanding section 1101, the last
2 proviso under the heading “National Park Service, Con-
3 struction” in division A of Public Law 111–88 shall not
4 apply to funds appropriated by this Act.

5 SEC. 2704. Notwithstanding section 1101, the level
6 for “United States Geological Survey, Surveys, Investiga-
7 tions, and Research” shall be \$1,125,090,000, of which
8 \$53,500,000 shall be for satellite operations, and of which
9 \$4,807,000 shall be for deferred maintenance and capital
10 improvement projects that exceed \$100,000 in cost.

11 SEC. 2705. Notwithstanding section 1101, the provi-
12 sions under the heading “Minerals Management Service,
13 Royalty and Offshore Minerals Management” in division
14 A of Public Law 111–88 shall be applied to funds appro-
15 priated by this Act as follows: by substituting
16 “\$271,113,000” for “\$175,217,000”; by substituting
17 “\$113,174,000” for “\$89,374,000”; by substituting
18 “\$154,890,000” for “\$156,730,000” each place it ap-
19 pears; and by substituting “fiscal year 2011” for “fiscal
20 year 2010” each place it appears.

21 SEC. 2706. Notwithstanding section 1101, the provi-
22 sions under the heading “Bureau of Indian Affairs, Oper-
23 ation of Indian Programs” in division A of Public Law
24 111–88 shall be applied to funds appropriated by this Act
25 as follows: by substituting “\$2,355,965,000” for

1 “\$2,335,965,000”; by substituting “\$200,000,000” for
2 “\$166,000,000” in the matter pertaining to contract sup-
3 port costs; by substituting “\$85,000,000” for
4 “\$74,915,000” in the matter pertaining to welfare assist-
5 ance payments; by substituting “\$597,449,000” for
6 “\$568,702,000” in the matter pertaining to school oper-
7 ations costs of Bureau-funded schools and other education
8 programs; and by substituting “\$53,899,000” for
9 “\$43,373,000” in the matter pertaining to administrative
10 cost grants for school operations.

11 SEC. 2707. The matter pertaining to Public Law
12 109–379 (regarding the Isleta Pueblo settlement) under
13 the heading “Bureau of Indian Affairs, Indian Land and
14 Water Claim Settlements and Miscellaneous Payments to
15 Indians” in division A of Public Law 111–88 shall not
16 apply to funds appropriated by this Act.

17 SEC. 2708. Notwithstanding section 1101, the level
18 for “Environmental Protection Agency, Environmental
19 Programs and Management” shall be \$2,840,779,000, of
20 which \$455,441,000 shall be for the Geographic Programs
21 specified in the explanatory statement accompanying Pub-
22 lic Law 111–88, except that the funding level for the
23 Great Lakes Restoration Initiative shall be \$322,000,000.

24 SEC. 2709. Notwithstanding section 1101, the level
25 for “Environmental Protection Agency, State and Tribal

1 Assistance Grants” shall be \$4,813,446,000, of which \$0
2 shall be for special project grants.

3 SEC. 2710. Notwithstanding section 1101, the
4 amounts included under the heading “Administrative Pro-
5 visions, Environmental Protection Agency” in division A
6 of Public Law 111–88 shall be applied to funds appro-
7 priated by this Act by substituting “\$322,000,000” for
8 “\$475,000,000”.

9 SEC. 2711. Of the unobligated balances available for
10 “Environmental Protection Agency, State and Tribal As-
11 sistance Grants”, \$10,000,000 is rescinded: *Provided*,
12 That no amounts may be rescinded from amounts that
13 were designated by Congress as an emergency requirement
14 pursuant to a concurrent resolution on the budget or the
15 Balanced Budget and Emergency Deficit Control Act of
16 1985, as amended.

17 SEC. 2712. Notwithstanding section 1101, the level
18 for “Forest Service, National Forest System” shall be
19 \$1,581,339,000, of which \$30,000,000 shall be deposited
20 in the Collaborative Forest Landscape Restoration Fund
21 for ecological restoration treatments as authorized by 16
22 U.S.C. 7303(f).

23 SEC. 2713. Notwithstanding section 1101, the level
24 for “Indian Health Service, Indian Health Services” shall
25 be \$3,797,227,000, and the provisions under such heading

1 shall be applied to funds appropriated by this Act by sub-
2 stituting “\$816,759,000” for “\$779,347,000” in the mat-
3 ter pertaining to contract medical care; by substituting
4 “\$404,332,000” for “\$398,490,000” in the matter per-
5 taining to contract support costs; and in section 409 of
6 division A of Public Law 111–88 by substituting “111–
7 8, and 111–88” for “and 111–8” and by substituting
8 “2010” for “2009”.

9 SEC. 2714. The matter pertaining to methyl
10 isocyanate in the last proviso under the heading “Chemical
11 Safety and Hazard Investigation Board, Salaries and Ex-
12 penses” in division A of Public Law 111–88 shall not
13 apply to funds appropriated by this Act.

14 SEC. 2715. Notwithstanding section 1101, the provi-
15 sions under the heading “National Gallery of Art, Repair,
16 Restoration and Renovation of Buildings” in division A
17 of Public Law 111–88 shall be applied to funds appro-
18 priated by this Act by substituting “\$42,250,000” for
19 “\$40,000,000” in the matter pertaining to repair of the
20 National Gallery’s East Building façade.

21 SEC. 2716. The first proviso under the heading
22 “John F. Kennedy Center for the Performing Arts, Oper-
23 ations and Maintenance” in division A of Public Law 111–
24 88 is amended by striking “until expended” and all that
25 follows and inserting “until September 30, 2011.”.

1 SEC. 2717. The contract authority provided for fiscal
2 year 2011 for “National Park Service, Land and Water
3 Conservation Fund” by 16 U.S.C. 460l–10a is rescinded.

4 SEC. 2718. (a) Notwithstanding any other provision
5 of this Act, the Secretary of the Interior may enter into
6 multiyear cooperative agreements with nonprofit organiza-
7 tions and other appropriate entities, and may enter into
8 multiyear contracts in accordance with the provisions of
9 section 304B of the Federal Property and Administrative
10 Services Act of 1949 (41 U.S.C. 254e) (except that the
11 5 year term restriction in subsection (d) shall not apply),
12 for the long-term care and maintenance of excess wild
13 free-roaming horses and burros by such organizations or
14 entities on private land. Such cooperative agreements and
15 contracts may not exceed 10 years, subject to renewal at
16 the discretion of the Secretary.

17 (b) During fiscal year 2011 and subsequent fiscal
18 years, in carrying out work involving cooperation with any
19 State or political subdivision thereof, the Bureau of Land
20 Management may record obligations against accounts re-
21 ceivable from any such entities.

22 SEC. 2719. During fiscal year 2011, the Secretary
23 of the Interior, in order to implement a reorganization of
24 the Bureau of Ocean Energy Management, Regulation,
25 and Enforcement, may establish accounts, transfer funds

1 among and between the offices and bureaus affected by
2 the reorganization, and take any other administrative ac-
3 tions necessary in conformance with the Appropriations
4 Committee reprogramming procedures described in the
5 joint explanatory statement of the managers accom-
6 panying Public Law 111–88.

7 SEC. 2720. Notwithstanding any other provision of
8 this Act, during fiscal year 2011 and subsequent fiscal
9 years, the Secretary of Agriculture, acting through the
10 Forest Service, may carry out a program, to be known
11 as the “Legacy Road and Trail Remediation program”,
12 to conduct urgently needed decommissioning of Forest
13 Service roads, forest road and trail repair and mainte-
14 nance and associated activities, and removal of fish pas-
15 sage barriers on National Forest System lands, especially
16 in areas where Forest Service roads may be contributing
17 to water quality problems in streams and water bodies
18 supporting threatened, endangered, or sensitive species or
19 community water sources.

20 SEC. 2721. Notwithstanding section 1101, section
21 423 of Public Law 111–88 (123 Stat. 2961), concerning
22 the distribution of geothermal energy receipts, shall have
23 no force or effect and the provisions of section 3003(a)
24 of Public Law 111–212 (124 Stat. 2338) shall apply for
25 fiscal year 2011.

1 SEC. 2722. The authority provided by section 337 of
2 the Department of the Interior and Related Agencies Ap-
3 propriations Act, 2005 (Public Law 108–447; 118 Stat.
4 3102), as amended, shall remain in effect until the date
5 specified in section 1106 of this Act.

6 SEC. 2723. Section 433 of division A of Public Law
7 111–88 (regarding Forest Service cabin user fees) is
8 amended by striking “2010” and “2009” and inserting
9 “2011” and “2010”, respectively.

10 SEC. 2724. Section 11(c)(1) of the Outer Continental
11 Shelf Lands Act (43 U.S.C. 1340(c)(1)) is amended by
12 striking “within thirty days” and inserting “within ninety
13 days”.

14 SEC. 2725. Notwithstanding section 1101, the level
15 for section 415 of division A of Public Law 111–88 shall
16 be \$0.

17 SEC. 2726. Within 30 days after the date of the en-
18 actment of this Act, each of the following departments and
19 agencies shall submit to the House and Senate Commit-
20 tees on Appropriations a spending, expenditure, or oper-
21 ating plan for fiscal year 2011 at a level of detail below
22 the account level:

- 23 (1) Department of Agriculture, Forest Service.
- 24 (2) Department of the Interior.
- 25 (3) Environmental Protection Agency.

1 (4) Indian Health Service.

2 (5) Smithsonian Institution.

3 (6) National Gallery of Art.

4 (7) National Endowment for the Arts.

5 (8) National Endowment for the Humanities.

6 SEC. 2727. (a) MODIFICATION.—

7 (1) IN GENERAL.—The first sentence of section
8 19 of the Act of June 18, 1934 (commonly known
9 as the “Indian Reorganization Act”) (25 U.S.C.
10 479), is amended—

11 (A) by striking “The term” and inserting
12 “Effective beginning on June 18, 1934, the
13 term”; and

14 (B) by striking “any recognized Indian
15 tribe now under Federal jurisdiction” and in-
16 serting “any federally recognized Indian tribe”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall take effect as if included in
19 the Act of June 18, 1934 (commonly known as the
20 “Indian Reorganization Act”) (25 U.S.C. 479), on
21 the date of enactment of that Act.

22 (b) RATIFICATION AND CONFIRMATION OF AC-
23 TIONS.—Any action taken by the Secretary of the Interior
24 pursuant to the Act of June 18, 1934 (commonly known
25 as the “Indian Reorganization Act”) (25 U.S.C. 461 et

1 seq.) for any Indian tribe that was federally recognized
2 on the date of the action is ratified and confirmed, to the
3 extent such action is subjected to challenge based on
4 whether the Indian tribe was federally recognized or under
5 Federal jurisdiction on June 18, 1934, ratified and con-
6 firmed as fully to all intents and purposes as if the action
7 had, by prior act of Congress, been specifically authorized
8 and directed.

9 (c) EFFECT ON OTHER LAWS.—

10 (1) IN GENERAL.—Nothing in this section or
11 the amendments made by this section affects—

12 (A) the application or effect of any Federal
13 law other than the Act of June 18, 1934 (25
14 U.S.C. 461 et seq.) (as amended by subsection
15 (a)); or

16 (B) any limitation on the authority of the
17 Secretary of the Interior under any Federal law
18 or regulation other than the Act of June 18,
19 1934 (25 U.S.C. 461 et seq.) (as so amended).

20 (2) REFERENCES IN OTHER LAWS.—An express
21 reference to the Act of June 18, 1934 (25 U.S.C.
22 461 et seq.) contained in any other Federal law shall
23 be considered to be a reference to that Act as
24 amended by subsection (a).

1 CHAPTER 8—LABOR, HEALTH AND HUMAN
2 SERVICES, EDUCATION, AND RELATED
3 AGENCIES

4 SEC. 2801. (a) Notwithstanding section 1101, the
5 level for “Department of Labor, Employment and Train-
6 ing Administration, Training and Employment Services”
7 shall be \$1,906,530,000 plus reimbursements, of which
8 (1) \$879,961,000 shall be available for obligation for the
9 period July 1, 2011, through June 30, 2012, of which
10 \$68,450,000 shall be available for pilots, demonstrations,
11 and research activities; (2) \$1,026,569,000 shall be avail-
12 able for obligation for the period April 1, 2011, through
13 June 30, 2012, for youth programs (including
14 YouthBuild); and (3) no funds shall be available for the
15 Career Pathways Innovation Fund.

16 (b) Notwithstanding section 1101, the level for “De-
17 partment of Labor, Employment and Training Adminis-
18 tration, Community Service Employment for Older Ameri-
19 cans” shall be \$620,425,000, to remain available through
20 June 30, 2012, and the first and second provisos under
21 such heading in division D of Public Law 111–117 shall
22 not apply to funds appropriated by this Act.

23 (c) Notwithstanding section 1101, the level which
24 may be expended from the Employment Security Adminis-
25 tration Account in the Unemployment Trust Fund for ad-

1 ministrative expenses of “Department of Labor, Employ-
2 ment and Training Administration, State Unemployment
3 Insurance and Employment Service Operations” shall be
4 \$4,154,490,000 (which includes all amounts available to
5 conduct in-person reemployment and eligibility assess-
6 ments and unemployment insurance improper payment re-
7 views), of which \$3,375,645,000 shall be available for un-
8 employment compensation State operations, \$50,519,000
9 shall be available for Federal administration of foreign
10 labor certifications, and \$15,129,000 shall be available for
11 grants to States for the administration of such activities.
12 For purposes of this section, the first proviso under such
13 heading in division D of Public Law 111–117 shall be ap-
14 plied by substituting “2011” and “6,051,000” for “2010”
15 and “5,059,000”, respectively.

16 SEC. 2802. Funds appropriated by section 1101 of
17 this Act to the Department of Labor’s Employment and
18 Training Administration for technical assistance services
19 to grantees may be transferred to “Department of Labor,
20 Employment and Training Administration, Program Ad-
21 ministration” if it is determined that those services will
22 be more efficiently performed by Federal staff.

23 SEC. 2803. Notwithstanding section 1101, the level
24 for “Department of Labor, Employee Benefits Security

1 Administration, Salaries and Expenses” shall be
2 \$164,861,000.

3 SEC. 2804. Notwithstanding section 1101, the level
4 for “Department of Labor, Mine Safety and Health Ad-
5 ministration, Salaries and Expenses” shall be
6 \$381,493,000, of which up to \$15,000,000 shall be avail-
7 able to the Secretary of Labor to be transferred to “De-
8 partmental Management, Salaries and Expenses” for ac-
9 tivities related to the Department of Labor’s caseload be-
10 fore the Federal Mine Safety and Health Review Commis-
11 sion and the amounts included under the heading “De-
12 partment of Labor, Mine Safety and Health Administra-
13 tion, Salaries and Expenses” in division D of Public Law
14 111–117 shall be applied to funds appropriated in this Act
15 during fiscal year 2011 by substituting “\$1,350,000” for
16 “\$1,000,000”.

17 SEC. 2805. Funds appropriated by section 1101 of
18 this Act for “Department of Labor, Bureau of Labor Sta-
19 tistics, Salaries and Expenses” may be obligated and ex-
20 pended to implement an alternative approach to the Local-
21 ity Pay Survey component of the National Compensation
22 Survey.

23 SEC. 2806. Notwithstanding section 1101, the level
24 for “Department of Labor, Departmental Management,
25 Office of Job Corps” shall be \$1,027,205,000 (which may

1 be administered within the Employment and Training Ad-
2 ministration pursuant to section 108 of division D of Pub-
3 lic Law 111–117), of which \$993,015,000 shall be avail-
4 able to meet the operational needs of Job Corps centers.
5 Of appropriations made available in this Act for construc-
6 tion, rehabilitation, and acquisition of Job Corps centers,
7 the Secretary of Labor may transfer up to 25 percent to
8 meet the operational needs of Job Corps centers.

9 SEC. 2807. (a) Of the unobligated balances available
10 in “Department of Labor, Working Capital Fund”,
11 \$3,900,000 is permanently rescinded, to be derived solely
12 from amounts available in the Investment in Reinvention
13 Fund (other than amounts that were designated by the
14 Congress as an emergency requirement pursuant to a con-
15 current resolution on the budget or the Balanced Budget
16 and Emergency Deficit Control Act of 1985).

17 (b) Public Law 85–67 is amended by striking the
18 third proviso under the heading “Working Capital Fund”
19 (as added by Public Law 104–134) and relating to estab-
20 lishment of an Investment in Reinvention Fund.

21 SEC. 2808. Notwithstanding section 102 of division
22 D of Public Law 111–117, not to exceed 1 percent of any
23 discretionary funds (pursuant to the Balanced Budget and
24 Emergency Deficit Control Act of 1985) that are appro-
25 priated for the current fiscal year for the Department of

1 Labor in this Act may be transferred among appropria-
2 tions, but no such appropriation to which such funds are
3 transferred may be increased by more than 3 percent by
4 any such transfer: *Provided*, That the transfer authority
5 granted by this section shall be available only to meet un-
6 anticipated needs and shall not be used to create any new
7 program or to fund any project or activity for which no
8 funds are provided in this Act: *Provided further*, That the
9 Committees on Appropriations are notified at least 15
10 days in advance of any transfer.

11 SEC. 2809. (a) Notwithstanding section 1101, the
12 level for “Department of Health and Human Services,
13 Health Resources and Services Administration, Health
14 Resources and Services” shall be \$7,270,520,000, of
15 which (1) not more than \$100,000,000 shall be available
16 until expended for carrying out the provisions of Public
17 Law 104–73 and for expenses incurred by the Department
18 of Health and Human Services pertaining to administra-
19 tive claims made under such law; (2) not less than
20 \$1,932,865,000 shall remain available through September
21 30, 2013 for parts A and B of title XXVI of the Public
22 Health Service Act (hereafter in this chapter, “PHS Act”),
23 of which not less than \$835,000,000 shall be for State
24 AIDS Drug Assistance Programs under section 2616 of
25 such Act; (3) in addition to amounts designated above to

1 carry out parts A and B of title XXVI of the PHS Act,
2 \$60,000,000 shall be available through September 30,
3 2013, for allocation to State AIDS Drug Assistance Pro-
4 grams under section 2616 or section 311(c) of the PHS
5 Act; and (4) not less than \$612,954,000 shall be available
6 for health professions programs under titles VII and VIII
7 and section 340G of the PHS Act.

8 (b) The eighteenth and nineteenth provisos under the
9 heading “Department of Health and Human Services,
10 Health Resources and Services Administration, Health
11 Resources and Services” in division D of Public Law 111–
12 117 shall not apply to funds appropriated by this Act.

13 (c) Sections 340G–1(d)(1) and (d)(2), 747(c)(2), and
14 751(j)(2) of the PHS Act, and the proportional funding
15 amounts in paragraphs (1) through (4) of section 756(e)
16 of such Act shall not apply to funds made available in this
17 Act for “Department of Health and Human Services,
18 Health Resources and Services Administration, Health
19 Resources and Services”.

20 (d) For any program operating under section 751 of
21 the PHS Act on or before January 1, 2009, the Secretary
22 of Health and Human Services may waive any of the re-
23 quirements contained in sections 751(d)(2)(A) and
24 751(d)(2)(B) of such Act.

1 SEC. 2810. (a) Notwithstanding section 1101, the
2 level for the first paragraph under the heading “Depart-
3 ment of Health and Human Services; Centers for Disease
4 Control and Prevention; Disease Control, Research, and
5 Training” shall be \$6,251,352,000, of which (1)
6 \$150,137,000 shall be available until expended to provide
7 screening and treatment for first response emergency serv-
8 ices personnel, residents, students, and others related to
9 the September 11, 2001 terrorist attacks on the World
10 Trade Center; (2) \$12,000,000 shall remain available
11 until expended for acquisition of real property, equipment,
12 construction, and renovation of facilities, including nec-
13 essary repairs and improvements to laboratories leased or
14 operated by the Centers for Disease Control and Preven-
15 tion; and (3) \$527,234,000 shall remain available until ex-
16 pended for the Strategic National Stockpile under section
17 319F–2 of the PHS Act.

18 (b) Paragraphs (1) through (3) of section 2821(b)
19 of the PHS Act shall not apply to funds made available
20 in this Act.

21 (c) Notwithstanding section 1101, funds appro-
22 priated for “Department of Health and Human Services;
23 Centers for Disease Control and Prevention; Disease Con-
24 trol, Research, and Training” shall also be available to
25 carry out title II of the Immigration and Nationality Act

1 and sections 4001, 4004, 4201, and 4301 of the Patient
2 Protection and Affordable Care Act (Public Law 111–
3 148).

4 SEC. 2811. Notwithstanding section 1101, the level
5 for “Department of Health and Human Services, National
6 Institutes of Health, National Institute of Allergy and In-
7 fectious Diseases” shall be \$4,818,275,000, and the re-
8 quirement under such heading in division D of Public Law
9 111–117 for a transfer from Biodefense Countermeasures
10 funds shall not apply.

11 SEC. 2812. Of the amount provided by section 1101
12 for “Department of Health and Human Services, National
13 Institutes of Health, Office of the Director” (including
14 amounts available for the Common Fund and the Direc-
15 tor’s Discretionary Fund), up to \$25,000,000 shall be
16 available to implement the Cures Acceleration Network
17 authorized by section 402C of the PHS Act.

18 SEC. 2813. (a) Notwithstanding section 1101, the
19 level for “Department of Health and Human Services,
20 Substance Abuse and Mental Health Services Administra-
21 tion, Substance Abuse and Mental Health Services” shall
22 be \$3,417,106,000.

23 (b) The second proviso under the heading “Depart-
24 ment of Health and Human Services, Substance Abuse
25 and Mental Health Services Administration, Substance

1 Abuse and Mental Health Services” in division D of Public
2 Law 111–117 shall not apply to funds appropriated by
3 this Act.

4 SEC. 2814. Notwithstanding section 1101, the level
5 for amounts transferred from the Federal Hospital Insur-
6 ance and Supplementary Medical Insurance Trust Funds
7 for “Department of Health and Human Services, Centers
8 for Medicare and Medicaid Services, Program Manage-
9 ment” shall not exceed \$3,623,113,000, of which
10 \$9,120,000 shall remain available through September 30,
11 2012, for Medicare contracting reform activities.

12 SEC. 2815. Notwithstanding section 1101, the level
13 for “Department of Health and Human Services, Centers
14 for Medicare and Medicaid Services, Health Care Fraud
15 and Abuse Control” shall be \$461,000,000 which shall re-
16 main available through September 30, 2012, of which (1)
17 \$274,640,000 shall be for the Medicare Integrity Program
18 at the Centers for Medicare & Medicaid Services, including
19 administrative costs, to conduct oversight activities for
20 Medicare Advantage and the Medicare Prescription Drug
21 Program authorized in title XVIII of the Social Security
22 Act and for activities listed in section 1893 of such Act;
23 (2) \$78,057,000 shall be for the Department of Health
24 and Human Services Office of Inspector General to carry
25 out fraud and abuse activities authorized by section

1 1817(k)(3) of such Act; (3) \$34,400,000 shall be for the
2 Medicaid and Children’s Health Insurance Program
3 (“CHIP”) program integrity activities; and (4)
4 \$73,903,000 shall be for the Department of Justice to
5 carry out fraud and abuse activities authorized by section
6 1817(k)(3) of such Act.

7 SEC. 2816. Notwithstanding section 1101, the level
8 for “Department of Health and Human Services, Admin-
9 istration for Children and Families, Payments to States
10 for the Child Care and Development Block Grant” shall
11 be \$2,501,081,000.

12 SEC. 2817. (a) Notwithstanding section 1101, the
13 level for “Department of Health and Human Services, Ad-
14 ministration for Children and Families, Children and
15 Families Services Programs” shall be \$9,643,532,000, of
16 which—

17 (1) \$44,500,000 shall be for grants to States
18 for adoption incentive payments as authorized by
19 section 473A of the Social Security Act;

20 (2) \$7,548,783,000 shall be for making pay-
21 ments under the Head Start Act; and, for purposes
22 of allocating such funds under the Head Start Act,
23 the term “base grant” as used in subsection
24 (a)(7)(A) of section 640 of such Act with respect to
25 funding provided to a Head Start agency (including

1 each Early Head Start agency) for fiscal year 2010
2 shall be deemed to include an amount obtained by
3 multiplying 50 percent of the funds appropriated
4 under “Department of Health and Human Services,
5 Administration for Children and Families, Children
6 and Family Services Programs” in Public Law 111–
7 5 and provided to such agency for carrying out ex-
8 pansion of Head Start programs, as that phrase is
9 used in subsection (a)(4)(D) of such section 640,
10 and provided to such agency as the ongoing funding
11 level for operations in the 12 month budget period
12 beginning in fiscal year 2010 (“expansion grants”),
13 by a fraction whose numerator is the number of chil-
14 dren actually enrolled in that agency’s Head Start
15 program in slots funded by such expansion grants as
16 of October 30, 2010, and whose denominator is the
17 client population number included in the obligating
18 documents for such expansion grants for that agen-
19 cy’s Head Start program for such budget period;
20 and

21 (3) \$766,000,000 shall be for making payments
22 under the Community Service Block Grant
23 (“CSBG”) Act and of which \$56,000,000 shall be
24 for section 680(a)(2) of the CSBG Act.

1 (b) Notwithstanding section 611(d)(1) of title VI of
2 division G of Public Law 110–161, the National Commis-
3 sion on Children and Disasters shall terminate on October
4 1, 2011.

5 SEC. 2818. (a) Notwithstanding section 1101, funds
6 appropriated for “Department of Health and Human
7 Services, Administration on Aging, Aging Services Pro-
8 grams” shall also be available to carry out subtitle B of
9 title XX of the Social Security Act and for necessary ad-
10 ministrative expenses to carry out title XVII of the PHS
11 Act.

12 (b) Amounts otherwise available in this Act to carry
13 out activities relating to Aging and Disability Resource
14 Centers, under subsections (a)(20)(B)(iii) and (b)(8) of
15 section 202 of the Older Americans Act of 1965, shall be
16 reduced by any amounts made available for fiscal year
17 2011 for such purposes under section 2405 of the Patient
18 Protection and Affordable Care Act.

19 SEC. 2819. The amounts included under the heading
20 “Department of Health and Human Services, Office of the
21 Secretary, General Departmental Management” in divi-
22 sion D of Public Law 111–117 shall be applied to funds
23 appropriated by this Act by substituting “\$538,318,000”
24 for “\$493,377,000” and such amounts shall also be avail-
25 able to carry out title XXVII of the PHS Act, the second

1 proviso under such heading shall not apply, and none of
2 the funds made available in this Act shall be for carrying
3 out activities specified under section 2003(b)(2) or (3) of
4 the PHS Act.

5 SEC. 2820. Notwithstanding section 1101, the level
6 for “Department of Health and Human Services, Office
7 of the Secretary, Office of Medicare Hearings and Ap-
8 peals” shall be \$77,798,000.

9 SEC. 2821. Notwithstanding section 1101, the level
10 for “Department of Health and Human Services, Office
11 of the Secretary, Office of Inspector General” shall be
12 \$60,754,000.

13 SEC. 2822. Notwithstanding section 1101, the level
14 for “Department of Health and Human Services, Office
15 of the Secretary, Office for Civil Rights” (excluding
16 amounts transferred from trust funds) shall be
17 \$41,068,000.

18 SEC. 2823. (a) Notwithstanding section 1101, the
19 level for “Department of Health and Human Services, Of-
20 fice of the Secretary, Public Health and Social Services
21 and Emergency Fund” shall be \$1,134,303,000, of which
22 (1) \$403,194,000 shall remain available through Sep-
23 tember 30, 2012, to support advanced research and devel-
24 opment pursuant to section 319L of the PHS Act and
25 which shall be derived by transfer from funds transferred

1 to “Department of Health and Human Services, Office of
2 the Secretary, Public Health and Social Services Emer-
3 gency Fund” by Public Law 111–117 in the fourth para-
4 graph under such heading; (2) \$78,167,000 shall be for
5 expenses necessary to prepare for and respond to an influ-
6 enza pandemic, none of which shall be available past Sep-
7 tember 30, 2011; and (3) \$35,000,000 shall be for ex-
8 penses necessary for fit-out and other costs related to a
9 competitive lease procurement to renovate or replace the
10 existing headquarters building for Public Health Service
11 agencies and other components of the Department of
12 Health and Human Services.

13 (b) Of the amounts provided under the heading “De-
14 partment of Health and Human Services, Office of the
15 Secretary, Public Health and Social Services Emergency
16 Fund” in Public Laws 111–8 and 111–117 and available
17 for expenses necessary to prepare for and respond to an
18 influenza pandemic, \$170,000,000 may also be used (1)
19 to plan, conduct, and support research to advance regu-
20 latory science to improve the ability to determine safety,
21 effectiveness, quality, and performance of medical counter-
22 measure products against chemical, biological, radio-
23 logical, and nuclear agents including influenza virus; and
24 (2) to analyze, conduct, and improve regulatory review and
25 compliance processes for such products.

1 SEC. 2824. (a) Not later than 45 days after enact-
2 ment of this Act, the Secretary of Health and Human
3 Services shall transfer from “Prevention and Public
4 Health Fund”—

5 (1) \$20,000,000 to “Health Resources and
6 Services” for an additional amount to carry out sec-
7 tions 766, 767, 768, and 776 of the PHS Act;

8 (2) \$630,000,000 to “Disease Control, Re-
9 search, and Training” for an additional amount to
10 carry out sections 306, 317(k)(2)(A), 317G, 399U,
11 1706, and 2821 of the PHS Act; sections 4001,
12 4004, 4201, and 4301 of the Patient Protection and
13 Affordable Care Act; Public Law 99–252; Public
14 Law 98–474; the immunization program under au-
15 thority of section 317(a), (j), (k)(1), (l), and (m) of
16 the PHS Act; the Environmental Public Health
17 Tracking Program under authority of section 301 of
18 the PHS Act; the Racial and Ethnic Approaches to
19 Community Health program under authority of sec-
20 tion 1703 of the PHS Act; the activities of the Of-
21 fice of Smoking and Health under authority of sec-
22 tions 317 and 1701 of the PHS Act; and State
23 grants for chronic disease activities under section
24 317(k)(2)(B) of the PHS Act;

1 (3) \$88,000,000 to “Substance Abuse and Men-
2 tal Health Services” for an additional amount for
3 suicide prevention activities and to carry out sections
4 505, 509, and 520(k) of the PHS Act; and

5 (4) \$12,000,000 to “Healthcare Research and
6 Quality” for an additional amount to carry out sec-
7 tions 902(a)(7) and 915(a) of the PHS Act.

8 (b) Not later than 60 days after enactment of this
9 Act, the Secretary of Health and Human Services shall
10 submit an operating plan to the Committees on Appropria-
11 tions detailing the amounts allocated to the programs
12 identified in subsection (a).

13 SEC. 2825. Notwithstanding section 206 of division
14 D of Public Law 111–117, not to exceed 1 percent of any
15 discretionary funds (pursuant to the Balanced Budget and
16 Emergency Deficit Control Act of 1985) that are appro-
17 priated by this Act for the current fiscal year for agencies
18 of the Department of Health and Human Services for
19 which funds were provided in such division may be trans-
20 ferred among appropriations, but no such appropriation
21 to which such funds are transferred may be increased by
22 more than 3 percent by any such transfer: *Provided*, That
23 the transfer authority granted by this section shall be
24 available only to meet unanticipated needs and shall not
25 be used to create any new program or to fund any project

1 or activity for which no funds are provided in this Act:
2 *Provided further*, That the Committees on Appropriations
3 are notified at least 15 days in advance of any transfer.

4 SEC. 2826. Hereafter, no funds appropriated in this
5 or any previous or subsequent Act shall be subject to the
6 allocation requirements of section 1707A(e) of the PHS
7 Act.

8 SEC. 2827. Hereafter, no funds appropriated in this
9 or any previous or subsequent Act shall be available for
10 transfer under section 274 of the PHS Act.

11 SEC. 2828. Federal administrative costs for activities
12 authorized subsequent to enactment of division D of Pub-
13 lic Law 111–117 may be funded from the relevant appro-
14 priations provided in this Act for administrative costs.

15 SEC. 2829. Notwithstanding section 1101, the level
16 for “Department of Education, School Improvement Pro-
17 grams” shall be \$3,540,003,000, of which \$3,358,993,000
18 shall become available on July 1, 2011, and remain avail-
19 able through September 30, 2012, and for purposes of this
20 section, up to \$11,500,000 of the funds available for the
21 Foreign Language Assistance Program shall be available
22 for activities described in the twelfth proviso under such
23 heading in division D of Public Law 111–117.

24 SEC. 2830. (a) Notwithstanding section 1101, the
25 level for “Department of Education, Innovation and Im-

1 provement” shall be \$1,870,123,000, of which
2 \$602,628,000 shall be available to carry out part D of
3 title V of the Elementary and Secondary Education Act
4 of 1965, including up to \$25,000,000 of such funds to
5 remain available through September 30, 2012, and of
6 which not more than \$550,000,000 may be used to make
7 awards to States under section 14006 of division A of
8 Public Law 111–5 in accordance with the applicable re-
9 quirements of that section.

10 (b) The seventeenth and eighteenth provisos under
11 the heading “Department of Education, Innovation and
12 Improvement” in division D of Public Law 111–117 shall
13 not apply to funds appropriated by this Act.

14 SEC. 2831. Notwithstanding section 1101, the level
15 for “Department of Education, Safe Schools and Citizen-
16 ship Education” shall be \$384,841,000, of which (1)
17 funds provided to carry out subpart 3 of part C of title
18 II of the Elementary and Secondary Education Act of
19 1965 (“ESEA”) shall be available to the Secretary of
20 Education for competitive grants to nonprofit organiza-
21 tions that have demonstrated effectiveness in the develop-
22 ment and implementation of civic learning programs, with
23 priority for those programs that demonstrate innovation,
24 scalability, accountability, and a focus on underserved
25 populations; and (2) no funds shall be available for activi-

1 ties authorized under subpart 3 of part D of title V of
2 the ESEA.

3 SEC. 2832. Notwithstanding section 1101, the level
4 for “Department of Education, Rehabilitation Services
5 and Disability Research” shall be \$3,501,766,000.

6 SEC. 2833. Within the funds provided by section
7 1101 for “Department of Education, Special Institutions
8 for Persons with Disabilities, National Technical Institute
9 for the Deaf”, amounts designated for construction shall
10 also be available for any other authorized purpose under
11 such heading.

12 SEC. 2834. Notwithstanding section 1101, the level
13 for “Department of Education; Career, Technical, and
14 Adult Education” shall be \$1,200,447,000, of which
15 \$1,196,047,000 shall become available on July 1, 2011,
16 and shall remain available through September 30, 2012.

17 SEC. 2835. (a) Notwithstanding section 1101, the
18 level for “Department of Education, Student Financial
19 Assistance” shall be \$24,963,809,000.

20 (b) The maximum Pell Grant for which a student
21 shall be eligible during award year 2011–2012 shall be
22 \$4,860.

23 (c) Of the funds made available under section
24 401A(e)(1)(E) of the Higher Education Act of 1965,
25 \$597,000,000 is rescinded.

1 SEC. 2836. Notwithstanding sections 1101 and 1103,
2 the level for “Department of Education, Student Aid Ad-
3 ministration” shall be \$994,000,000, which shall remain
4 available through September 30, 2012.

5 SEC. 2837. Notwithstanding section 1101, the level
6 for “Department of Education, Higher Education” shall
7 be \$2,177,915,000.

8 SEC. 2838. Of the amount provided by section 1101
9 for “Department of Education, Institute of Education
10 Sciences” and notwithstanding subsections (d) and (e) of
11 section 174 the Education Sciences Reform Act of 2002,
12 \$69,650,000 may be used to continue the contracts for
13 the Regional Educational Laboratories for one additional
14 year.

15 SEC. 2839. Notwithstanding section 1101, the level
16 for “Department of Education, Departmental Manage-
17 ment, Program Administration” shall be \$465,000,000, of
18 which up to \$17,000,000 shall remain available until ex-
19 pended for relocation of, and renovation of buildings occu-
20 pied by, Department staff.

21 SEC. 2840. Notwithstanding section 1101, the level
22 for “Corporation for National and Community Service,
23 National Service Trust” shall be \$217,000,000.

24 SEC. 2841. Notwithstanding section 1101, the level
25 for “Corporation for Public Broadcasting” for fiscal year

1 2011 shall be \$36,000,000 and shall not be available for
2 fiscal stabilization grants and the public radio interconnec-
3 tion system.

4 SEC. 2842. Notwithstanding section 1101, the level
5 for “Federal Mine Safety and Health Review Commission,
6 Salaries and Expenses” shall be \$15,706,000.

7 SEC. 2843. Notwithstanding section 1101, the level
8 for “Institute of Museum and Library Services, Office of
9 Museum and Library Services: Grants and Administra-
10 tion” shall be \$265,869,000.

11 SEC. 2844. Notwithstanding section 1101, the level
12 for “Medicare Payment Advisory Commission, Salaries
13 and Expenses” shall be \$12,850,000.

14 SEC. 2845. Notwithstanding section 1101, the level
15 for “Railroad Retirement Board, Dual Benefits Payments
16 Account” shall be \$57,000,000.

17 SEC. 2846. (a) Notwithstanding section 1101, the
18 level for “Social Security Administration, Payments to So-
19 cial Security Trust Funds” shall be \$21,404,000, and in
20 addition may be used to carry out section 217(g) of the
21 Social Security Act.

22 (b) Notwithstanding section 1101, the level for the
23 first paragraph under the heading “Social Security Ad-
24 ministration, Limitation on Administrative Expenses”
25 shall be \$11,240,500,000.

1 (c) Notwithstanding section 1101, the level for the
2 first paragraph under the heading “Social Security Ad-
3 ministration, Supplemental Security Income Program”
4 shall be \$40,320,200,000, of which \$3,587,200,000 shall
5 be for administrative expenses.

6 (d) Upon enactment of this Act, up to \$325,000,000
7 of the remaining unobligated balances of funds appro-
8 priated for “Social Security Administration, Limitation on
9 Administrative Expenses” for fiscal years 2010 and prior
10 years (other than funds appropriated in Public Law 111–
11 5) shall be made part of and merged with other funds in
12 such account available without fiscal year limitation for
13 investment in information technology and telecommuni-
14 cations hardware and software infrastructure, and of such
15 funds available without fiscal year limitation for invest-
16 ment in information technology and telecommunications
17 hardware and software infrastructure \$325,000,000 is re-
18 scinded.

19 SEC. 2847. Section 6402(f)(3)(C) of the Internal
20 Revenue Code of 1986, as amended by section
21 801(a)(3)(C) of the Claims Resolution Act of 2010, is fur-
22 ther amended by striking the word “not”.

23 CHAPTER 9—LEGISLATIVE BRANCH

24 SEC. 2901. Notwithstanding section 1101, the level
25 for each of the following accounts of the Senate shall be

1 as follows: “Salaries, Officers and Employees”,
2 \$185,982,000; “Salaries, Officers and Employees, Office
3 of the Sergeant at Arms and Doorkeeper”, \$77,000,000;
4 “Contingent Expenses of the Senate, Secretary of the Sen-
5 ate”, \$6,200,000; and “Contingent Expenses of the Sen-
6 ate, Sergeant at Arms and Doorkeeper of the Senate”,
7 \$142,401,000.

8 SEC. 2902. Section 8 of the Legislative Branch Ap-
9 propriations Act, 1990 (31 U.S.C. 1535 note) is amended
10 by striking paragraph (3) and inserting the following: “(3)
11 Agreement under paragraph (1) shall be in accordance
12 with regulations prescribed by the Committee on Rules
13 and Administration of the Senate.”.

14 SEC. 2903. Notwithstanding section 1101, the level
15 for “House of Representatives, Salaries and Expenses”
16 shall be \$1,371,172,000, to be allocated in accordance
17 with an allocation plan submitted by the Chief Administra-
18 tive Officer of the House of Representatives and approved
19 by the Committee on Appropriations of the House of Rep-
20 resentatives.

21 SEC. 2904. Notwithstanding section 1101, the level
22 for each of the following accounts of the Capitol Police
23 shall be as follows: “Salaries”, \$279,224,000, of which
24 \$1,945,000 shall remain available until September 30,
25 2014; and “General Expenses”, \$57,985,000.

1 SEC. 2905. (a) Notwithstanding section 1018(d) of
2 the Legislative Branch Appropriations Act, 2003 (2
3 U.S.C. 1907(d)), the use of any funds appropriated to the
4 United States Capitol Police during fiscal year 2003 for
5 transfer relating to the Truck Interdiction Monitoring
6 Program to the working capital fund established under
7 section 328 of title 49, United States Code, is ratified.

8 (b) Nothing in subsection (a) may be construed to
9 waive sections 1341, 1342, 1349, 1350, or 1351 of title
10 31, United States Code, or subchapter II of chapter 15
11 of such title (commonly known as the “Anti-Deficiency
12 Act”).

13 SEC. 2906. Notwithstanding section 1101, the level
14 for “Congressional Budget Office, Salaries and Expenses”
15 shall be \$46,905,000.

16 SEC. 2907. Notwithstanding section 1101, the level
17 for each of the following accounts of the Architect of the
18 Capitol shall be as follows: “General Administration”,
19 \$109,294,000, of which \$7,499,000 shall remain available
20 until September 30, 2015; “Capitol Building”,
21 \$54,616,000, of which \$27,226,000 shall remain available
22 until September 30, 2015; “Capitol Grounds”,
23 \$9,988,000; “Senate Office Buildings”, \$81,112,000, of
24 which \$19,474,000 shall remain available until September
25 30, 2015; “House Office Buildings”, \$75,619,000, of

1 which \$25,323,000 shall remain available until September
2 30, 2015; “Capitol Power Plant”, \$109,069,000, of which
3 \$15,100,000 shall remain available until September 30,
4 2015; “Library Buildings and Grounds”, \$44,396,000, of
5 which \$17,457,000 shall remain available until September
6 30, 2015; “Capitol Police Buildings, Grounds and Secu-
7 rity”, \$26,266,000, of which \$6,436,000 shall remain
8 available until September 30, 2015; “Botanic Garden”,
9 \$13,834,000, of which \$1,505,000 shall remain available
10 until September 30, 2015; and “Capitol Visitor Center”,
11 \$22,771,000. In addition, notwithstanding section 1101,
12 \$40,000,000, to remain available until expended, shall be
13 available under “Architect of the Capitol, House Office
14 Buildings” for a payment to the House Historic Buildings
15 Revitalization Trust Fund.

16 SEC. 2908. (a) Notwithstanding section 1101, the
17 level for “Government Accountability Office, Salaries and
18 Expenses” shall be \$558,430,000.

19 (b) Notwithstanding section 1101, the amount appli-
20 cable under the first proviso under the heading “Govern-
21 ment Accountability Office, Salaries and Expenses” in the
22 Legislative Branch Appropriations Act, 2010 (Public Law
23 111–68) shall be \$9,400,000, the amount applicable under
24 the second proviso under such heading shall be

1 \$3,100,000, and the amount applicable under the third
2 proviso under such heading shall be \$7,000,000.

3 CHAPTER 10—MILITARY CONSTRUCTION,
4 VETERANS AFFAIRS, AND RELATED AGENCIES

5 SEC. 3001. Notwithstanding section 1101, the level
6 for each of the following accounts of the Department of
7 Defense for projects and activities included in the most
8 recently submitted future years defense program or that
9 are necessary to support overseas contingency operations
10 shall be as follows: “Military Construction, Army”,
11 \$4,885,000,000; “Military Construction, Navy and Marine
12 Corps”, \$3,517,000,000; “Military Construction, Air
13 Force”, \$1,592,000,000; “Military Construction, Defense-
14 Wide”, \$3,095,000,000; “Military Construction, Army
15 National Guard”, \$874,000,000; “Military Construction,
16 Air National Guard”, \$177,000,000; “Military Construc-
17 tion, Army Reserve”, \$318,000,000; “Military Construc-
18 tion, Navy Reserve”, \$62,000,000; “Military Construc-
19 tion, Air Force Reserve”, \$8,000,000; “Family Housing
20 Construction, Army”, \$92,000,000; “Family Housing
21 Construction, Navy and Marine Corps”, \$186,000,000;
22 “Family Housing Construction, Air Force”, \$78,000,000;
23 and “Family Housing Construction, Defense-Wide”, \$0.
24 Within 45 days of the enactment of this section, the De-
25 partment of Defense shall submit a project-level expendi-

1 ture plan for fiscal year 2011 for the accounts funded in
2 this section.

3 SEC. 3002. Notwithstanding section 1111, of the
4 total amount specified in section 3001 for “Military Con-
5 struction, Army”, “Military Construction, Air Force”, and
6 “Military Construction, Defense-Wide”, \$1,257,000,000
7 for Overseas Deployments and Other Activities is des-
8 ignated as an emergency requirement and necessary to
9 meet emergency needs pursuant to sections 403(a) and
10 423(b) of S. Con. Res. 13 (111th Congress), the concur-
11 rent resolution on the budget for fiscal year 2010.

12 SEC. 3003. Notwithstanding section 1101, the level
13 for each of the following accounts of the Department of
14 Defense for projects and activities authorized by law shall
15 be as follows: “North Atlantic Treaty Organization Secu-
16 rity Investment Program”, \$259,000,000; “Homeowners
17 Assistance Fund”, \$17,000,000; “Chemical Demilitariza-
18 tion Construction, Defense-Wide”, \$125,000,000; “De-
19 partment of Defense Base Closure Account 1990”,
20 \$360,000,000; and “Department of Defense Base Closure
21 Account 2005”, \$2,354,000,000.

22 SEC. 3004. Notwithstanding any other provision of
23 this Act, the following provisions included in title I of divi-
24 sion E of Public Law 111–117 shall not apply to funds
25 appropriated by this Act: the first, second, and last pro-

1 visos, and the set-aside of \$350,000,000, under the head-
2 ing “Military Construction, Army”; the first and last pro-
3 visos under the heading “Military Construction, Navy and
4 Marine Corps”; the first, second, and last provisos under
5 the heading “Military Construction, Air Force”; the sec-
6 ond, third, fourth, and last provisos under the heading
7 “Military Construction, Defense-Wide”; the first, second,
8 and last provisos, and the set-aside of \$30,000,000, under
9 the heading “Military Construction, Army National
10 Guard”; the first, second, and last provisos, and the set-
11 aside of \$30,000,000, under the heading “Military Con-
12 struction, Air National Guard”; the first, second, and last
13 provisos, and the set-aside of \$30,000,000, under the
14 heading “Military Construction, Army Reserve”; the first,
15 second, and last provisos, the set-aside of \$20,000,000,
16 and the set-aside of \$35,000,000, under the heading
17 “Military Construction, Navy Reserve”; the first, second,
18 and last provisos, and the set-aside of \$55,000,000, under
19 the heading “Military Construction, Air Force Reserve”;
20 the proviso under the heading “Family Housing Construc-
21 tion, Army”; the proviso under the heading “Family
22 Housing Construction, Navy and Marine Corps”; the pro-
23 viso under the heading “Family Housing Construction,
24 Air Force”; the proviso under the heading “Family Hous-
25 ing Construction, Defense-Wide”; and the proviso under

1 the heading “Chemical Demilitarization Construction, De-
2 fense-Wide”.

3 SEC. 3005. Section 129 of division E of Public Law
4 111–117 shall not apply in fiscal year 2011.

5 SEC. 3006. Notwithstanding any other provision of
6 this Act, the following provisions included in title IV of
7 division E of Public Law 111–117 shall not apply to funds
8 appropriated by this Act: the proviso under “Military Con-
9 struction, Army”; and the proviso under “Military Con-
10 struction, Air Force”.

11 SEC. 3007. Notwithstanding any other provision of
12 law, funds made available to the Department of Defense
13 by this chapter may be obligated and expended to carry
14 out planning and design and military construction projects
15 not otherwise authorized by law.

16 SEC. 3008. Notwithstanding any other provision of
17 law, funds made available to “North Atlantic Treaty Orga-
18 nization Security Investment Program” by this chapter
19 may be obligated and expended for purposes of section
20 2806 of title 10, United States Code, and sections 2501
21 and 2502 of the National Defense Authorization Act for
22 Fiscal Year 2010 (Public Law 111–84).

23 SEC. 3009. Notwithstanding section 1101, the level
24 for “Department of Veterans Affairs, Departmental Ad-
25 ministration, General Operating Expenses” shall be

1 \$2,546,276,000, of which not less than \$2,148,776,000
2 shall be for the Veterans Benefits Administration.

3 SEC. 3010. Notwithstanding section 1101, the level
4 for “Department of Veterans Affairs, Departmental Ad-
5 ministration, Information Technology Systems” shall be
6 \$3,162,501,000.

7 SEC. 3011. Notwithstanding section 1101, the level
8 for “Department of Veterans Affairs, Departmental Ad-
9 ministration, Construction, Major Projects” shall be
10 \$1,151,036,000. Within 30 days of the enactment of this
11 section, the Department shall submit to the Committees
12 on Appropriations of the House of Representatives and the
13 Senate a spending plan for fiscal year 2011 at a level of
14 detail below the account level.

15 SEC. 3012. Notwithstanding section 1101, the level
16 for “Department of Veterans Affairs, Departmental Ad-
17 ministration, Construction, Minor Projects” shall be
18 \$467,700,000.

19 SEC. 3013. Notwithstanding section 1101, the level
20 for “Department of Veterans Affairs, Departmental Ad-
21 ministration, Grants for Construction of State Extended
22 Care Facilities” shall be \$85,000,000.

23 SEC. 3014. Notwithstanding any other provision in
24 this Act, sections 230, 231, and 232 of division E of Pub-
25 lic Law 111–117 shall not apply in fiscal year 2011.

1 SEC. 3015. Notwithstanding section 1101, the level
2 for “Department of Defense—Civil, Cemeterial Expenses,
3 Army, Salaries and Expenses”, shall be \$50,340,000.

4 SEC. 3016. Notwithstanding section 1101, the level
5 for “Armed Forces Retirement Home, Trust Fund”, shall
6 be \$71,200,000, of which \$2,000,000 shall be for renova-
7 tion of physical plants.

8 SEC. 3017. (a) Of the funds appropriated in division
9 E of Public Law 111–117, the following amounts which
10 became available on October 1, 2010, are hereby rescinded
11 from the following accounts of the Department of Vet-
12 erans Affairs in the amounts specified: “Medical services”,
13 \$1,015,000,000; “Medical support and compliance”,
14 \$145,000,000; and “Medical facilities”, \$145,000,000.

15 (b) An additional amount is appropriated to the fol-
16 lowing accounts of the Department of Veterans Affairs in
17 the amounts specified, to remain available until September
18 30, 2012: “Medical services”, \$1,015,000,000; “Medical
19 support and compliance”, \$145,000,000; and “Medical fa-
20 cilities”, \$145,000,000.

21 SEC. 3018. Amounts provided to the Department of
22 Veterans Affairs for “Medical services”, “Medical support
23 and compliance”, “Medical facilities”, “Construction,
24 minor projects”, and “Information technology systems”
25 for fiscal year 2011 shall be available, through the date

1 specified by section 1106 of this Act: (1) for transfer to
2 the Joint Department of Defense-Department of Veterans
3 Affairs Medical Facility Demonstration Fund, established
4 by section 1704 of Public Law 111–84, and (2) for oper-
5 ations of the integrated Captain James A. Lovell Federal
6 Health Care Center, consisting of the North Chicago Vet-
7 eran Affairs Medical Center, and Navy Ambulatory Care
8 Center, and supporting facilities designated as a combined
9 Federal medical facility as described by section 706 of
10 Public Law 110–417.

11 SEC. 3019. Such sums as may be deposited to the
12 Medical Care Collections Fund pursuant to section 1729A
13 of title 38, United States Code, for health care provided
14 at the Captain James A. Lovell Federal Health Care Cen-
15 ter shall also be available: (1) for transfer to the Joint
16 Department of Defense-Department of Veterans Affairs
17 Medical Facility Demonstration Fund, established by sec-
18 tion 1704 of Public Law 111–84, and (2) for operations
19 of the integrated Captain James A. Lovell Federal Health
20 Care Center, consisting of the North Chicago Veteran Af-
21 fairs Medical Center and Navy Ambulatory Care Center,
22 and supporting facilities designated as a combined Federal
23 medical facility as described by section 706 of Public Law
24 110–417.

1 CHAPTER 11—STATE, FOREIGN OPERATIONS,
2 AND RELATED PROGRAMS

3 SEC. 3101. For purposes of this chapter, the term
4 “division F of Public Law 111–117” means the Depart-
5 ment of State, Foreign Operations, and Related Programs
6 Appropriations Act, 2010 (division F of Public Law 111–
7 117).

8 SEC. 3102. Notwithstanding section 1101, the level
9 for each of the following accounts shall be as follows: “Ad-
10 ministration of Foreign Affairs, Diplomatic and Consular
11 Programs”, \$8,971,529,000; “Administration of Foreign
12 Affairs, Civilian Stabilization Initiative”, \$35,000,000;
13 “International Organizations, Contributions to Inter-
14 national Organizations”, \$1,575,430,000; “International
15 Organizations, Contributions for International Peace-
16 keeping Activities”, \$2,105,000,000; “International Com-
17 missions, International Boundary and Water Commission,
18 United States and Mexico, Construction”, \$26,900,000;
19 “International Commissions, International Fisheries Com-
20 missions”, \$51,000,000; “Related Agency, Broadcasting
21 Board of Governors, Broadcasting Capital Improve-
22 ments”, \$6,875,000; “Related Programs, United States
23 Institute of Peace”, \$44,050,000, which shall not be used
24 for construction activities; “United States Agency for
25 International Development, Funds Appropriated to the

1 President, Civilian Stabilization Initiative”, \$15,000,000;
2 “United States Agency for International Development,
3 Funds Appropriated to the President, Capital Investment
4 Fund”, \$173,000,000; “Bilateral Economic Assistance,
5 Funds Appropriated to the President, International Fund
6 for Ireland”, \$15,000,000; “Bilateral Economic Assist-
7 ance, Funds Appropriated to the President, Democracy
8 Fund”, \$115,000,000, of which \$68,500,000 shall be
9 made available for the Human Rights and Democracy
10 Fund of the Bureau of Democracy, Human Rights and
11 Labor, Department of State, and \$46,500,000 shall be
12 made available for the Office of Democracy and Govern-
13 ance of the Bureau for Democracy, Conflict, and Human-
14 tarian Assistance, United States Agency for International
15 Development; “Bilateral Economic Assistance, Funds Ap-
16 propriated to the President, Assistance for Europe, Eur-
17 asia and Central Asia”, \$709,000,000; “Bilateral Eco-
18 nomic Assistance, Department of the Treasury, Debt Re-
19 structuring”, \$56,000,000; “Multilateral Assistance,
20 Funds Appropriated to the President, International Devel-
21 opment Association”, \$1,235,000,000; “Multilateral As-
22 sistance, Funds Appropriated to the President, Contribu-
23 tion to the Inter-American Development Bank”,
24 \$21,000,000; “Multilateral Assistance, Funds Appro-
25 priated to the President, Contribution to the African De-

1 velopment Fund”, \$150,000,000; “International Security
2 Assistance, Department of State, Nonproliferation, Anti-
3 terrorism, Demining and Related Programs”,
4 \$740,000,000; “International Security Assistance, De-
5 partment of State, Peacekeeping Operations”,
6 \$305,000,000; “International Security Assistance, Funds
7 Appropriated to the President, International Military
8 Education and Training”, \$107,000,000; “International
9 Security Assistance, Funds Appropriated to the President,
10 Pakistan Counterinsurgency Capability Fund”,
11 \$700,000,000, which shall remain available until Sep-
12 tember 30, 2012, and shall be available to the Secretary
13 of State under the terms and conditions provided for this
14 Fund in Public Law 111–32 and Public Law 111–212;
15 and “International Security Assistance, Funds Appro-
16 priated to the President, Foreign Military Financing Pro-
17 gram”, \$5,440,000,000, of which not less than
18 \$3,000,000,000 shall be available for grants only for
19 Israel and \$1,300,000,000 shall be available for grants
20 only for Egypt and \$300,000,000 shall be available for
21 assistance for Jordan: *Provided*, That the dollar amount
22 in the fourth proviso under the heading “International Se-
23 curity Assistance, Funds Appropriated to the President,
24 Foreign Military Financing Program” in division F of
25 Public Law 111–117 shall be deemed to be \$789,000,000

1 for the purpose of applying funds appropriated under such
2 heading by this Act.

3 SEC. 3103. Notwithstanding section 1101, the dollar
4 amount in the seventh proviso under the heading “Bilat-
5 eral Economic Assistance, Funds Appropriated to the
6 President, Economic Support Fund” in division F of Pub-
7 lic Law 111–117 shall be deemed to be \$200,000,000 for
8 the purpose of applying funds appropriated under such
9 heading by this Act: *Provided*, That the ninth through the
10 fourteenth provisos under the heading “Bilateral Eco-
11 nomic Assistance, Funds Appropriated to the President,
12 Economic Support Fund” in division F of Public Law
13 111–117 shall not apply to assistance for Afghanistan
14 under this Act: *Provided further*, That the dollar amount
15 in section 7042(f)(1) in division F of Public Law 111–
16 117 shall be deemed to be \$550,400,000.

17 SEC. 3104. Notwithstanding section 1101, the level
18 for each of the following accounts shall be \$0: “Adminis-
19 tration of Foreign Affairs, Buying Power Maintenance Ac-
20 count” and “Multilateral Assistance, Funds Appropriated
21 to the President, Contribution to the Asian Development
22 Fund”.

23 SEC. 3105. (a) In addition to amounts otherwise
24 made available in this Act, \$12,000,000 is appropriated
25 for “Bilateral Economic Assistance, Funds Appropriated

1 to the President, Economic Support Fund” for activities
2 specified in section 7071(j) of division F of Public Law
3 111–117.

4 (b) For purposes of the amount made available by
5 this Act for “Export-Import Bank of the United States,
6 Administrative Expenses”, project specific transaction
7 costs, including direct and indirect costs incurred in claims
8 settlements, and other costs for systems infrastructure di-
9 rectly supporting transactions, shall not be considered ad-
10 ministrative expenses.

11 (c) Of the unobligated balances available from funds
12 appropriated under the heading “Export and Investment
13 Assistance, Export-Import Bank of the United States,
14 Subsidy Appropriation” in the Department of State, For-
15 eign Operations, and Related Programs Appropriations
16 Act, 2009 (division H, Public Law 111–8) and under such
17 heading in prior Acts making appropriations for the De-
18 partment of State, foreign operations, and related pro-
19 grams, \$160,000,000 is rescinded.

20 SEC. 3106. (a) Notwithstanding any other provision
21 of this Act, the dollar amounts under paragraphs (1)
22 through (4) under the heading “Administration of Foreign
23 Affairs, Diplomatic and Consular Programs” in division
24 F of Public Law 111–117 shall not apply to funds appro-
25 priated by this Act: *Provided*, That the dollar amounts to

1 be derived from fees collected under paragraph (5)(A)
2 under such heading shall be “\$1,702,904” and
3 “\$505,000”, respectively.

4 (b) Notwithstanding any other provision of this Act,
5 the following provisions in division F of Public Law 111–
6 117 shall not apply to funds appropriated by this Act:

7 (1) Section 7034(l).

8 (2) Section 7042(a), (b)(1), (c), and (d)(1).

9 (3) In section 7045:

10 (A) The first sentence of subsection (c).

11 (B) The first sentence of subsection (e)(1).

12 (C) The first sentence of subsection (f).

13 (D) Subsection (h).

14 (4) Section 7070(b).

15 (5) The third proviso under the heading “Ad-
16 ministration of Foreign Affairs, Civilian Stabiliza-
17 tion Initiative”.

18 (6) The fourth proviso under the heading “Bi-
19 lateral Economic Assistance, Funds Appropriated to
20 the President, Assistance for Europe, Eurasia and
21 Central Asia”.

22 SEC. 3107. (a) Section 1115(d) of Public Law 111–
23 32 is amended by striking “October 1, 2010” and insert-
24 ing “October 1, 2011”.

1 (b) Section 824(g)(2)(A) of the Foreign Service Act
2 of 1980 (22 U.S.C. 4064(g)(2)(A)) is amended by striking
3 “October 1, 2010” and inserting “October 1, 2011”.

4 (c) Section 61(a)(2) of the State Department Basic
5 Authorities Act of 1956 (22 U.S.C. 2733(a)(2)) is amend-
6 ed by striking “October 1, 2010” and inserting “October
7 1, 2011”.

8 (d) Section 625(j)(1)(B) of the Foreign Assistance
9 Act of 1961 (22 U.S.C. 2385(j)(1)(B)) is amended by
10 striking “October 1, 2010” and inserting “October 1,
11 2011”.

12 (e) Section 1(b)(2) of the Passport Act of June 4,
13 1920 (22 U.S.C. 214(b)(2)) is amended by striking “Sep-
14 tember 30, 2010” and inserting “September 30, 2011”.

15 (f) The authority provided by section 1334 of the
16 Foreign Affairs Reform and Restructuring Act of 1998
17 (22 U.S.C. 6553) shall remain in effect until September
18 30, 2011.

19 (g) Section 404(b)(2)(B)(vi) of the Foreign Relations
20 Authorization Act, Fiscal Years 1994 and 1995 (22
21 U.S.C. 287e note) is amended by striking “calendar year
22 2010,” and inserting “calendar years 2010 and 2011,”.

23 (h) The Foreign Operations, Export Financing, and
24 Related Programs Appropriations Act, 1990 (Public Law
25 101–167) is amended—

1 (1) in section 599D (8 U.S.C. 1157 note)—

2 (A) in subsection (b)(3), by striking “and
3 2010” and inserting “2010, and 2011”; and

4 (B) in subsection (e), by striking “2010”
5 each place it appears and inserting “2011”; and

6 (2) in section 599E (8 U.S.C. 1255 note) in
7 subsection (b)(2), by striking “2010” and inserting
8 “2011”.

9 SEC. 3108. (a) The second proviso under the heading
10 “International Security Assistance, Department of State,
11 Peacekeeping Operations” in division F of Public Law
12 111–117 shall be applied by substituting the following:
13 “*Provided further*, That up to \$55,918,000 may be used
14 to pay assessed expenses of international peacekeeping ac-
15 tivities in Somalia, except that up to an additional
16 \$35,000,000 may be made available for such purpose sub-
17 ject to prior consultation with, and the regular notification
18 procedures of, the Committees on Appropriations:”.

19 (b) Section 7034 of division F of Public Law 111–
20 117 shall be applied to funds appropriated by this Act
21 by—

22 (1) substituting \$75,000,000 for the dollar
23 amount in subsection (j); and

24 (2) substituting \$20,000,000 for the dollar
25 amount in subsection (m)(5).

1 (c) Section 7043 of division F of Public Law 111–
2 117 shall be applied to funds appropriated by this Act by
3 substituting the following for subsection (b):

4 “(b) LIMITATION.—None of the funds appropriated
5 or otherwise made available in title VI of this Act under
6 the heading ‘Export-Import Bank of the United States’
7 may be used by the Export-Import Bank of the United
8 States to provide any new financing (including loans,
9 guarantees, other credits, insurance, and reinsurance) to
10 any person that is subject to sanctions under paragraph
11 (2) or (3) of section 5(a) of the Iran Sanctions Act of
12 1996 (Public Law 104–172).”.

13 (d) Section 7045(b) of division F of Public Law 111–
14 117 shall be applied to funds appropriated by this Act by
15 substituting the following for paragraph (2):

16 “(2) Of the funds appropriated under the head-
17 ing ‘Debt Restructuring’ in this Act, up to
18 \$36,000,000 may be made available for the United
19 States share of an increase in the resources of the
20 Fund for Special Operations of the Inter-American
21 Development Bank in furtherance of providing debt
22 relief to Haiti in view of the Cancun Declaration of
23 March 21, 2010.”.

24 (e)(1) Section 7046(a) of division F of Public Law
25 111–117 shall be applied to funds appropriated by this

1 Act by substituting “\$453,995,000” for the dollar
2 amount.

3 (2) The dollar amount in the sixteenth proviso under
4 the heading “Bilateral Economic Assistance, Funds Ap-
5 propriated to the President, Economic Support Fund” in
6 division F of Public Law 111–117 shall be deemed to be
7 “\$195,000,000”.

8 (3) The dollar amount in the seventh proviso of the
9 first paragraph under the heading “International Security
10 Assistance, Funds Appropriated to the President, Foreign
11 Military Financing Program” in division F of Public Law
12 111–117 shall be deemed to be “\$44,500,000” for the
13 purpose of applying funds appropriated under such head-
14 ings by this Act.

15 (f) The second proviso of section 7081(d) of division
16 F of Public Law 111–117 is amended to read as follows:
17 “: *Provided further*, That funds appropriated under title
18 III of this Act for tropical forest programs shall be used
19 for purposes including to implement and enforce section
20 8204 of Public Law 110–246, shall not be used to support
21 or promote the expansion of industrial scale logging into
22 primary tropical forests, and shall be subject to prior con-
23 sultation with, and the regular notification procedures of,
24 the Committees on Appropriations”.

1 SEC. 3109. (a) Subsections (b) through (e) of this
2 section shall apply to funds appropriated by this Act in
3 lieu of section 7076 of division F of Public Law 111–117.

4 (b) LIMITATION.—None of the funds appropriated or
5 otherwise made available by this Act under the headings
6 “Economic Support Fund” and “International Narcotics
7 Control and Law Enforcement” may be obligated for as-
8 sistance for Afghanistan until the Secretary of State, in
9 consultation with the Administrator of the United States
10 Agency for International Development (USAID), certifies
11 and reports to the Committees on Appropriations that—

12 (1) The Government of Afghanistan is—

13 (A) demonstrating a commitment to reduce
14 corruption and improve governance, including
15 by investigating, prosecuting, sanctioning and/
16 or removing corrupt officials from office and to
17 implement financial transparency and account-
18 ability measures for government institutions
19 and officials (including the Central Bank) as
20 well as to conduct oversight of public resources;

21 (B) taking significant steps to facilitate ac-
22 tive public participation in governance and over-
23 sight; and

1 (C) taking credible steps to protect the
2 internationally recognized human rights of Af-
3 ghan women.

4 (2) There is a unified United States Govern-
5 ment anti-corruption strategy for Afghanistan that
6 is adequately funded, and is being implemented in
7 conjunction with relevant Afghan authorities.

8 (3) Funds will be programmed to support and
9 strengthen the capacity of Afghan public and private
10 institutions and entities to reduce corruption and to
11 improve transparency and accountability of national,
12 provincial and local governments, such as—

13 (A) the High Office of Oversight;

14 (B) the Control and Audit Office;

15 (C) the Afghan Criminal Justice Task
16 Force;

17 (D) the Afghan Judicial Security Unit;

18 (E) the Anti-Corruption Tribunal, and the
19 Attorney General's Anti-Corruption Unit;

20 (F) the training and mentoring of judicial
21 personnel;

22 (G) the training and mentoring of Afghan
23 Government personnel in financial management,
24 budgeting, and independent oversight of public
25 funds; and

1 (H) Afghan civil society organizations and
2 media institutions that play an important role
3 in government oversight.

4 (4) Representatives of Afghan national, provin-
5 cial or local governments, local communities and civil
6 society organizations, as appropriate, will be con-
7 sulted and participate in the design of programs,
8 projects, and activities, including participation in im-
9 plementation and oversight, and the development of
10 specific benchmarks to measure progress and out-
11 comes.

12 (5) Funds will be used to train and deploy addi-
13 tional United States Government direct-hire per-
14 sonnel to improve monitoring and control of assist-
15 ance to ensure that funds are used for the intended
16 purpose and do not support illicit and/or corrupt ac-
17 tivities.

18 (6) A framework and methodology is being uti-
19 lized to assess national, provincial, local and sector
20 level fiduciary risks relating to public financial man-
21 agement of United States Government assistance.

22 (c) DIRECT GOVERNMENT-TO-GOVERNMENT ASSIST-
23 ANCE.—

24 (1) Funds appropriated or otherwise made
25 available by this Act for assistance for Afghanistan

1 may not be made available for direct government-to-
2 government assistance unless the Secretary of State
3 certifies to the Committees on Appropriations that
4 the relevant Afghan implementing agency has been
5 assessed and considered qualified to manage such
6 funds and the Government of the United States and
7 the Government of Afghanistan have agreed, in writ-
8 ing, to clear and achievable goals and objectives for
9 the use of such funds, and have established mecha-
10 nisms within each implementing agency to ensure
11 that such funds are used for the purposes for which
12 they were intended: *Provided*, That the Secretary of
13 State should suspend any direct government-to-gov-
14 ernment assistance to an implementing agency if the
15 Secretary has credible information of misuse of such
16 funds by any such agency: *Provided further*, That
17 any such assistance shall be subject to prior con-
18 sultation with, and the regular notification proce-
19 dures of, the Committees on Appropriations.

20 (2) Funds appropriated or otherwise made
21 available by this Act for assistance for Afghanistan
22 may be made available as a United States contribu-
23 tion to the Afghanistan Reconstruction Trust Fund
24 (ARTF) unless the Secretary of State determines
25 and reports to the Committees on Appropriations

1 that the World Bank Monitoring Agent of the
2 ARTF is unable to conduct its financial control and
3 audit responsibilities due to restrictions on security
4 personnel by the Government of Afghanistan.

5 (d) ASSISTANCE FOR OPERATIONS.—

6 (1) Funds appropriated under the headings
7 “Economic Support Fund” and “International Nar-
8 cotics Control and Law Enforcement” in this Act
9 that are available for assistance for Afghanistan—

10 (A) shall be made available, to the max-
11 imum extent practicable, in a manner that em-
12 phasizes the participation of Afghan women,
13 and directly improves the security, economic
14 and social well-being, and political status, and
15 protects the rights of, Afghan women and girls
16 and complies with sections 7062 and 7063 of
17 division F of Public Law 111–117, including
18 support for the Afghan Independent Human
19 Rights Commission, the Afghan Ministry of
20 Women’s Affairs, and women-led nongovern-
21 mental organizations;

22 (B) may be made available for a United
23 States contribution to an internationally-man-
24 aged fund to support the reconciliation with
25 and disarmament, demobilization and reintegra-

1 tion into Afghan society of former combatants
2 who have renounced violence against the Gov-
3 ernment of Afghanistan: *Provided*, That funds
4 may be made available to support reconciliation
5 and reintegration activities only if—

6 (i) Afghan women are participating at
7 national, provincial and local levels of gov-
8 ernment in the design, policy formulation
9 and implementation of the reconciliation or
10 reintegration process, and such process up-
11 holds steps taken by the Government of
12 Afghanistan to protect the internationally
13 recognized human rights of Afghan women;
14 and

15 (ii) such funds will not be used to
16 support any pardon or immunity from
17 prosecution, or any position in the Govern-
18 ment of Afghanistan or security forces, for
19 any leader of an armed group responsible
20 for crimes against humanity, war crimes,
21 or other violations of internationally recog-
22 nized human rights.

23 (C) may be made available for a United
24 States contribution to the North Atlantic Trea-
25 ty Organization/International Security Assist-

1 ance Force Post-Operations Humanitarian Re-
2 lief Fund; and

3 (D) should be made available, notwith-
4 standing any provision of law that restricts as-
5 sistance to foreign countries, for cross border
6 stabilization and development programs between
7 Afghanistan and Pakistan or between either
8 country and the Central Asian republics.

9 (2) Programs and activities funded under titles
10 III and IV of this Act that provide training for for-
11 eign police, judicial, and military personnel shall ad-
12 dress, where appropriate, gender-based violence.

13 (3) The authority contained in section 1102(c)
14 of Public Law 111-32 shall continue in effect during
15 fiscal year 2011 and shall apply as if included in
16 this Act.

17 (4) The Coordinator for Rule of Law at the
18 United States Embassy in Kabul, Afghanistan shall
19 be consulted on the use of all funds appropriated by
20 this Act for rule of law programs in Afghanistan.

21 (5) None of the funds made available by this
22 Act may be used by the United States Government
23 to enter into a permanent basing rights agreement
24 between the United States and Afghanistan.

1 (6) The Secretary of State, after consultation
2 with the USAID Administrator, shall submit to the
3 Committees on Appropriations not later than 45
4 days after enactment of this Act, and prior to the
5 initial obligation of funds, a detailed spending plan
6 for assistance for Afghanistan which shall include
7 clear and achievable goals, benchmarks for meas-
8 uring progress, and expected results: *Provided*, That
9 such plan shall not be considered as meeting the no-
10 tification requirements under section 7015 of divi-
11 sion F of Public Law 111–117 or under section
12 634A of the Foreign Assistance Act of 1961.

13 (7) Any significant modification to the scope,
14 objectives, or implementation mechanisms of United
15 States assistance programs in Afghanistan shall be
16 subject to prior consultation with, and the regular
17 notification procedures of, the Committees on Ap-
18 propriations, except that the prior consultation re-
19 quirement may be waived in a manner consistent
20 with section 7015(e) of division F of Public Law
21 111–117.

22 (e) OVERSIGHT.—

23 (1) The Special Inspector General for Afghani-
24 stan Reconstruction, the Inspector General of the
25 Department of State and the Inspector General of

1 USAID, shall jointly develop and submit to the
2 Committees on Appropriations within 45 days of en-
3 actment of this Act a coordinated audit and inspec-
4 tion plan of United States assistance for, and civil-
5 ian operations in, Afghanistan.

6 (2) Of the funds appropriated in this Act under
7 the heading “Economic Support Fund” for assist-
8 ance for Afghanistan, \$3,000,000 shall be trans-
9 ferred to, and merged with, funds made available
10 under the heading “Office of Inspector General” in
11 title I of this Act, for increased oversight of pro-
12 grams in Afghanistan and shall be in addition to
13 funds otherwise available for such purposes: *Pro-*
14 *vided*, That \$1,500,000 shall be for the Special In-
15 spector General for Afghanistan Reconstruction.

16 (3) Of the funds appropriated in this Act under
17 the heading “Economic Support Fund” for assist-
18 ance for Afghanistan, \$1,500,000 shall be trans-
19 ferred to, and merged with, funds appropriated
20 under the heading “Office of Inspector General” in
21 title II of this Act for increased oversight of pro-
22 grams in Afghanistan and shall be in addition to
23 funds otherwise available for such purposes.

24 (f) MODIFICATION TO PRIOR PROVISIONS.—

1 (1) Section 1004(c)(1)(C) of Public Law 111–
2 212 is amended to read as follows:

3 “(C) taking credible steps to protect the inter-
4 nationally recognized human rights of Afghan
5 women.”.

6 (2) Section 1004(d)(1) of Public Law 111–212
7 is amended to read as follows:

8 “(1) Afghan women are participating at na-
9 tional, provincial and local levels of government in
10 the design, policy formulation and implementation of
11 the reconciliation or reintegration process, and such
12 process upholds steps taken by the Government of
13 Afghanistan to protect the internationally recognized
14 human rights of Afghan women; and”.

15 (3) Section 1004(e)(1) of Public Law 111–212
16 is amended to read as follows:.

17 “(1) based on information available to the Sec-
18 retary, the Independent Electoral Commission has
19 no members or other employees who participated in,
20 or helped to cover up, acts of fraud in the 2009
21 presidential election in Afghanistan, and the Elec-
22 toral Complaints Commission is a genuinely inde-
23 pendent body with all the authorities that were in-
24 vested in it under Afghan law as of December 31,
25 2009; and”.

1 SEC. 3110. In addition to amounts otherwise made
2 available by this Act, \$100,000,000, to remain available
3 until expended, is appropriated for payment as a contribu-
4 tion to a global food security fund by the Secretary of the
5 Treasury.

6 SEC. 3111. (a) CONTRIBUTION TO THE ASIAN DE-
7 VELOPMENT BANK.—In addition to amounts otherwise
8 made available by this Act, \$106,586,000, to remain avail-
9 able until expended, is appropriated for payment to the
10 Asian Development Bank by the Secretary of the Treasury
11 for the United States share of the paid-in portion of the
12 increase in capital stock.

13 (b) LIMITATION ON CALLABLE CAPITAL SUBSCRIP-
14 TIONS.—The United States Governor of the Asian Devel-
15 opment Bank may subscribe without fiscal year limitation
16 to the callable capital portion of the United States share
17 of such capital stock in an amount not to exceed
18 \$2,558,048,769.

19 (c) AMENDMENT.—The Asian Development Bank
20 Act (22 U.S.C. 285 et seq.), is amended by adding at the
21 end the following:

22 “NINTH REPLENISHMENT

23 “SEC. 33. (a) The United States Governor of the
24 Bank is authorized to contribute, on behalf of the United
25 States, \$461,000,000 to the ninth replenishment of the

1 resources of the Fund, subject to obtaining the necessary
2 appropriations.

3 “(b) In order to pay for the United States contribu-
4 tion provided for in subsection (a), there are authorized
5 to be appropriated, without fiscal year limitation,
6 \$461,000,000 for payment by the Secretary of the Treas-
7 ury.

8 “FIFTH CAPITAL INCREASE

9 “SEC. 34. (a) Subscription Authorized.

10 “(1) The United States Governor of the Bank
11 may subscribe on behalf of the United States to
12 1,104,420 additional shares of the capital stock of
13 the Bank.

14 “(2) Any subscription by the United States to
15 capital stock of the Bank shall be effective only to
16 such extent or in such amounts as are provided in
17 advance in appropriations Acts.

18 “(b) Authorization of Appropriations—

19 “(1) In order to pay for the increase in the
20 United States subscription to the Bank provided for
21 in subsection (a), there are authorized to be appro-
22 priated, without fiscal year limitation,
23 \$13,323,173,083, for payment by the Secretary of
24 the Treasury.

25 “(2) Of the amount authorized to be appro-
26 priated under paragraph (1)—

1 “(A) \$532,929,240 is authorized to be ap-
2 propriated for paid in shares of the Bank; and

3 “(B) \$12,790,243,843 is authorized to be
4 appropriated for callable shares of the Bank,
5 for payment by the Secretary of the Treasury.”.

6 CHAPTER 12—TRANSPORTATION, AND HOUS-
7 ING AND URBAN DEVELOPMENT, AND RE-
8 LATED AGENCIES

9 SEC. 3201. Notwithstanding section 1101, the level
10 for “Department of Transportation, Federal Aviation Ad-
11 ministration, Operations” shall be \$9,542,983,000, of
12 which \$4,559,000,000 shall be derived from the Airport
13 and Airway Trust Fund, of which no less than
14 \$7,473,299,000 shall be for air traffic organization activi-
15 ties; no less than \$1,253,020,000 shall be for aviation reg-
16 ulation and certification activities; not to exceed
17 \$15,237,000 shall be available for commercial space trans-
18 portation activities; not to exceed \$113,681,000 shall be
19 available for financial services activities; not to exceed
20 \$100,428,000 shall be available for human resources pro-
21 gram activities; not to exceed \$341,977,000 shall be avail-
22 able for region and center operations and regional coordi-
23 nation activities; not to exceed \$196,063,000 shall be
24 available for staff offices; and not to exceed \$49,278,000
25 shall be available for information services.

1 SEC. 3202. The amounts included under the heading
2 “Department of Transportation, Federal Aviation Admin-
3 istration, Grants-in-Aid for Airports (Liquidation of Con-
4 tract Authorization)” in division A of Public Law 111-
5 117 shall be applied to funds appropriated by this Act by
6 substituting “\$3,550,000,000” for “\$3,000,000,000”.

7 SEC. 3203. Notwithstanding section 1101, the level
8 for “Department of Transportation, Federal Highway Ad-
9 ministration, Surface Transportation Priorities” shall be
10 \$0.

11 SEC. 3204. Notwithstanding section 1101, no funds
12 are provided for activities described in section 122 of title
13 I of division A of Public Law 111-117.

14 SEC. 3205. Of the amount made available for “De-
15 partment of Transportation, Motor Carrier Safety Grants,
16 (Liquidation of Contract Authorization), (Limitation on
17 Obligations), (Highway Trust Fund)” for the commercial
18 driver’s license information system modernization pro-
19 gram, \$3,000,000 shall be made available for audits of
20 new entrant motor carriers to carry out section 4107(b)
21 of Public Law 109-59, and 31104(a) of title 49, United
22 States Code, and \$5,000,000 shall be made available for
23 the commercial driver’s license improvements program to
24 carry out section 31313 of title 49, United States Code.

1 SEC. 3206. Notwithstanding section 1101, the level
2 for “Department of Transportation, Federal Railroad Ad-
3 ministration, Safety and Operations” shall be
4 \$176,950,000.

5 SEC. 3207. Notwithstanding section 1101, the level
6 for “Department of Transportation, Federal Railroad Ad-
7 ministration, Capital Assistance for High Speed Rail Cor-
8 ridors and Intercity Passenger Rail Service” shall be
9 \$1,000,000,000.

10 SEC. 3208. Notwithstanding section 1101, the level
11 for “Department of Transportation, Maritime Administra-
12 tion, Operations and Training” shall be \$155,750,000, of
13 which \$11,240,000 shall remain available until expended
14 for maintenance and repair of training ships at State Mar-
15 itime Academies, and of which \$15,000,000 shall remain
16 available until expended for capital improvements at the
17 United States Merchant Marine Academy, of which
18 \$59,057,000 shall be available for operations at the
19 United States Merchant Marine Academy, and of which
20 \$6,000,000 shall remain available until expended for the
21 Secretary’s reimbursement of overcharged midshipmen
22 fees for academic years 2003–2004 through 2008–2009
23 and such action shall be final and conclusive.

24 SEC. 3209. Notwithstanding section 1101, the level
25 for each of the following accounts under the heading “De-

1 partment of Transportation, Pipeline and Hazardous Ma-
2 terials Safety Administration” shall be as follows: “Oper-
3 ational Expenses (Pipeline Safety Fund)”, \$21,496,000;
4 “Hazardous Materials Safety”, \$39,098,000, of which
5 \$1,699,000 shall remain available until September 30,
6 2013; and “Pipeline Safety (Pipeline Safety Fund) (Oil
7 Spill Liability Trust Fund)”, \$106,919,000, of which
8 \$18,905,000 shall be derived from the Oil Spill Liability
9 Trust Fund and shall remain available until September
10 30, 2013, and of which \$88,014,000 shall be derived from
11 the Pipeline Safety Fund, of which \$47,332,000 shall re-
12 main available until September 30, 2013.

13 SEC. 3210. Notwithstanding section 1101, section
14 186 of title I of division A of Public Law 111–117 shall
15 not apply to fiscal year 2011.

16 SEC. 3211. Notwithstanding section 1101, the level
17 for “Department of Housing and Urban Development,
18 Personnel Compensation and Benefits, Housing” shall be
19 \$390,885,000.

20 SEC. 3212. Notwithstanding section 1101, the level
21 for “Department of Housing and Urban Development,
22 Personnel Compensation and Benefits, Office of the Gov-
23 ernment National Mortgage Association” shall be
24 \$14,000,000.

1 SEC. 3213. Notwithstanding section 1101, the level
2 for “Department of Housing and Urban Development,
3 Public and Indian Housing, Tenant-Based Rental Assist-
4 ance” shall be \$14,863,998,000, to remain available until
5 expended, shall be available on October 1, 2010 (in addi-
6 tion to the \$4,000,000,000 previously appropriated under
7 such heading that will become available on October 1,
8 2010), and notwithstanding section 1109, an additional
9 \$4,000,000,000, to remain available until expended, shall
10 be available on October 1, 2011: *Provided*, That of the
11 amounts available for such heading, \$16,993,998,000
12 shall be for activities specified in paragraph (1) and
13 \$145,000,000 shall be for activities specified in paragraph
14 (2) under such heading of division A of Public Law 111–
15 117: *Provided further*, That of the amounts made available
16 for activities under paragraph (2) under such heading of
17 division A of Public Law 111–117, \$25,000,000 shall be
18 available to provide tenant protection assistance, not oth-
19 erwise provided under this paragraph, to residents resid-
20 ing in low-vacancy areas and who may have to pay rents
21 greater than 30 percent of household income, as the result
22 of (1) the maturity of a HUD-insured, HUD-held or sec-
23 tion 202 loan that requires the permission of the Secretary
24 prior to loan payment, (2) the expiration of a rental assist-
25 ance contract for which the tenants are not eligible for

1 enhanced voucher or tenant protection assistance under
2 existing law, or (3) the expiration of affordability restric-
3 tions accompanying a mortgage or preservation program
4 administered by the Secretary: *Provided further*, That
5 such tenant protection assistance made available under
6 the previous proviso may be provided under the authority
7 of section 8(t) of the United States Housing Act of 1937
8 (42 U.S.C. 1937f(t)): *Provided further*, That the Secretary
9 shall issue guidance to implement the previous two pro-
10 visos, including but not limited to requirements for defin-
11 ing eligible at-risk households, within 120 days of the en-
12 actment of this Act.

13 SEC. 3214. The seventh proviso in paragraph (1)
14 under the heading “Department of Housing and Urban
15 Development, Public and Indian Housing, Tenant-Based
16 Rental Assistance” in division A of Public Law 111–117
17 shall be applied in fiscal year 2011 by inserting before the
18 colon at the end the following: “; (5) for one-time adjust-
19 ments of renewal funding for public housing agencies in
20 receivership with approved fungibility plans for calendar
21 year 2009 as authorized in section 11003 of the Consoli-
22 dated Security, Disaster Assistance, and Continuing Ap-
23 propriations Act, 2009 (Public Law 110–329); or (6) to
24 adjust allocations for public housing agencies to prevent
25 termination of assistance to families receiving assistance

1 under the disaster voucher program, as authorized by
2 chapter 9 of title I of division B of Public Law 109–148
3 under the heading ‘Tenant-Based Rental Assistance’ ”.

4 SEC. 3215. Notwithstanding section 1101, the level
5 for “Department of Housing and Urban Development,
6 Community Planning and Development, Community De-
7 velopment Fund” shall be \$4,255,000,000, of which
8 \$3,990,000,000 shall be for carrying out the community
9 development block grant program under title I of the
10 Housing and Community Development Act of 1974, as
11 amended: *Provided*, That none of the funds made available
12 by this section for such account may be used for grants
13 for the Economic Development Initiative or Neighborhood
14 Initiatives activities.

15 SEC. 3216. Notwithstanding section 1101, the level
16 for “Department of Housing and Urban Development,
17 Community Planning and Development, Homeless Assist-
18 ance Grants” shall be \$2,055,000,000.

19 SEC. 3217. Notwithstanding section 1101, the level
20 for “Department of Housing and Urban Development,
21 Housing Programs, Project-Based Rental Assistance”
22 shall be \$8,882,328,000, to remain available until ex-
23 pended, shall be available on October 1, 2010 (in addition
24 to the \$393,672,000 previously appropriated under such
25 heading that became available on October 1, 2010), and,

1 notwithstanding section 1109, an additional
2 \$400,000,000, to remain available until expended, shall be
3 available on October 1, 2011: *Provided*, That of the
4 amounts available for such heading, \$8,950,000,000 shall
5 be for activities specified in paragraph (1) under such
6 heading of division A of Public Law 111–117 and
7 \$326,000,000 shall be available for activities specified in
8 paragraph (2) under such heading in such public law.

9 SEC. 3218. Notwithstanding section 1101, the level
10 for “Department of Housing and Urban Development,
11 Housing Programs, Energy Innovation Fund” shall be \$0.

12 SEC. 3219. The heading “Department of Housing
13 and Urban Development, Housing Program, Other As-
14 sisted Housing Programs, Rental Housing Assistance”
15 shall be applied by inserting “, or extensions of up to one
16 year for expiring contracts,” after “for amendments to
17 contracts”.

18 SEC. 3220. Notwithstanding section 1101, the level
19 under the heading “Department of Housing and Urban
20 Development, Housing Programs, Rent Supplement (Re-
21 scission)” shall be \$40,060,000.

22 SEC. 3221. Notwithstanding section 1101, the level
23 for “Department of Housing and Urban Development,
24 Federal Housing Administration, Mutual Mortgage Insur-

1 ance Program Account” for administrative contract ex-
2 penses shall be \$221,125,000.

3 SEC. 3222. The first proviso in the first paragraph
4 under the heading “Department of Housing and Urban
5 Development, Federal Housing Administration, General
6 and Special Risk Program Account” in division A of Pub-
7 lic Law 111–117 shall be applied in fiscal year 2011 by
8 substituting ‘\$20,000,000,000’ for ‘\$15,000,000,000’.

9 SEC. 3223. Notwithstanding section 1101, the level
10 for “Department of Housing and Urban Development,
11 Management and Administration, Working Capital Fund”
12 shall be \$228,500,000.

13 SEC. 3224. Notwithstanding section 1101, the level
14 for “Related Agencies, National Railroad Passenger Cor-
15 poration, Office of Inspector General, Salaries and Ex-
16 penses” shall be \$19,496,000.

17 SEC. 3225. Notwithstanding section 1101, the level
18 under the heading “Related Agencies, United States Inter-
19 agency Council on Homelessness, Operating Expenses”
20 shall be \$3,930,000.

21 SEC. 3226. Section 209 of the McKinney-Vento
22 Homeless Assistance Act (42 U.S.C. 11319) is repealed.

23 SEC. 3227. Unobligated balances of funds made
24 available for obligation under 23 U.S.C. 320, section 147
25 of Public Law 95–599, section 9(c) of Public Law 97–

1 134, section 149 of Public Law 100–17, and sections
2 1006, 1069, 1103, 1104, 1105, 1106, 1107, 1108, 6005,
3 6015, and 6023 of Public Law 102–240 are permanently
4 rescinded. In addition, the unobligated balance available
5 on September 30, 2011, under section 1602 of the Trans-
6 portation Equity Act for the 21st Century (Public Law
7 105–178) for each project for which less than 10 percent
8 of the amount authorized for such project under such sec-
9 tion has been obligated is permanently rescinded. In addi-
10 tion, of the amounts authorized for fiscal years 2005
11 through 2009 in section 1101(a)(16) of the Safe, Account-
12 able, Flexible, Efficient Transportation Equity Act: A
13 Legacy for Users (Public Law 109–59) to carry out the
14 high priority projects program under section 117 of title
15 23, United States Code, that are not allocated for projects
16 described in section 1702 of such Act, \$8,190,335 are per-
17 manently rescinded.

18 **DIVISION B—SURFACE**
19 **TRANSPORTATION EXTENSION**
20 **SEC. 4001. SHORT TITLE; RECONCILIATION OF FUNDS.**

21 (a) **SHORT TITLE.**—This division may be cited as the
22 “Surface Transportation Extension Act of 2010, Part II”.

23 (b) **RECONCILIATION OF FUNDS.**—The Secretary of
24 Transportation shall reduce the amount apportioned or al-
25 located for a program, project, or activity under this divi-

1 sion in fiscal year 2011 by amounts apportioned or allo-
2 cated pursuant to the Surface Transportation Extension
3 Act of 2010 for the period beginning on October 1, 2010,
4 and ending on December 31, 2010.

5 **TITLE I—FEDERAL-AID**
6 **HIGHWAYS**

7 **SEC. 4101. EXTENSION OF FEDERAL-AID HIGHWAY PRO-**
8 **GRAMS.**

9 (a) IN GENERAL.—Section 411 of the Surface Trans-
10 portation Extension Act of 2010 (Public Law 111–147;
11 124 Stat. 78) is amended—

12 (1) by striking “the period beginning on Octo-
13 ber 1, 2010, and ending on December 31, 2010”
14 each place it appears (except in subsection (c)(2))
15 and inserting “fiscal year 2011”;

16 (2) in subsection (a) by striking “December 31,
17 2010” and inserting “September 30, 2011”;

18 (3) in subsection (b)(2) by striking “ $\frac{1}{4}$ of”;

19 (4) in subsection (c)—

20 (A) in paragraph (2)—

21 (i) by striking “ $\frac{1}{4}$ of”; and

22 (ii) by striking “the period beginning
23 on October 1, 2010, and ending on Decem-
24 ber 31, 2010,” and inserting “fiscal year
25 2011”;

1 (B) in paragraph (4)—

2 (i) in subparagraph (A)(ii) by striking
3 “, except that during such period obliga-
4 tions subject to such limitation shall not
5 exceed $\frac{1}{4}$ of the limitation on obligations
6 included in an Act making appropriations
7 for fiscal year 2011”; and

8 (ii) in subparagraph (B)(ii)(II) by
9 striking “\$159,750,000” and inserting
10 “\$639,000,000”; and

11 (C) by striking paragraph (5);

12 (5) in subsection (d)—

13 (A) by striking “ $\frac{1}{4}$ of” each place it ap-
14 pears; and

15 (B) in paragraph (2)(A)—

16 (i) in the matter preceding clause (i)
17 by striking “apportioned under sections
18 104(b) and 144 of title 23, United States
19 Code,” and inserting “specified in section
20 105(a)(2) of title 23, United States Code
21 (except the high priority projects pro-
22 gram),”; and

23 (ii) in clause (ii) by striking “appor-
24 tioned under such sections of such Code”
25 and inserting “specified in such section

1 105(a)(2) (except the high priority projects
2 program)”; and

3 (6) in subsection (e)(1)(B) by striking “¼”.

4 (b) ADMINISTRATIVE EXPENSES.—Section 412(a)(2)
5 of the Surface Transportation Extension Act of 2010
6 (Public Law 111–147; 124 Stat. 83) is amended—

7 (1) by striking “\$105,606,250” and inserting
8 “\$422,425,000”; and

9 (2) by striking “the period beginning on Octo-
10 ber 1, 2010, and ending on December 31, 2010”
11 and inserting “fiscal year 2011”.

12 **TITLE II—NATIONAL HIGHWAY**
13 **TRAFFIC SAFETY ADMINIS-**
14 **TRATION, FEDERAL MOTOR**
15 **CARRIER SAFETY ADMINIS-**
16 **TRATION, AND ADDITIONAL**
17 **PROGRAMS**

18 **SEC. 4201. EXTENSION OF NATIONAL HIGHWAY TRAFFIC**
19 **SAFETY ADMINISTRATION HIGHWAY SAFETY**
20 **PROGRAMS.**

21 (a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Sec-
22 tion 2001(a)(1) of SAFETEA–LU (119 Stat. 1519) is
23 amended by striking “and \$58,750,000 for the period be-
24 ginning on October 1, 2010, and ending on December 31,

1 2010.” and inserting “and \$235,000,000 for fiscal year
2 2011.”.

3 (b) HIGHWAY SAFETY RESEARCH AND DEVELOP-
4 MENT.—Section 2001(a)(2) of SAFETEA–LU (119 Stat.
5 1519) is amended by striking “and \$27,061,000 for the
6 period beginning on October 1, 2010, and ending on De-
7 cember 31, 2010.” and inserting “and \$108,244,000 for
8 fiscal year 2011.”.

9 (c) OCCUPANT PROTECTION INCENTIVE GRANTS.—
10 Section 2001(a)(3) of SAFETEA–LU (119 Stat. 1519)
11 is amended by striking “and \$6,250,000 for the period
12 beginning on October 1, 2010, and ending on December
13 31, 2010.” and inserting “and \$25,000,000 for fiscal year
14 2011.”.

15 (d) SAFETY BELT PERFORMANCE GRANTS.—Section
16 2001(a)(4) of SAFETEA–LU (119 Stat. 1519) is amend-
17 ed by striking “and \$31,125,000 for the period beginning
18 on October 1, 2010, and ending on December 31, 2010.”
19 and inserting “and \$124,500,000 for fiscal year 2011.”.

20 (e) STATE TRAFFIC SAFETY INFORMATION SYSTEM
21 IMPROVEMENTS.—Section 2001(a)(5) of SAFETEA–LU
22 (119 Stat. 1519) is amended by striking “and \$8,625,000
23 for the period beginning on October 1, 2010, and ending
24 on December 31, 2010.” and inserting “and \$34,500,000
25 for fiscal year 2011.”.

1 (f) ALCOHOL-IMPAIRED DRIVING COUNTER-
2 MEASURES INCENTIVE GRANT PROGRAM.—Section
3 2001(a)(6) of SAFETEA-LU (119 Stat. 1519) is amend-
4 ed by striking “and \$34,750,000 for the period beginning
5 on October 1, 2010, and ending on December 31, 2010.”
6 and inserting “and \$139,000,000 for fiscal year 2011.”.

7 (g) NATIONAL DRIVER REGISTER.—Section
8 2001(a)(7) of SAFETEA-LU (119 Stat. 1520) is amend-
9 ed by striking “and \$1,029,000 for the period beginning
10 on October 1, 2010, and ending on December 31, 2010.”
11 and inserting “and \$4,116,000 for fiscal year 2011.”.

12 (h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—
13 Section 2001(a)(8) of SAFETEA-LU (119 Stat. 1520)
14 is amended by striking “and \$7,250,000 for the period
15 beginning on October 1, 2010, and ending on December
16 31, 2010.” and inserting “and \$29,000,000 for fiscal year
17 2011.”.

18 (i) MOTORCYCLIST SAFETY.—Section 2001(a)(9) of
19 SAFETEA-LU (119 Stat. 1520) is amended by striking
20 “and \$1,750,000 for the period beginning on October 1,
21 2010, and ending on December 31, 2010.” and inserting
22 “and \$7,000,000 for fiscal year 2011.”.

23 (j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFE-
24 TY INCENTIVE GRANTS.—Section 2001(a)(10) of
25 SAFETEA-LU (119 Stat. 1520) is amended by striking

1 “and \$1,750,000 for the period beginning on October 1,
2 2010, and ending on December 31, 2010.” and inserting
3 “and \$7,000,000 for fiscal year 2011.”.

4 (k) ADMINISTRATIVE EXPENSES.—Section
5 2001(a)(11) of SAFETEA-LU (119 Stat. 1520) is
6 amended by striking “and \$6,332,000 for the period be-
7 ginning on October 1, 2010, and ending on December 31,
8 2010.” and inserting “and \$25,328,000 for fiscal year
9 2011.”.

10 **SEC. 4202. EXTENSION OF FEDERAL MOTOR CARRIER SAFE-**
11 **TY ADMINISTRATION PROGRAMS.**

12 (a) MOTOR CARRIER SAFETY GRANTS.—Section
13 31104(a)(7) of title 49, United States Code, is amended
14 by striking “\$52,679,000 for the period beginning on Oc-
15 tober 1, 2010, and ending on December 31, 2010.” and
16 inserting “\$209,000,000 for fiscal year 2011.”.

17 (b) ADMINISTRATIVE EXPENSES.—Section
18 31104(i)(1)(G) of title 49, United States Code, is amend-
19 ed by striking “\$61,036,000 for the period beginning on
20 October 1, 2010, and ending on December 31, 2010.” and
21 inserting “\$244,144,000 for fiscal year 2011.”.

22 (c) GRANT PROGRAMS.—Section 4101(e) of
23 SAFETEA-LU (119 Stat. 1715) is amended—

24 (1) in paragraph (1)—

25 (A) by striking “and” after “2009,”; and

1 (B) by striking “and \$6,301,000 for the
2 period beginning on October 1, 2010, and end-
3 ing on December 31, 2010” and inserting “and
4 \$25,000,000 for fiscal year 2011”;

5 (2) in paragraph (2) by striking “and
6 \$8,066,000 for the period beginning on October 1,
7 2010, and ending on December 31, 2010” and in-
8 serting “and \$32,000,000 for fiscal year 2011”;

9 (3) in paragraph (3) by striking “and
10 \$1,260,000 for the period beginning on October 1,
11 2010, and ending on December 31, 2010” and in-
12 serting “and \$5,000,000 for fiscal year 2011”;

13 (4) in paragraph (4) by striking “and
14 \$6,301,000 for the period beginning on October 1,
15 2010, and ending on December 31, 2010” and in-
16 serting “and \$25,000,000 for fiscal year 2011”; and

17 (5) in paragraph (5) by striking “and \$756,000
18 for the period beginning on October 1, 2010, and
19 ending on December 31, 2010” and inserting “and
20 \$3,000,000 for fiscal year 2011”.

21 (d) HIGH-PRIORITY ACTIVITIES.—Section
22 31104(k)(2) of title 49, United States Code, is amended
23 by striking “and \$3,781,000 for the period beginning on
24 October 1, 2010, and ending on December 31, 2010” and
25 inserting “and \$15,000,000 for fiscal year 2011”.

1 (e) NEW ENTRANT AUDITS.—Section
2 31144(g)(5)(B) of title 49, United States Code, is amend-
3 ed by striking “(and up to \$7,310,000 for the period be-
4 ginning on October 1, 2010, and ending on December 31,
5 2010)”.

6 (f) COMMERCIAL DRIVER’S LICENSE INFORMATION
7 SYSTEM MODERNIZATION.—Section 4123(d)(6) of
8 SAFETEA–LU (119 Stat. 1736) is amended by striking
9 “\$2,016,000 for the period beginning on October 1, 2010,
10 and ending on December 31, 2010.” and inserting
11 “\$8,000,000 for fiscal year 2011.”.

12 (g) OUTREACH AND EDUCATION.—Section 4127(e)
13 of SAFETEA–LU (119 Stat. 1741) is amended by strik-
14 ing “and 2010” and all that follows before “to carry out”
15 and inserting “2010, and 2011”.

16 (h) GRANT PROGRAM FOR COMMERCIAL MOTOR VE-
17 HICLE OPERATORS.—Section 4134(c) of SAFETEA–LU
18 (119 Stat. 1744) is amended by striking “2009, 2010, and
19 \$252,000 for the period beginning on October 1, 2010,
20 and ending on December 31, 2010,” and inserting
21 “2011”.

22 (i) MOTOR CARRIER SAFETY ADVISORY COM-
23 MITTEE.—Section 4144(d) of SAFETEA–LU (119 Stat.
24 1748) is amended by striking “December 31, 2010” and
25 inserting “September 30, 2011”.

1 (j) WORKING GROUP FOR DEVELOPMENT OF PRAC-
2 TICES AND PROCEDURES TO ENHANCE FEDERAL-STATE
3 RELATIONS.—Section 4213(d) of SAFETEA-LU (49
4 U.S.C. 14710 note; 119 Stat. 1759) is amended by strik-
5 ing “December 31, 2010” and inserting “September 30,
6 2011”.

7 **SEC. 4203. ADDITIONAL PROGRAMS.**

8 (a) HAZARDOUS MATERIALS RESEARCH
9 PROJECTS.—Section 7131(c) of SAFETEA-LU (119
10 Stat. 1910) is amended by striking “through 2010” and
11 all that follows before “shall be available” and inserting
12 “through 2011”.

13 (b) DINGELL-JOHNSON SPORT FISH RESTORATION
14 ACT.—Section 4 of the Dingell-Johnson Sport Fish Res-
15 toration Act (16 U.S.C. 777c) is amended—

16 (1) in subsection (a) by striking “For each of
17 fiscal years 2006” and all that follows before para-
18 graph (1) and inserting the following: “For each of
19 fiscal years 2006 through 2011, the balance of each
20 annual appropriation made in accordance with the
21 provisions of section 3 remaining after the distribu-
22 tions for administrative expenses and other purposes
23 under subsection (b) and for multistate conservation
24 grants under section 14 shall be distributed as fol-
25 lows:”; and

1 (2) in subsection (b)(1)(A) by striking the first
2 sentence and inserting the following: “From the an-
3 nual appropriation made in accordance with section
4 3, for each of fiscal years 2006 through 2011, the
5 Secretary of the Interior may use no more than the
6 amount specified in subparagraph (B) for the fiscal
7 year for expenses for administration incurred in the
8 implementation of this Act, in accordance with this
9 section and section 9.”.

10 (c) SURFACE TRANSPORTATION PROJECT DELIVERY
11 PILOT PROGRAM.—Section 327(i)(1) of title 23, United
12 States Code, is amended by striking “6 years after” and
13 inserting “7 years after”.

14 (d) IMPLEMENTATION OF FUTURE STRATEGIC HIGH-
15 WAY RESEARCH PROGRAM.—Section 510 of title 23,
16 United States Code, is amended by adding at the end the
17 following:

18 “(h) IMPLEMENTATION.—Notwithstanding any other
19 provision of this section, the Secretary may use funds
20 made available to carry out this section for implementa-
21 tion of research products related to the future strategic
22 highway research program, including development, dem-
23 onstration, evaluation, and technology transfer activi-
24 ties.”.

1 **TITLE III—PUBLIC**
2 **TRANSPORTATION PROGRAMS**

3 **SEC. 4301. ALLOCATION OF FUNDS FOR PLANNING PRO-**
4 **GRAMS.**

5 Section 5305(g) of title 49, United States Code, is
6 amended by striking “2010, and for the period beginning
7 October 1, 2010, and ending December 31, 2010,” and
8 inserting “2011”.

9 **SEC. 4302. SPECIAL RULE FOR URBANIZED AREA FORMULA**
10 **GRANTS.**

11 Section 5307(b)(2) of title 49, United States Code,
12 is amended—

13 (1) in the paragraph heading by striking “2010,
14 AND THE PERIOD BEGINNING OCTOBER 1, 2010, AND
15 ENDING DECEMBER 31, 2010” and inserting “2011”;

16 (2) in subparagraph (A) by striking “2010, and
17 the period beginning October 1, 2010, and ending
18 December 31, 2010,” and inserting “2011,”; and

19 (3) in subparagraph (E)—

20 (A) in the subparagraph heading by strik-
21 ing “2010 AND DURING THE PERIOD BEGINNING
22 OCTOBER 1, 2010, AND ENDING DECEMBER 31,
23 2010” and inserting “2011”; and

24 (B) in the matter preceding clause (i) by
25 striking “In fiscal years 2008 through 2010,

1 and during the period beginning October 1,
2 2010, and ending December 31, 2010,” and in-
3 sserting “In each of fiscal years 2008 through
4 2011”.

5 **SEC. 4303. ALLOCATING AMOUNTS FOR CAPITAL INVEST-**
6 **MENT GRANTS.**

7 Section 5309(m) of title 49, United States Code, is
8 amended—

9 (1) in paragraph (2)—

10 (A) in the paragraph heading by striking
11 “2010 AND OCTOBER 1, 2010, THROUGH DECEM-
12 BER 31, 2010” and inserting “2011”;

13 (B) in the matter preceding subparagraph
14 (A) by striking “2010, and during the period
15 beginning October 1, 2010, and ending Decem-
16 ber 31, 2010,” and inserting “2011”; and

17 (C) in subparagraph (A)(i) by striking
18 “2010, and \$50,000,000 for the period begin-
19 ning October 1, 2010, and ending December
20 31, 2010,” and inserting “2011”;

21 (2) in paragraph (6)—

22 (A) in subparagraph (B) by striking
23 “2010, and \$3,750,000 shall be available for
24 the period beginning October 1, 2010, and end-

1 ing December 31, 2010,” and inserting “2011”;

2 and

3 (B) in subparagraph (C) by striking

4 “2010, and \$1,250,000 shall be available for

5 the period beginning October 1, 2010 and end-

6 ing December 31, 2010,” and inserting “2011”;

7 and

8 (3) in paragraph (7)—

9 (A) in subparagraph (A)—

10 (i) by striking “(A) FERRY BOAT SYS-

11 TEMS.—” and all that follows through “(i)

12 FISCAL YEAR 2006 THROUGH 2010.—

13 \$10,000,000 shall be available in each of

14 fiscal years 2006 through 2010” and in-

15 serting the following:

16 “(A) FERRY BOAT SYSTEMS.—

17 \$10,000,000 shall be available in each of fiscal

18 years 2006 through 2011”;

19 (ii) by striking clause (ii);

20 (iii) by redesignating subclauses (I)

21 through (VIII) as clauses (i) through (viii),

22 respectively, and moving the text of such

23 clauses 2 ems to the left; and

24 (iv) by inserting a period at the end

25 of clause (iv) (as so redesignated);

1 (B) by striking subparagraph (B)(vi) and
2 inserting the following:

3 “(vi) \$13,500,000 for fiscal year
4 2011.”;

5 (C) in subparagraph (C) by striking “, and
6 during the period beginning October 1, 2010,
7 and ending December 31, 2010,”;

8 (D) in subparagraph (D) by striking “,
9 and not less than \$8,750,000 shall be available
10 for the period beginning October 1, 2010, and
11 ending December 31, 2010,”; and

12 (E) in subparagraph (E) by striking “, and
13 \$750,000 shall be available for the period be-
14 ginning October 1, 2010, and ending December
15 31, 2010,”.

16 **SEC. 4304. APPORTIONMENT OF FORMULA GRANTS FOR**
17 **OTHER THAN URBANIZED AREAS.**

18 Section 5311(c)(1)(F) of title 49, United States
19 Code, is amended to read as follows:

20 “(F) \$15,000,000 for fiscal year 2011.”.

21 **SEC. 4305. APPORTIONMENT BASED ON FIXED GUIDEWAY**
22 **FACTORS.**

23 Section 5337 of title 49, United States Code, is
24 amended—

1 (1) in subsection (a), in the matter preceding
2 paragraph (1), by striking “2010” and inserting
3 “2011”; and

4 (2) by striking subsection (g).

5 **SEC. 4306. AUTHORIZATIONS FOR PUBLIC TRANSPOR-**
6 **TATION.**

7 (a) **FORMULA AND BUS GRANTS.**—Section 5338(b)
8 of title 49, United States Code, is amended—

9 (1) by striking paragraph (1)(F) and inserting
10 the following:

11 “(F) \$8,360,565,000 for fiscal year
12 2011.”; and

13 (2) in paragraph (2)—

14 (A) in subparagraph (A) by striking
15 “\$28,375,000 for the period beginning October
16 1, 2010, and ending December 31, 2010,” and
17 inserting “\$113,500,000 for fiscal year 2011”;

18 (B) in subparagraph (B) by striking
19 “\$1,040,091,250 for the period beginning Octo-
20 ber 1, 2010, and ending December 31, 2010,”
21 and inserting “\$4,160,365,000 for fiscal year
22 2011”;

23 (C) in subparagraph (C) by striking
24 “\$12,875,000 for the period beginning October

1 1, 2010, and ending December 31, 2010,” and
2 inserting “\$51,500,000 for fiscal year 2011”;

3 (D) in subparagraph (D) by striking
4 “\$416,625,000 for the period beginning Octo-
5 ber 1, 2010 and ending December 31, 2010,”
6 and inserting “\$1,666,500,000 for fiscal year
7 2011”;

8 (E) in subparagraph (E) by striking
9 “\$246,000,000 for the period beginning Octo-
10 ber 1, 2010 and ending December 31, 2010,”
11 and inserting “\$984,000,000 for fiscal year
12 2011”;

13 (F) in subparagraph (F) by striking
14 “\$33,375,000 for the period beginning October
15 1, 2010 and ending December 31, 2010,” and
16 inserting “\$133,500,000 for fiscal year 2011”;

17 (G) in subparagraph (G) by striking
18 “\$116,250,000 for the period beginning Octo-
19 ber 1, 2010 and ending December 31, 2010,”
20 and inserting “\$465,000,000 for fiscal year
21 2011”;

22 (H) in subparagraph (H) by striking
23 “\$41,125,000 for the period beginning October
24 1, 2010 and ending December 31, 2010,” and
25 inserting “\$164,500,000 for fiscal year 2011”;

1 (I) in subparagraph (I) by striking
2 “\$23,125,000 for the period beginning October
3 1, 2010 and ending December 31, 2010,” and
4 inserting “\$92,500,000 for fiscal year 2011”;

5 (J) in subparagraph (J) by striking
6 “\$6,725,000 for the period beginning October
7 1, 2010 and ending December 31, 2010,” and
8 inserting “\$26,900,000 for fiscal year 2011”;

9 (K) in subparagraph (K) by striking
10 “\$875,000 for the period beginning October 1,
11 2010 and ending December 31, 2010,” and in-
12 serting “\$3,500,000 for fiscal year 2011”;

13 (L) in subparagraph (L) by striking
14 “\$6,250,000 for the period beginning October
15 1, 2010 and ending December 31, 2010,” and
16 inserting “\$25,000,000 for fiscal year 2011”;

17 (M) in subparagraph (M) by striking
18 “\$116,250,000 for the period beginning Octo-
19 ber 1, 2010 and ending December 31, 2010,”
20 and inserting “\$465,000,000 for fiscal year
21 2011”; and

22 (N) in subparagraph (N) by striking
23 “\$2,200,000 for the period beginning October
24 1, 2010 and ending December 31, 2010,” and
25 inserting “\$8,800,000 for fiscal year 2011”.

1 (b) CAPITAL INVESTMENT GRANTS.—Section
2 5338(c)(6) of title 49, United States Code, is amended
3 to read as follows:

4 “(6) \$2,000,000,000 for fiscal year 2011.”.

5 (c) RESEARCH AND UNIVERSITY RESEARCH CEN-
6 TERS.—Section 5338(d) of title 49, United States Code,
7 is amended—

8 (1) in paragraph (1)—

9 (A) in the matter preceding subparagraph
10 (A) by striking “\$17,437,500 for the period be-
11 ginning October 1, 2010, and ending December
12 31, 2010” and inserting “\$69,750,000 for fiscal
13 year 2011”; and

14 (B) in subparagraph (A) by striking “fiscal
15 year 2009” and inserting “each of fiscal years
16 2009, 2010, and 2011”;

17 (2) in paragraph (2)(A)—

18 (A) in clauses (i), (ii), and (iii) by striking
19 “2009” and inserting “2011”; and

20 (B) in clauses (v), (vi), (vii), and (viii) by
21 striking “and 2009” and inserting “through
22 2011”; and

23 (3) by striking paragraph (3) and inserting the
24 following:

1 “(3) FUNDING.—If the Secretary determines
2 that a project or activity described in paragraph (2)
3 received sufficient funds in fiscal year 2010, or a
4 previous fiscal year, to carry out the purpose for
5 which the project or activity was authorized, the
6 Secretary may not allocate any amounts under para-
7 graph (2) for the project or activity for fiscal year
8 2011, or any subsequent fiscal year.”.

9 (d) ADMINISTRATION.—Section 5338(e)(6) of title
10 49, United States Code, is amended to read as follows:

11 “(6) \$98,911,000 for fiscal year 2011.”.

12 **SEC. 4307. AMENDMENTS TO SAFETEA-LU.**

13 (a) CONTRACTED PARATRANSIT PILOT.—Section
14 3009(i)(1) of SAFETEA-LU (119 Stat. 1572) is amend-
15 ed by striking “2010, and for the period beginning Octo-
16 ber 1, 2010, and ending December 31, 2010” and insert-
17 ing “2011”.

18 (b) PUBLIC-PRIVATE PARTNERSHIP PILOT PRO-
19 GRAM.—Section 3011 of SAFETEA-LU (49 U.S.C. 5309
20 note; 119 Stat. 1588) is amended—

21 (1) in subsection (c)(5) by striking “2010 and
22 the period beginning October 1, 2010, and ending
23 December 31, 2010” and inserting “2011”; and

1 (2) in subsection (d) by striking “2010, and for
2 the period beginning October 1, 2010, and ending
3 December 31, 2010” and inserting “2011”.

4 (c) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH
5 DISABILITIES PILOT PROGRAM.—Section 3012(b)(8) of
6 SAFETEA-LU (49 U.S.C. 5310 note; 119 Stat. 1593)
7 is amended by striking “December 31, 2010” and insert-
8 ing “September 30, 2011”.

9 (d) OBLIGATION CEILING.—Section 3040(7) of
10 SAFETEA-LU (119 Stat. 1639) is amended to read as
11 follows:

12 “(7) \$10,507,752,000 for fiscal year 2011, of
13 which not more than \$8,360,565,000 shall be from
14 the Mass Transit Account.”.

15 (e) PROJECT AUTHORIZATIONS FOR NEW FIXED
16 GUIDEWAY CAPITAL PROJECTS.—Section 3043 of
17 SAFETEA-LU (119 Stat. 1640) is amended—

18 (1) in subsection (b), in the matter preceding
19 paragraph (1), by striking “2010, and for the period
20 beginning October 1, 2010, and ending December
21 31, 2010,” and inserting “2011”; and

22 (2) in subsection (c), in the matter preceding
23 paragraph (1), by striking “2010, and for the period
24 beginning October 1, 2010, and ending December
25 31, 2010,” and inserting “2011”.

1 (f) ALLOCATIONS FOR NATIONAL RESEARCH AND
2 TECHNOLOGY PROGRAMS.—Section 3046 of SAFETEA-
3 LU (49 U.S.C. 5338 note; 119 Stat. 1706) is amended—

4 (1) in subsection (b) by striking “or period”;

5 (2) by striking subsection (c) and inserting the
6 following:

7 “(c) ADDITIONAL APPROPRIATIONS.—The Secretary
8 shall allocate amounts appropriated pursuant to section
9 5338(d) of title 49, United States Code, for national re-
10 search and technology programs under sections 5312,
11 5314, and 5322 of such title for fiscal years 2010 and
12 2011, in amounts equal to the amounts allocated for fiscal
13 year 2009 under each of paragraphs (2), (3), (5), (6), and
14 (8) through (25) of subsection (a).”; and

15 (3) in subsection (d)—

16 (A) by striking “2009” and inserting
17 “2010”; and

18 (B) by striking “2010” and inserting
19 “2011”.

20 **SEC. 4308. LEVEL OF OBLIGATION LIMITATIONS.**

21 (a) HIGHWAY CATEGORY.—Section 8003(a) of
22 SAFETEA-LU (2 U.S.C. 901 note; 119 Stat. 1917) is
23 amended—

24 (1) in paragraph (6) by striking “for the period
25 beginning on October 1, 2009, and ending on Sep-

1 tember 30, 2010,” and inserting “for fiscal year
2 2010,”; and

3 (2) by striking paragraph (7) and inserting the
4 following:

5 “(7) for fiscal year 2011, \$42,469,970,178.”.

6 (b) MASS TRANSIT CATEGORY.—Section 8003(b) of
7 SAFETEA-LU (2 U.S.C. 901 note; 119 Stat. 1917) is
8 amended—

9 (1) in paragraph (6) by striking “for the period
10 beginning on October 1, 2009, and ending on De-
11 cember 31, 2010,” and inserting “for fiscal year
12 2010,”; and

13 (2) by striking paragraph (7) and inserting the
14 following:

15 “(7) for fiscal year 2011, \$10,338,065,000.”.

16 **TITLE IV—EXTENSION OF**
17 **EXPENDITURE AUTHORITY**

18 **SEC. 4401. EXTENSION OF EXPENDITURE AUTHORITY.**

19 (a) HIGHWAY TRUST FUND.—Section 9503 of the
20 Internal Revenue Code of 1986 is amended—

21 (1) by striking “December 31, 2010 (January
22 1, 2011, in the case of expenditures for administra-
23 tive expenses)” in subsections (b)(6)(B) and (c)(1)
24 and inserting “October 1, 2011”,

1 (2) by striking “the Surface Transportation Ex-
2 tension Act of 2010” in subsections (c)(1) and
3 (e)(3) and inserting “the Surface Transportation
4 Extension Act of 2010, Part II”, and
5 (3) by striking “January 1, 2011” in subsection
6 (e)(3) and inserting “October 1, 2011”.

7 (b) SPORT FISH RESTORATION AND BOATING TRUST
8 FUND.—Section 9504 of the Internal Revenue Code of
9 1986 is amended—

10 (1) by striking “Surface Transportation Exten-
11 sion Act of 2010” each place it appears in sub-
12 section (b)(2) and inserting “Surface Transportation
13 Extension Act of 2010, Part II”, and

14 (2) by striking “January 1, 2011” in subsection
15 (d)(2) and inserting “October 1, 2011”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on December 31, 2010.

18 **DIVISION C—AIRPORT AND**
19 **AIRWAY EXTENSION**

20 **SEC. 5001. SHORT TITLE.**

21 This division may be cited as the “Airport and Air-
22 way Extension Act of 2010, Part IV”.

1 **SEC. 5002. EXTENSION OF TAXES FUNDING AIRPORT AND**
2 **AIRWAY TRUST FUND.**

3 (a) FUEL TAXES.—Subparagraph (B) of section
4 4081(d)(2) of the Internal Revenue Code of 1986 is
5 amended by striking “December 31, 2010” and inserting
6 “September 30, 2011”.

7 (b) TICKET TAXES.—

8 (1) PERSONS.—Clause (ii) of section
9 4261(j)(1)(A) of the Internal Revenue Code of 1986
10 is amended by striking “December 31, 2010” and
11 inserting “September 30, 2011”.

12 (2) PROPERTY.—Clause (ii) of section
13 4271(d)(1)(A) of such Code is amended by striking
14 “December 31, 2010” and inserting “September 30,
15 2011”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on January 1, 2011.

18 **SEC. 5003. EXTENSION OF AIRPORT AND AIRWAY TRUST**
19 **FUND EXPENDITURE AUTHORITY.**

20 (a) IN GENERAL.—Paragraph (1) of section 9502(d)
21 of the Internal Revenue Code of 1986 is amended—

22 (1) by striking “January 1, 2011” and insert-
23 ing “October 1, 2011”; and

24 (2) by inserting “or the Airport and Airway Ex-
25 tension Act of 2010, Part IV” before the semicolon
26 at the end of subparagraph (A).

1 (b) CONFORMING AMENDMENT.—Paragraph (2) of
2 section 9502(e) of such Code is amended by striking “Jan-
3 uary 1, 2011” and inserting “October 1, 2011”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on January 1, 2011.

6 **SEC. 5004. EXTENSION OF AIRPORT IMPROVEMENT PRO-**
7 **GRAM.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
9 48103(8) of title 49, United States Code, is amended to
10 read as follows:

11 “(8) \$3,700,000,000 for fiscal year 2011.”

12 (b) PROJECT GRANT AUTHORITY.—Section 47104(c)
13 of such title is amended by striking “December 31, 2010,”
14 and inserting “September 30, 2011,”.

15 **SEC. 5005. EXTENSION OF EXPIRING AUTHORITIES.**

16 (a) Section 40117(l)(7) of title 49, United States
17 Code, is amended by striking “January 1, 2011.” and in-
18 serting “October 1, 2011.”.

19 (b) Section 44302(f)(1) of such title is amended—

20 (1) by striking “December 31, 2010,” and in-
21 serting “September 30, 2011,”; and

22 (2) by striking “March 31, 2011,” and insert-
23 ing “December 31, 2011,”.

1 (c) Section 44303(b) of such title is amended by
2 striking “March 31, 2011,” and inserting “December 31,
3 2011,”.

4 (d) Section 47107(s)(3) of such title is amended by
5 striking “January 1, 2011.” and inserting “October 1,
6 2011.”.

7 (e) Section 47115(j) of such title is amended by strik-
8 ing “fiscal years 2004 through 2010, and for the portion
9 of fiscal year 2011 ending before January 1, 2011,” and
10 inserting “fiscal years 2004 through 2011,”.

11 (f) Section 47141(f) of such title is amended by strik-
12 ing “December 31, 2010.” and inserting “September 30,
13 2011.”.

14 (g) Section 49108 of such title is amended by striking
15 “December 31, 2010,” and inserting “September 30,
16 2011,”.

17 (h) Section 161 of the Vision 100—Century of Avia-
18 tion Reauthorization Act (49 U.S.C. 47109 note) is
19 amended by striking “fiscal year 2009 or 2010, or in the
20 portion of fiscal year 2011 ending before January 1,
21 2011,” and inserting “fiscal year 2009, 2010, or 2011”.

22 (i) Section 186(d) of such Act (117 Stat. 2518) is
23 amended by striking “for fiscal years ending before Octo-
24 ber 1, 2010, and for the portion of fiscal year 2011 ending

1 before January 1, 2011,” and inserting “for fiscal years
2 ending before October 1, 2011,”.

3 (j) The amendments made by this section shall take
4 effect on January 1, 2011.

5 **DIVISION D—FOOD SAFETY**

6 **SEC. 6001. SHORT TITLE; REFERENCES; TABLE OF CON-**
7 **TENTS.**

8 (a) **SHORT TITLE.**—This division may be cited as the
9 “FDA Food Safety Modernization Act”.

10 (b) **REFERENCES.**—Except as otherwise specified,
11 whenever in this division an amendment is expressed in
12 terms of an amendment to a section or other provision,
13 the reference shall be considered to be made to a section
14 or other provision of the Federal Food, Drug, and Cos-
15 metic Act (21 U.S.C. 301 et seq.).

16 (c) **TABLE OF CONTENTS.**—The table of contents for
17 this division is as follows:

DIVISION D—FOOD SAFETY

Sec. 6001. Short title; references; table of contents.

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY
PROBLEMS

- Sec. 6101. Inspections of records.
- Sec. 6102. Registration of food facilities.
- Sec. 6103. Hazard analysis and risk-based preventive controls.
- Sec. 6104. Performance standards.
- Sec. 6105. Standards for produce safety.
- Sec. 6106. Protection against intentional adulteration.
- Sec. 6107. Authority to collect fees.
- Sec. 6108. National agriculture and food defense strategy.
- Sec. 6109. Food and Agriculture Coordinating Councils.
- Sec. 6110. Building domestic capacity.
- Sec. 6111. Sanitary transportation of food.
- Sec. 6112. Food allergy and anaphylaxis management.

- Sec. 6113. New dietary ingredients.
- Sec. 6114. Requirement for guidance relating to post-harvest processing of raw oysters.
- Sec. 6115. Port shopping.
- Sec. 6116. Alcohol-related facilities.

TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO
FOOD SAFETY PROBLEMS

- Sec. 6201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.
- Sec. 6202. Laboratory accreditation for analyses of foods.
- Sec. 6203. Integrated consortium of laboratory networks.
- Sec. 6204. Enhancing tracking and tracing of food and recordkeeping.
- Sec. 6205. Surveillance.
- Sec. 6206. Mandatory recall authority.
- Sec. 6207. Administrative detention of food.
- Sec. 6208. Decontamination and disposal standards and plans.
- Sec. 6209. Improving the training of State, local, territorial, and tribal food safety officials.
- Sec. 6210. Enhancing food safety.
- Sec. 6211. Improving the reportable food registry.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

- Sec. 6301. Foreign supplier verification program.
- Sec. 6302. Voluntary qualified importer program.
- Sec. 6303. Authority to require import certifications for food.
- Sec. 6304. Prior notice of imported food shipments.
- Sec. 6305. Building capacity of foreign governments with respect to food safety.
- Sec. 6306. Inspection of foreign food facilities.
- Sec. 6307. Accreditation of third-party auditors.
- Sec. 6308. Foreign offices of the Food and Drug Administration.
- Sec. 6309. Smuggled food.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 6401. Funding for food safety.
- Sec. 6402. Employee protections.
- Sec. 6403. Jurisdiction; authorities.
- Sec. 6404. Compliance with international agreements.
- Sec. 6405. Determination of budgetary effects.

1 **TITLE I—IMPROVING CAPACITY**
2 **TO PREVENT FOOD SAFETY**
3 **PROBLEMS**

4 **SEC. 6101. INSPECTIONS OF RECORDS.**

- 5 (a) IN GENERAL.—Section 414(a) (21 U.S.C.
6 350c(a)) is amended—

1 (1) by striking the subsection heading and all
2 that follows through “of food is” and inserting the
3 following: “RECORDS INSPECTION.—

4 “(1) ADULTERATED FOOD.—If the Secretary
5 has a reasonable belief that an article of food, and
6 any other article of food that the Secretary reason-
7 ably believes is likely to be affected in a similar man-
8 ner, is”;

9 (2) by inserting “, and to any other article of
10 food that the Secretary reasonably believes is likely
11 to be affected in a similar manner,” after “relating
12 to such article”;

13 (3) by striking the last sentence; and

14 (4) by inserting at the end the following:

15 “(2) USE OF OR EXPOSURE TO FOOD OF CON-
16 CERN.—If the Secretary believes that there is a rea-
17 sonable probability that the use of or exposure to an
18 article of food, and any other article of food that the
19 Secretary reasonably believes is likely to be affected
20 in a similar manner, will cause serious adverse
21 health consequences or death to humans or animals,
22 each person (excluding farms and restaurants) who
23 manufactures, processes, packs, distributes, receives,
24 holds, or imports such article shall, at the request of
25 an officer or employee duly designated by the Sec-

1 retary, permit such officer or employee, upon presen-
2 tation of appropriate credentials and a written notice
3 to such person, at reasonable times and within rea-
4 sonable limits and in a reasonable manner, to have
5 access to and copy all records relating to such article
6 and to any other article of food that the Secretary
7 reasonably believes is likely to be affected in a simi-
8 lar manner, that are needed to assist the Secretary
9 in determining whether there is a reasonable prob-
10 ability that the use of or exposure to the food will
11 cause serious adverse health consequences or death
12 to humans or animals.

13 “(3) APPLICATION.—The requirement under
14 paragraphs (1) and (2) applies to all records relating
15 to the manufacture, processing, packing, distribu-
16 tion, receipt, holding, or importation of such article
17 maintained by or on behalf of such person in any
18 format (including paper and electronic formats) and
19 at any location.”.

20 (b) CONFORMING AMENDMENT.—Section
21 704(a)(1)(B) (21 U.S.C. 374(a)(1)(B)) is amended by
22 striking “section 414 when” and all that follows through
23 “subject to” and inserting “section 414, when the stand-
24 ard for records inspection under paragraph (1) or (2) of
25 section 414(a) applies, subject to”.

1 **SEC. 6102. REGISTRATION OF FOOD FACILITIES.**

2 (a) UPDATING OF FOOD CATEGORY REGULATIONS;
3 BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21
4 U.S.C. 350d(a)) is amended—

5 (1) in paragraph (2), by—

6 (A) striking “conducts business and” and
7 inserting “conducts business, the e-mail address
8 for the contact person of the facility or, in the
9 case of a foreign facility, the United States
10 agent for the facility, and”; and

11 (B) inserting “, or any other food cat-
12 egories as determined appropriate by the Sec-
13 retary, including by guidance” after “Code of
14 Federal Regulations”;

15 (2) by redesignating paragraphs (3) and (4) as
16 paragraphs (4) and (5), respectively; and

17 (3) by inserting after paragraph (2) the fol-
18 lowing:

19 “(3) BIENNIAL REGISTRATION RENEWAL.—
20 During the period beginning on October 1 and end-
21 ing on December 31 of each even-numbered year, a
22 registrant that has submitted a registration under
23 paragraph (1) shall submit to the Secretary a re-
24 newal registration containing the information de-
25 scribed in paragraph (2). The Secretary shall pro-
26 vide for an abbreviated registration renewal process

1 for any registrant that has not had any changes to
2 such information since the registrant submitted the
3 preceding registration or registration renewal for the
4 facility involved.”.

5 (b) SUSPENSION OF REGISTRATION.—

6 (1) IN GENERAL.—Section 415 (21 U.S.C.
7 350d) is amended—

8 (A) in subsection (a)(2), by inserting after
9 the first sentence the following: “The registra-
10 tion shall contain an assurance that the Sec-
11 retary will be permitted to inspect such facility
12 at the times and in the manner permitted by
13 this Act.”;

14 (B) by redesignating subsections (b) and
15 (c) as subsections (c) and (d), respectively; and

16 (C) by inserting after subsection (a) the
17 following:

18 “(b) SUSPENSION OF REGISTRATION.—

19 “(1) IN GENERAL.—If the Secretary determines
20 that food manufactured, processed, packed, received,
21 or held by a facility registered under this section has
22 a reasonable probability of causing serious adverse
23 health consequences or death to humans or animals,
24 the Secretary may by order suspend the registration
25 of a facility—

1 “(A) that created, caused, or was otherwise
2 responsible for such reasonable probability; or

3 “(B)(i) that knew of, or had reason to
4 know of, such reasonable probability; and

5 “(ii) packed, received, or held such food.

6 “(2) HEARING ON SUSPENSION.—The Secretary
7 shall provide the registrant subject to an order
8 under paragraph (1) with an opportunity for an in-
9 formal hearing, to be held as soon as possible but
10 not later than 2 business days after the issuance of
11 the order or such other time period, as agreed upon
12 by the Secretary and the registrant, on the actions
13 required for reinstatement of registration and why
14 the registration that is subject to suspension should
15 be reinstated. The Secretary shall reinstate a reg-
16 istration if the Secretary determines, based on evi-
17 dence presented, that adequate grounds do not exist
18 to continue the suspension of the registration.

19 “(3) POST-HEARING CORRECTIVE ACTION PLAN;
20 VACATING OF ORDER.—

21 “(A) CORRECTIVE ACTION PLAN.—If, after
22 providing opportunity for an informal hearing
23 under paragraph (2), the Secretary determines
24 that the suspension of registration remains nec-
25 essary, the Secretary shall require the reg-

1 istrant to submit a corrective action plan to
2 demonstrate how the registrant plans to correct
3 the conditions found by the Secretary. The Sec-
4 retary shall review such plan not later than 14
5 days after the submission of the corrective ac-
6 tion plan or such other time period as deter-
7 mined by the Secretary.

8 “(B) VACATING OF ORDER.—Upon a de-
9 termination by the Secretary that adequate
10 grounds do not exist to continue the suspension
11 actions required by the order, or that such ac-
12 tions should be modified, the Secretary shall
13 promptly vacate the order and reinstate the reg-
14 istration of the facility subject to the order or
15 modify the order, as appropriate.

16 “(4) EFFECT OF SUSPENSION.—If the registra-
17 tion of a facility is suspended under this subsection,
18 no person shall import or export food into the
19 United States from such facility, offer to import or
20 export food into the United States from such facil-
21 ity, or otherwise introduce food from such facility
22 into interstate or intrastate commerce in the United
23 States.

24 “(5) REGULATIONS.—

1 “(A) IN GENERAL.—The Secretary shall
2 promulgate regulations to implement this sub-
3 section. The Secretary may promulgate such
4 regulations on an interim final basis.

5 “(B) REGISTRATION REQUIREMENT.—The
6 Secretary may require that registration under
7 this section be submitted in an electronic for-
8 mat. Such requirement may not take effect be-
9 fore the date that is 5 years after the date of
10 enactment of the FDA Food Safety Moderniza-
11 tion Act.

12 “(6) APPLICATION DATE.—Facilities shall be
13 subject to the requirements of this subsection begin-
14 ning on the earlier of—

15 “(A) the date on which the Secretary
16 issues regulations under paragraph (5); or

17 “(B) 180 days after the date of enactment
18 of the FDA Food Safety Modernization Act.

19 “(7) NO DELEGATION.—The authority con-
20 ferred by this subsection to issue an order to sus-
21 pend a registration or vacate an order of suspension
22 shall not be delegated to any officer or employee
23 other than the Commissioner.”.

24 (2) SMALL ENTITY COMPLIANCE POLICY
25 GUIDE.—Not later than 180 days after the issuance

1 of the regulations promulgated under section
2 415(b)(5) of the Federal Food, Drug, and Cosmetic
3 Act (as added by this section), the Secretary shall
4 issue a small entity compliance policy guide setting
5 forth in plain language the requirements of such
6 regulations to assist small entities in complying with
7 registration requirements and other activities re-
8 quired under such section.

9 (3) IMPORTED FOOD.—Section 801(l) (21
10 U.S.C. 381(l)) is amended by inserting “(or for
11 which a registration has been suspended under such
12 section)” after “section 415”.

13 (c) CLARIFICATION OF INTENT.—

14 (1) RETAIL FOOD ESTABLISHMENT.—The Sec-
15 retary shall amend the definition of the term “retail
16 food establishment” in section 1.227(b)(11) of title
17 21, Code of Federal Regulations to clarify that, in
18 determining the primary function of an establish-
19 ment or a retail food establishment under such sec-
20 tion, the sale of food products directly to consumers
21 by such establishment and the sale of food directly
22 to consumers by such retail food establishment in-
23 clude—

24 (A) the sale of such food products or food
25 directly to consumers by such establishment at

1 a roadside stand or farmers’ market where such
2 stand or market is located other than where the
3 food was manufactured or processed;

4 (B) the sale and distribution of such food
5 through a community supported agriculture
6 program; and

7 (C) the sale and distribution of such food
8 at any other such direct sales platform as deter-
9 mined by the Secretary.

10 (2) DEFINITIONS.—For purposes of paragraph

11 (1)—

12 (A) the term “community supported agri-
13 culture program” has the same meaning given
14 the term “community supported agriculture
15 (CSA) program” in section 249.2 of title 7,
16 Code of Federal Regulations (or any successor
17 regulation); and

18 (B) the term “consumer” does not include
19 a business.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 301(d) (21 U.S.C. 331(d)) is
22 amended by inserting “415,” after “404,”.

23 (2) Section 415(d), as redesignated by sub-
24 section (b), is amended by adding at the end before
25 the period “for a facility to be registered, except

1 with respect to the reinstatement of a registration
2 that is suspended under subsection (b)”.

3 **SEC. 6103. HAZARD ANALYSIS AND RISK-BASED PREVEN-**
4 **TIVE CONTROLS.**

5 (a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVEN-**
8 **TIVE CONTROLS.**

9 “(a) IN GENERAL.—The owner, operator, or agent
10 in charge of a facility shall, in accordance with this sec-
11 tion, evaluate the hazards that could affect food manufac-
12 tured, processed, packed, or held by such facility, identify
13 and implement preventive controls to significantly mini-
14 mize or prevent the occurrence of such hazards and pro-
15 vide assurances that such food is not adulterated under
16 section 402 or misbranded under section 403(w), monitor
17 the performance of those controls, and maintain records
18 of this monitoring as a matter of routine practice.

19 “(b) HAZARD ANALYSIS.—The owner, operator, or
20 agent in charge of a facility shall—

21 “(1) identify and evaluate known or reasonably
22 foreseeable hazards that may be associated with the
23 facility, including—

24 “(A) biological, chemical, physical, and ra-
25 diological hazards, natural toxins, pesticides,

1 drug residues, decomposition, parasites, aller-
2 gens, and unapproved food and color additives;
3 and

4 “(B) hazards that occur naturally, or may
5 be unintentionally introduced; and

6 “(2) identify and evaluate hazards that may be
7 intentionally introduced, including by acts of ter-
8 rorism; and

9 “(3) develop a written analysis of the hazards.

10 “(c) PREVENTIVE CONTROLS.—The owner, operator,
11 or agent in charge of a facility shall identify and imple-
12 ment preventive controls, including at critical control
13 points, if any, to provide assurances that—

14 “(1) hazards identified in the hazard analysis
15 conducted under subsection (b)(1) will be signifi-
16 cantly minimized or prevented;

17 “(2) any hazards identified in the hazard anal-
18 ysis conducted under subsection (b)(2) will be sig-
19 nificantly minimized or prevented and addressed,
20 consistent with section 420, as applicable; and

21 “(3) the food manufactured, processed, packed,
22 or held by such facility will not be adulterated under
23 section 402 or misbranded under section 403(w).

24 “(d) MONITORING OF EFFECTIVENESS.—The owner,
25 operator, or agent in charge of a facility shall monitor the

1 effectiveness of the preventive controls implemented under
2 subsection (c) to provide assurances that the outcomes de-
3 scribed in subsection (c) shall be achieved.

4 “(e) CORRECTIVE ACTIONS.—The owner, operator,
5 or agent in charge of a facility shall establish procedures
6 to ensure that, if the preventive controls implemented
7 under subsection (c) are not properly implemented or are
8 found to be ineffective—

9 “(1) appropriate action is taken to reduce the
10 likelihood of recurrence of the implementation fail-
11 ure;

12 “(2) all affected food is evaluated for safety;
13 and

14 “(3) all affected food is prevented from entering
15 into commerce if the owner, operator, or agent in
16 charge of such facility cannot ensure that the af-
17 fected food is not adulterated under section 402 or
18 misbranded under section 403(w).

19 “(f) VERIFICATION.—The owner, operator, or agent
20 in charge of a facility shall verify that—

21 “(1) the preventive controls implemented under
22 subsection (c) are adequate to control the hazards
23 identified under subsection (b);

24 “(2) the owner, operator, or agent is conducting
25 monitoring in accordance with subsection (d);

1 “(3) the owner, operator, or agent is making
2 appropriate decisions about corrective actions taken
3 under subsection (e);

4 “(4) the preventive controls implemented under
5 subsection (e) are effectively and significantly mini-
6 mizing or preventing the occurrence of identified
7 hazards, including through the use of environmental
8 and product testing programs and other appropriate
9 means; and

10 “(5) there is documented, periodic reanalysis of
11 the plan under subsection (i) to ensure that the plan
12 is still relevant to the raw materials, conditions, and
13 processes in the facility, and new and emerging
14 threats.

15 “(g) RECORDKEEPING.—The owner, operator, or
16 agent in charge of a facility shall maintain, for not less
17 than 2 years, records documenting the monitoring of the
18 preventive controls implemented under subsection (c), in-
19 stances of nonconformance material to food safety, the re-
20 sults of testing and other appropriate means of verification
21 under subsection (f)(4), instances when corrective actions
22 were implemented, and the efficacy of preventive controls
23 and corrective actions.

24 “(h) WRITTEN PLAN AND DOCUMENTATION.—The
25 owner, operator, or agent in charge of a facility shall pre-

1 pare a written plan that documents and describes the pro-
2 cedures used by the facility to comply with the require-
3 ments of this section, including analyzing the hazards
4 under subsection (b) and identifying the preventive con-
5 trols adopted under subsection (c) to address those haz-
6 ards. Such written plan, together with the documentation
7 described in subsection (g), shall be made promptly avail-
8 able to a duly authorized representative of the Secretary
9 upon oral or written request.

10 “(i) REQUIREMENT TO REANALYZE.—The owner,
11 operator, or agent in charge of a facility shall conduct a
12 reanalysis under subsection (b) whenever a significant
13 change is made in the activities conducted at a facility
14 operated by such owner, operator, or agent if the change
15 creates a reasonable potential for a new hazard or a sig-
16 nificant increase in a previously identified hazard or not
17 less frequently than once every 3 years, whichever is ear-
18 lier. Such reanalysis shall be completed and additional pre-
19 ventive controls needed to address the hazard identified,
20 if any, shall be implemented before the change in activities
21 at the facility is operative. Such owner, operator, or agent
22 shall revise the written plan required under subsection (h)
23 if such a significant change is made or document the basis
24 for the conclusion that no additional or revised preventive
25 controls are needed. The Secretary may require a reanaly-

1 sis under this section to respond to new hazards and devel-
2 opments in scientific understanding, including, as appro-
3 priate, results from the Department of Homeland Security
4 biological, chemical, radiological, or other terrorism risk
5 assessment.

6 “(j) EXEMPTION FOR SEAFOOD, JUICE, AND LOW-
7 ACID CANNED FOOD FACILITIES SUBJECT TO HACCP.—

8 “(1) IN GENERAL.—This section shall not apply
9 to a facility if the owner, operator, or agent in
10 charge of such facility is required to comply with,
11 and is in compliance with, 1 of the following stand-
12 ards and regulations with respect to such facility:

13 “(A) The Seafood Hazard Analysis Critical
14 Control Points Program of the Food and Drug
15 Administration.

16 “(B) The Juice Hazard Analysis Critical
17 Control Points Program of the Food and Drug
18 Administration.

19 “(C) The Thermally Processed Low-Acid
20 Foods Packaged in Hermetically Sealed Con-
21 tainers standards of the Food and Drug Ad-
22 ministration (or any successor standards).

23 “(2) APPLICABILITY.—The exemption under
24 paragraph (1)(C) shall apply only with respect to
25 microbiological hazards that are regulated under the

1 standards for Thermally Processed Low-Acid Foods
2 Packaged in Hermetically Sealed Containers under
3 part 113 of chapter 21, Code of Federal Regulations
4 (or any successor regulations).

5 “(k) EXCEPTION FOR ACTIVITIES OF FACILITIES
6 SUBJECT TO SECTION 419.—This section shall not apply
7 to activities of a facility that are subject to section 419.

8 “(l) MODIFIED REQUIREMENTS FOR QUALIFIED FA-
9 CILITIES.—

10 “(1) QUALIFIED FACILITIES.—

11 “(A) IN GENERAL.—A facility is a quali-
12 fied facility for purposes of this subsection if
13 the facility meets the conditions under subpara-
14 graph (B) or (C).

15 “(B) VERY SMALL BUSINESS.—A facility is
16 a qualified facility under this subparagraph—

17 “(i) if the facility, including any sub-
18 sidiary or affiliate of the facility, is, collec-
19 tively, a very small business (as defined in
20 the regulations promulgated under sub-
21 section (n)); and

22 “(ii) in the case where the facility is
23 a subsidiary or affiliate of an entity, if
24 such subsidiaries or affiliates, are, collec-

1 tively, a very small business (as so de-
2 fined).

3 “(C) LIMITED ANNUAL MONETARY VALUE
4 OF SALES.—

5 “(i) IN GENERAL.—A facility is a
6 qualified facility under this subparagraph
7 if clause (ii) applies—

8 “(I) to the facility, including any
9 subsidiary or affiliate of the facility,
10 collectively; and

11 “(II) to the subsidiaries or affili-
12 ates, collectively, of any entity of
13 which the facility is a subsidiary or af-
14 filiate.

15 “(ii) AVERAGE ANNUAL MONETARY
16 VALUE.—This clause applies if—

17 “(I) during the 3-year period pre-
18 ceding the applicable calendar year,
19 the average annual monetary value of
20 the food manufactured, processed,
21 packed, or held at such facility (or the
22 collective average annual monetary
23 value of such food at any subsidiary
24 or affiliate, as described in clause (i))
25 that is sold directly to qualified end-

1 users during such period exceeded the
2 average annual monetary value of the
3 food manufactured, processed, packed,
4 or held at such facility (or the collec-
5 tive average annual monetary value of
6 such food at any subsidiary or affil-
7 iate, as so described) sold by such fa-
8 cility (or collectively by any such sub-
9 sidiary or affiliate) to all other pur-
10 chasers during such period; and

11 “(II) the average annual mone-
12 tary value of all food sold by such fa-
13 cility (or the collective average annual
14 monetary value of such food sold by
15 any subsidiary or affiliate, as de-
16 scribed in clause (i)) during such pe-
17 riod was less than \$500,000, adjusted
18 for inflation.

19 “(2) EXEMPTION.—A qualified facility—

20 “(A) shall not be subject to the require-
21 ments under subsections (a) through (i) and
22 subsection (n) in an applicable calendar year;
23 and

24 “(B) shall submit to the Secretary—

1 “(i)(I) documentation that dem-
2 onstrates that the owner, operator, or
3 agent in charge of the facility has identi-
4 fied potential hazards associated with the
5 food being produced, is implementing pre-
6 ventive controls to address the hazards,
7 and is monitoring the preventive controls
8 to ensure that such controls are effective;
9 or

10 “(II) documentation (which may in-
11 clude licenses, inspection reports, certifi-
12 cates, permits, credentials, certification by
13 an appropriate agency (such as a State de-
14 partment of agriculture), or other evidence
15 of oversight), as specified by the Secretary,
16 that the facility is in compliance with
17 State, local, county, or other applicable
18 non-Federal food safety law; and

19 “(ii) documentation, as specified by
20 the Secretary in a guidance document
21 issued not later than 1 year after the date
22 of enactment of this section, that the facil-
23 ity is a qualified facility under paragraph
24 (1)(B) or (1)(C).

1 “(3) WITHDRAWAL; RULE OF CONSTRUC-
2 TION.—

3 “(A) IN GENERAL.—In the event of an ac-
4 tive investigation of a foodborne illness out-
5 break that is directly linked to a qualified facil-
6 ity subject to an exemption under this sub-
7 section, or if the Secretary determines that it is
8 necessary to protect the public health and pre-
9 vent or mitigate a foodborne illness outbreak
10 based on conduct or conditions associated with
11 a qualified facility that are material to the safe-
12 ty of the food manufactured, processed, packed,
13 or held at such facility, the Secretary may with-
14 draw the exemption provided to such facility
15 under this subsection.

16 “(B) RULE OF CONSTRUCTION.—Nothing
17 in this subsection shall be construed to expand
18 or limit the inspection authority of the Sec-
19 retary.

20 “(4) DEFINITIONS.—In this subsection:

21 “(A) AFFILIATE.—The term ‘affiliate’
22 means any facility that controls, is controlled
23 by, or is under common control with another fa-
24 cility.

1 “(B) QUALIFIED END-USER.—The term
2 ‘qualified end-user’, with respect to a food,
3 means—

4 “(i) the consumer of the food; or

5 “(ii) a restaurant or retail food estab-
6 lishment (as those terms are defined by the
7 Secretary for purposes of section 415)
8 that—

9 “(I) is located—

10 “(aa) in the same State as
11 the qualified facility that sold the
12 food to such restaurant or estab-
13 lishment; or

14 “(bb) not more than 275
15 miles from such facility; and

16 “(II) is purchasing the food for
17 sale directly to consumers at such res-
18 taurant or retail food establishment.

19 “(C) CONSUMER.—For purposes of sub-
20 paragraph (B), the term ‘consumer’ does not
21 include a business.

22 “(D) SUBSIDIARY.—The term ‘subsidiary’
23 means any company which is owned or con-
24 trolled directly or indirectly by another com-
25 pany.

1 “(5) STUDY.—

2 “(A) IN GENERAL.—The Secretary, in con-
3 sultation with the Secretary of Agriculture,
4 shall conduct a study of the food processing
5 sector regulated by the Secretary to deter-
6 mine—

7 “(i) the distribution of food produc-
8 tion by type and size of operation, includ-
9 ing monetary value of food sold;

10 “(ii) the proportion of food produced
11 by each type and size of operation;

12 “(iii) the number and types of food
13 facilities co-located on farms, including the
14 number and proportion by commodity and
15 by manufacturing or processing activity;

16 “(iv) the incidence of foodborne illness
17 originating from each size and type of op-
18 eration and the type of food facilities for
19 which no reported or known hazard exists;
20 and

21 “(v) the effect on foodborne illness
22 risk associated with commingling, proc-
23 essing, transporting, and storing food and
24 raw agricultural commodities, including

1 differences in risk based on the scale and
2 duration of such activities.

3 “(B) SIZE.—The results of the study con-
4 ducted under subparagraph (A) shall include
5 the information necessary to enable the Sec-
6 retary to define the terms ‘small business’ and
7 ‘very small business’, for purposes of promul-
8 gating the regulation under subsection (n). In
9 defining such terms, the Secretary shall include
10 consideration of harvestable acres, income, the
11 number of employees, and the volume of food
12 harvested.

13 “(C) SUBMISSION OF REPORT.—Not later
14 than 18 months after the date of enactment the
15 FDA Food Safety Modernization Act, the Sec-
16 retary shall submit to Congress a report that
17 describes the results of the study conducted
18 under subparagraph (A).

19 “(6) NO PREEMPTION.—Nothing in this sub-
20 section preempts State, local, county, or other non-
21 Federal law regarding the safe production of food.
22 Compliance with this subsection shall not relieve any
23 person from liability at common law or under State
24 statutory law.

25 “(7) NOTIFICATION TO CONSUMERS.—

1 “(A) IN GENERAL.—A qualified facility
2 that is exempt from the requirements under
3 subsections (a) through (i) and subsection (n)
4 and does not prepare documentation under
5 paragraph (2)(B)(i)(I) shall—

6 “(i) with respect to a food for which
7 a food packaging label is required by the
8 Secretary under any other provision of this
9 Act, include prominently and conspicuously
10 on such label the name and business ad-
11 dress of the facility where the food was
12 manufactured or processed; or

13 “(ii) with respect to a food for which
14 a food packaging label is not required by
15 the Secretary under any other provisions of
16 this Act, prominently and conspicuously
17 display, at the point of purchase, the name
18 and business address of the facility where
19 the food was manufactured or processed,
20 on a label, poster, sign, placard, or docu-
21 ments delivered contemporaneously with
22 the food in the normal course of business,
23 or, in the case of Internet sales, in an elec-
24 tronic notice.

1 “(B) NO ADDITIONAL LABEL.—Subpara-
2 graph (A) does not provide authority to the
3 Secretary to require a label that is in addition
4 to any label required under any other provision
5 of this Act.

6 “(m) AUTHORITY WITH RESPECT TO CERTAIN FA-
7 CILITIES.—The Secretary may, by regulation, exempt or
8 modify the requirements for compliance under this section
9 with respect to facilities that are solely engaged in the pro-
10 duction of food for animals other than man, the storage
11 of raw agricultural commodities (other than fruits and
12 vegetables) intended for further distribution or processing,
13 or the storage of packaged foods that are not exposed to
14 the environment.

15 “(n) REGULATIONS.—

16 “(1) IN GENERAL.—Not later than 18 months
17 after the date of enactment of the FDA Food Safety
18 Modernization Act, the Secretary shall promulgate
19 regulations—

20 “(A) to establish science-based minimum
21 standards for conducting a hazard analysis,
22 documenting hazards, implementing preventive
23 controls, and documenting the implementation
24 of the preventive controls under this section;
25 and

1 “(B) to define, for purposes of this section,
2 the terms ‘small business’ and ‘very small busi-
3 ness’, taking into consideration the study de-
4 scribed in subsection (1)(5).

5 “(2) COORDINATION.—In promulgating the reg-
6 ulations under paragraph (1)(A), with regard to haz-
7 ards that may be intentionally introduced, including
8 by acts of terrorism, the Secretary shall coordinate
9 with the Secretary of Homeland Security, as appro-
10 prium.

11 “(3) CONTENT.—The regulations promulgated
12 under paragraph (1)(A) shall—

13 “(A) provide sufficient flexibility to be
14 practicable for all sizes and types of facilities,
15 including small businesses such as a small food
16 processing facility co-located on a farm;

17 “(B) comply with chapter 35 of title 44,
18 United States Code (commonly known as the
19 ‘Paperwork Reduction Act’), with special atten-
20 tion to minimizing the burden (as defined in
21 section 3502(2) of such Act) on the facility, and
22 collection of information (as defined in section
23 3502(3) of such Act), associated with such reg-
24 ulations;

1 “(C) acknowledge differences in risk and
2 minimize, as appropriate, the number of sepa-
3 rate standards that apply to separate foods;
4 and

5 “(D) not require a facility to hire a con-
6 sultant or other third party to identify, imple-
7 ment, certify, or audit preventative controls, ex-
8 cept in the case of negotiated enforcement reso-
9 lutions that may require such a consultant or
10 third party.

11 “(4) RULE OF CONSTRUCTION.—Nothing in
12 this subsection shall be construed to provide the Sec-
13 retary with the authority to prescribe specific tech-
14 nologies, practices, or critical controls for an indi-
15 vidual facility.

16 “(5) REVIEW.—In promulgating the regulations
17 under paragraph (1)(A), the Secretary shall review
18 regulatory hazard analysis and preventive control
19 programs in existence on the date of enactment of
20 the FDA Food Safety Modernization Act, including
21 the Grade ‘A’ Pasteurized Milk Ordinance to ensure
22 that such regulations are consistent, to the extent
23 practicable, with applicable domestic and inter-
24 nationally recognized standards in existence on such
25 date.

1 “(o) DEFINITIONS.—For purposes of this section:

2 “(1) CRITICAL CONTROL POINT.—The term
3 ‘critical control point’ means a point, step, or proce-
4 dure in a food process at which control can be ap-
5 plied and is essential to prevent or eliminate a food
6 safety hazard or reduce such hazard to an accept-
7 able level.

8 “(2) FACILITY.—The term ‘facility’ means a
9 domestic facility or a foreign facility that is required
10 to register under section 415.

11 “(3) PREVENTIVE CONTROLS.—The term ‘pre-
12 ventive controls’ means those risk-based, reasonably
13 appropriate procedures, practices, and processes that
14 a person knowledgeable about the safe manufac-
15 turing, processing, packing, or holding of food would
16 employ to significantly minimize or prevent the haz-
17 ards identified under the hazard analysis conducted
18 under subsection (b) and that are consistent with
19 the current scientific understanding of safe food
20 manufacturing, processing, packing, or holding at
21 the time of the analysis. Those procedures, practices,
22 and processes may include the following:

23 “(A) Sanitation procedures for food con-
24 tact surfaces and utensils and food-contact sur-
25 faces of equipment.

1 “(B) Supervisor, manager, and employee
2 hygiene training.

3 “(C) An environmental monitoring pro-
4 gram to verify the effectiveness of pathogen
5 controls in processes where a food is exposed to
6 a potential contaminant in the environment.

7 “(D) A food allergen control program.

8 “(E) A recall plan.

9 “(F) Current Good Manufacturing Prac-
10 tices (cGMPs) under part 110 of title 21, Code
11 of Federal Regulations (or any successor regu-
12 lations).

13 “(G) Supplier verification activities that
14 relate to the safety of food.”.

15 (b) GUIDANCE DOCUMENT.—The Secretary shall
16 issue a guidance document related to the regulations pro-
17 mulgated under subsection (b)(1) with respect to the haz-
18 ard analysis and preventive controls under section 418 of
19 the Federal Food, Drug, and Cosmetic Act (as added by
20 subsection (a)).

21 (c) RULEMAKING.—

22 (1) PROPOSED RULEMAKING.—

23 (A) IN GENERAL.—Not later than 9
24 months after the date of enactment of this Act,
25 the Secretary of Health and Human Services

1 (referred to in this subsection as the “Sec-
2 retary”) shall publish a notice of proposed rule-
3 making in the Federal Register to promulgate
4 regulations with respect to—

5 (i) activities that constitute on-farm
6 packing or holding of food that is not
7 grown, raised, or consumed on such farm
8 or another farm under the same ownership
9 for purposes of section 415 of the Federal
10 Food, Drug, and Cosmetic Act (21 U.S.C.
11 350d), as amended by this Act; and

12 (ii) activities that constitute on-farm
13 manufacturing or processing of food that is
14 not consumed on that farm or on another
15 farm under common ownership for pur-
16 poses of such section 415.

17 (B) CLARIFICATION.—The rulemaking de-
18 scribed under subparagraph (A) shall enhance
19 the implementation of such section 415 and
20 clarify the activities that are included as part of
21 the definition of the term “facility” under such
22 section 415. Nothing in this Act authorizes the
23 Secretary to modify the definition of the term
24 “facility” under such section.

1 (C) SCIENCE-BASED RISK ANALYSIS.—In
2 promulgating regulations under subparagraph
3 (A), the Secretary shall conduct a science-based
4 risk analysis of—

5 (i) specific types of on-farm packing
6 or holding of food that is not grown,
7 raised, or consumed on such farm or an-
8 other farm under the same ownership, as
9 such packing and holding relates to spe-
10 cific foods; and

11 (ii) specific on-farm manufacturing
12 and processing activities as such activities
13 relate to specific foods that are not con-
14 sumed on that farm or on another farm
15 under common ownership.

16 (D) AUTHORITY WITH RESPECT TO CER-
17 TAIN FACILITIES.—

18 (i) IN GENERAL.—In promulgating
19 the regulations under subparagraph (A),
20 the Secretary shall consider the results of
21 the science-based risk analysis conducted
22 under subparagraph (C), and shall exempt
23 certain facilities from the requirements in
24 section 418 of the Federal Food, Drug,
25 and Cosmetic Act (as added by this sec-

1 tion), including hazard analysis and pre-
2 ventive controls, and the mandatory in-
3 spection frequency in section 421 of such
4 Act (as added by section 6201), or modify
5 the requirements in such sections 418 or
6 421, as the Secretary determines appro-
7 priate, if such facilities are engaged only in
8 specific types of on-farm manufacturing,
9 processing, packing, or holding activities
10 that the Secretary determines to be low
11 risk involving specific foods the Secretary
12 determines to be low risk.

13 (ii) LIMITATION.—The exemptions or
14 modifications under clause (i) shall not in-
15 clude an exemption from the requirement
16 to register under section 415 of the Fed-
17 eral Food, Drug, and Cosmetic Act (21
18 U.S.C. 350d), as amended by this Act, if
19 applicable, and shall apply only to small
20 businesses and very small businesses, as
21 defined in the regulation promulgated
22 under section 418(n) of the Federal Food,
23 Drug, and Cosmetic Act (as added under
24 subsection (a)).

1 (2) FINAL REGULATIONS.—Not later than 9
2 months after the close of the comment period for the
3 proposed rulemaking under paragraph (1), the Sec-
4 retary shall adopt final rules with respect to—

5 (A) activities that constitute on-farm pack-
6 ing or holding of food that is not grown, raised,
7 or consumed on such farm or another farm
8 under the same ownership for purposes of sec-
9 tion 415 of the Federal Food, Drug, and Cos-
10 metic Act (21 U.S.C. 350d), as amended by
11 this Act;

12 (B) activities that constitute on-farm man-
13 ufacturing or processing of food that is not con-
14 sumed on that farm or on another farm under
15 common ownership for purposes of such section
16 415; and

17 (C) the requirements under sections 418
18 and 421 of the Federal Food, Drug, and Cos-
19 metic Act, as added by this Act, from which the
20 Secretary may issue exemptions or modifica-
21 tions of the requirements for certain types of
22 facilities.

23 (d) SMALL ENTITY COMPLIANCE POLICY GUIDE.—
24 Not later than 180 days after the issuance of the regula-
25 tions promulgated under subsection (n) of section 418 of

1 the Federal Food, Drug, and Cosmetic Act (as added by
2 subsection (a)), the Secretary shall issue a small entity
3 compliance policy guide setting forth in plain language the
4 requirements of such section 418 and this section to assist
5 small entities in complying with the hazard analysis and
6 other activities required under such section 418 and this
7 section.

8 (e) PROHIBITED ACTS.—Section 301 (21 U.S.C.
9 331) is amended by adding at the end the following:

10 “(uu) The operation of a facility that manufactures,
11 processes, packs, or holds food for sale in the United
12 States if the owner, operator, or agent in charge of such
13 facility is not in compliance with section 418.”.

14 (f) NO EFFECT ON HACCP AUTHORITIES.—Nothing
15 in the amendments made by this section limits the author-
16 ity of the Secretary under the Federal Food, Drug, and
17 Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health
18 Service Act (42 U.S.C. 201 et seq.) to revise, issue, or
19 enforce Hazard Analysis Critical Control programs and
20 the Thermally Processed Low-Acid Foods Packaged in
21 Hermetically Sealed Containers standards.

22 (g) DIETARY SUPPLEMENTS.—Nothing in the
23 amendments made by this section shall apply to any facil-
24 ity with regard to the manufacturing, processing, packing,
25 or holding of a dietary supplement that is in compliance

1 with the requirements of sections 402(g)(2) and 761 of
2 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
3 342(g)(2), 379aa-1).

4 (h) UPDATING GUIDANCE RELATING TO FISH AND
5 FISHERIES PRODUCTS HAZARDS AND CONTROLS.—The
6 Secretary shall, not later than 180 days after the date of
7 enactment of this Act, update the Fish and Fisheries
8 Products Hazards and Control Guidance to take into ac-
9 count advances in technology that have occurred since the
10 previous publication of such Guidance by the Secretary.

11 (i) EFFECTIVE DATES.—

12 (1) GENERAL RULE.—The amendments made
13 by this section shall take effect 18 months after the
14 date of enactment of this Act.

15 (2) FLEXIBILITY FOR SMALL BUSINESSES.—
16 Notwithstanding paragraph (1)—

17 (A) the amendments made by this section
18 shall apply to a small business (as defined in
19 the regulations promulgated under section
20 418(n) of the Federal Food, Drug, and Cos-
21 metic Act (as added by this section)) beginning
22 on the date that is 6 months after the effective
23 date of such regulations; and

24 (B) the amendments made by this section
25 shall apply to a very small business (as defined

1 in such regulations) beginning on the date that
2 is 18 months after the effective date of such
3 regulations.

4 **SEC. 6104. PERFORMANCE STANDARDS.**

5 (a) IN GENERAL.—The Secretary shall, in coordina-
6 tion with the Secretary of Agriculture, not less frequently
7 than every 2 years, review and evaluate relevant health
8 data and other relevant information, including from toxico-
9 logical and epidemiological studies and analyses, current
10 Good Manufacturing Practices issued by the Secretary re-
11 lating to food, and relevant recommendations of relevant
12 advisory committees, including the Food Advisory Com-
13 mittee, to determine the most significant foodborne con-
14 taminants.

15 (b) GUIDANCE DOCUMENTS AND REGULATIONS.—
16 Based on the review and evaluation conducted under sub-
17 section (a), and when appropriate to reduce the risk of
18 serious illness or death to humans or animals or to prevent
19 adulteration of the food under section 402 of the Federal
20 Food, Drug, or Cosmetic Act (21 U.S.C. 342) or to pre-
21 vent the spread by food of communicable disease under
22 section 361 of the Public Health Service Act (42 U.S.C.
23 264), the Secretary shall issue contaminant-specific and
24 science-based guidance documents, including guidance
25 documents regarding action levels, or regulations. Such

1 guidance, including guidance regarding action levels, or
2 regulations—

3 (1) shall apply to products or product classes;

4 (2) shall, where appropriate, differentiate be-
5 tween food for human consumption and food in-
6 tended for consumption by animals other than hu-
7 mans; and

8 (3) shall not be written to be facility-specific.

9 (c) NO DUPLICATION OF EFFORTS.—The Secretary
10 shall coordinate with the Secretary of Agriculture to avoid
11 issuing duplicative guidance on the same contaminants.

12 (d) REVIEW.—The Secretary shall periodically review
13 and revise, as appropriate, the guidance documents, in-
14 cluding guidance documents regarding action levels, or
15 regulations promulgated under this section.

16 **SEC. 6105. STANDARDS FOR PRODUCE SAFETY.**

17 (a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et
18 seq.), as amended by section 6103, is amended by adding
19 at the end the following:

20 **“SEC. 419. STANDARDS FOR PRODUCE SAFETY.**

21 **“(a) PROPOSED RULEMAKING.—**

22 **“(1) IN GENERAL.—**

23 **“(A) RULEMAKING.—**Not later than 1 year
24 after the date of enactment of the FDA Food
25 Safety Modernization Act, the Secretary, in co-

1 ordination with the Secretary of Agriculture
2 and representatives of State departments of ag-
3 riculture (including with regard to the national
4 organic program established under the Organic
5 Foods Production Act of 1990), and in con-
6 sultation with the Secretary of Homeland Secu-
7 rity, shall publish a notice of proposed rule-
8 making to establish science-based minimum
9 standards for the safe production and har-
10 vesting of those types of fruits and vegetables,
11 including specific mixes or categories of fruits
12 and vegetables, that are raw agricultural com-
13 modities for which the Secretary has deter-
14 mined that such standards minimize the risk of
15 serious adverse health consequences or death.

16 “(B) DETERMINATION BY SECRETARY.—
17 With respect to small businesses and very small
18 businesses (as such terms are defined in the
19 regulation promulgated under subparagraph
20 (A)) that produce and harvest those types of
21 fruits and vegetables that are raw agricultural
22 commodities that the Secretary has determined
23 are low risk and do not present a risk of serious
24 adverse health consequences or death, the Sec-
25 retary may determine not to include production

1 and harvesting of such fruits and vegetables in
2 such rulemaking, or may modify the applicable
3 requirements of regulations promulgated pursu-
4 ant to this section.

5 “(2) PUBLIC INPUT.—During the comment pe-
6 riod on the notice of proposed rulemaking under
7 paragraph (1), the Secretary shall conduct not less
8 than 3 public meetings in diverse geographical areas
9 of the United States to provide persons in different
10 regions an opportunity to comment.

11 “(3) CONTENT.—The proposed rulemaking
12 under paragraph (1) shall—

13 “(A) provide sufficient flexibility to be ap-
14 plicable to various types of entities engaged in
15 the production and harvesting of fruits and
16 vegetables that are raw agricultural commod-
17 ities, including small businesses and entities
18 that sell directly to consumers, and be appro-
19 priate to the scale and diversity of the produc-
20 tion and harvesting of such commodities;

21 “(B) include, with respect to growing, har-
22 vesting, sorting, packing, and storage oper-
23 ations, science-based minimum standards re-
24 lated to soil amendments, hygiene, packaging,

1 temperature controls, animals in the growing
2 area, and water;

3 “(C) consider hazards that occur naturally,
4 may be unintentionally introduced, or may be
5 intentionally introduced, including by acts of
6 terrorism;

7 “(D) take into consideration, consistent
8 with ensuring enforceable public health protec-
9 tion, conservation and environmental practice
10 standards and policies established by Federal
11 natural resource conservation, wildlife conserva-
12 tion, and environmental agencies;

13 “(E) in the case of production that is cer-
14 tified organic, not include any requirements
15 that conflict with or duplicate the requirements
16 of the national organic program established
17 under the Organic Foods Production Act of
18 1990, while providing the same level of public
19 health protection as the requirements under
20 guidance documents, including guidance docu-
21 ments regarding action levels, and regulations
22 under the FDA Food Safety Modernization Act;
23 and

1 “(F) define, for purposes of this section,
2 the terms ‘small business’ and ‘very small busi-
3 ness’.

4 “(4) PRIORITIZATION.—The Secretary shall
5 prioritize the implementation of the regulations
6 under this section for specific fruits and vegetables
7 that are raw agricultural commodities based on
8 known risks which may include a history and sever-
9 ity of foodborne illness outbreaks.

10 “(b) FINAL REGULATION.—

11 “(1) IN GENERAL.—Not later than 1 year after
12 the close of the comment period for the proposed
13 rulemaking under subsection (a), the Secretary shall
14 adopt a final regulation to provide for minimum
15 science-based standards for those types of fruits and
16 vegetables, including specific mixes or categories of
17 fruits or vegetables, that are raw agricultural com-
18 modities, based on known safety risks, which may
19 include a history of foodborne illness outbreaks.

20 “(2) FINAL REGULATION.—The final regulation
21 shall—

22 “(A) provide for coordination of education
23 and enforcement activities by State and local
24 officials, as designated by the Governors of the
25 respective States or the appropriate elected

1 State official as recognized by State statute;
2 and

3 “(B) include a description of the variance
4 process under subsection (c) and the types of
5 permissible variances the Secretary may grant.

6 “(3) FLEXIBILITY FOR SMALL BUSINESSES.—
7 Notwithstanding paragraph (1)—

8 “(A) the regulations promulgated under
9 this section shall apply to a small business (as
10 defined in the regulation promulgated under
11 subsection (a)(1)) after the date that is 1 year
12 after the effective date of the final regulation
13 under paragraph (1); and

14 “(B) the regulations promulgated under
15 this section shall apply to a very small business
16 (as defined in the regulation promulgated under
17 subsection (a)(1)) after the date that is 2 years
18 after the effective date of the final regulation
19 under paragraph (1).

20 “(c) CRITERIA.—

21 “(1) IN GENERAL.—The regulations adopted
22 under subsection (b) shall—

23 “(A) set forth those procedures, processes,
24 and practices that the Secretary determines to
25 minimize the risk of serious adverse health con-

1 sequences or death, including procedures, proc-
2 esses, and practices that the Secretary deter-
3 mines to be reasonably necessary to prevent the
4 introduction of known or reasonably foreseeable
5 biological, chemical, and physical hazards, in-
6 cluding hazards that occur naturally, may be
7 unintentionally introduced, or may be inten-
8 tionally introduced, including by acts of ter-
9 rorism, into fruits and vegetables, including
10 specific mixes or categories of fruits and vegeta-
11 bles, that are raw agricultural commodities and
12 to provide reasonable assurances that the
13 produce is not adulterated under section 402;

14 “(B) provide sufficient flexibility to be
15 practicable for all sizes and types of businesses,
16 including small businesses such as a small food
17 processing facility co-located on a farm;

18 “(C) comply with chapter 35 of title 44,
19 United States Code (commonly known as the
20 ‘Paperwork Reduction Act’), with special atten-
21 tion to minimizing the burden (as defined in
22 section 3502(2) of such Act) on the business,
23 and collection of information (as defined in sec-
24 tion 3502(3) of such Act), associated with such
25 regulations;

1 “(D) acknowledge differences in risk and
2 minimize, as appropriate, the number of separate standards that apply to separate foods;
3
4 and

5 “(E) not require a business to hire a consultant or other third party to identify, implement, or certify compliance with these procedures, processes, and practices, except in the case of negotiated enforcement resolutions that may require such a consultant or third party;
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11 and

12 “(F) permit States and foreign countries from which food is imported into the United States to request from the Secretary variances from the requirements of the regulations, subject to paragraph (2), where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 and to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).
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1 “(2) VARIANCES.—

2 “(A) REQUESTS FOR VARIANCES.—A State
3 or foreign country from which food is imported
4 into the United States may in writing request
5 a variance from the Secretary. Such request
6 shall describe the variance requested and
7 present information demonstrating that the
8 variance does not increase the likelihood that
9 the food for which the variance is requested will
10 be adulterated under section 402, and that the
11 variance provides the same level of public health
12 protection as the requirements of the regula-
13 tions adopted under subsection (b). The Sec-
14 retary shall review such requests in a reason-
15 able timeframe.

16 “(B) APPROVAL OF VARIANCES.—The Sec-
17 retary may approve a variance in whole or in
18 part, as appropriate, and may specify the scope
19 of applicability of a variance to other similarly
20 situated persons.

21 “(C) DENIAL OF VARIANCES.—The Sec-
22 retary may deny a variance request if the Sec-
23 retary determines that such variance is not rea-
24 sonably likely to ensure that the food is not
25 adulterated under section 402 and is not rea-

1 sonably likely to provide the same level of public
2 health protection as the requirements of the
3 regulation adopted under subsection (b). The
4 Secretary shall notify the person requesting
5 such variance of the reasons for the denial.

6 “(D) MODIFICATION OR REVOCATION OF A
7 VARIANCE.—The Secretary, after notice and an
8 opportunity for a hearing, may modify or re-
9 voke a variance if the Secretary determines that
10 such variance is not reasonably likely to ensure
11 that the food is not adulterated under section
12 402 and is not reasonably likely to provide the
13 same level of public health protection as the re-
14 quirements of the regulations adopted under
15 subsection (b).

16 “(d) ENFORCEMENT.—The Secretary may coordinate
17 with the Secretary of Agriculture and, as appropriate,
18 shall contract and coordinate with the agency or depart-
19 ment designated by the Governor of each State to perform
20 activities to ensure compliance with this section.

21 “(e) GUIDANCE.—

22 “(1) IN GENERAL.—Not later than 1 year after
23 the date of enactment of the FDA Food Safety Mod-
24 ernization Act, the Secretary shall publish, after
25 consultation with the Secretary of Agriculture, rep-

1 representatives of State departments of agriculture,
2 farmer representatives, and various types of entities
3 engaged in the production and harvesting or import-
4 ing of fruits and vegetables that are raw agricultural
5 commodities, including small businesses, updated
6 good agricultural practices and guidance for the safe
7 production and harvesting of specific types of fresh
8 produce under this section.

9 “(2) PUBLIC MEETINGS.—The Secretary shall
10 conduct not fewer than 3 public meetings in diverse
11 geographical areas of the United States as part of
12 an effort to conduct education and outreach regard-
13 ing the guidance described in paragraph (1) for per-
14 sons in different regions who are involved in the pro-
15 duction and harvesting of fruits and vegetables that
16 are raw agricultural commodities, including persons
17 that sell directly to consumers and farmer represent-
18 atives, and for importers of fruits and vegetables
19 that are raw agricultural commodities.

20 “(3) PAPERWORK REDUCTION.—The Secretary
21 shall ensure that any updated guidance under this
22 section will—

23 “(A) provide sufficient flexibility to be
24 practicable for all sizes and types of facilities,

1 including small businesses such as a small food
2 processing facility co-located on a farm; and

3 “(B) acknowledge differences in risk and
4 minimize, as appropriate, the number of sepa-
5 rate standards that apply to separate foods.

6 “(f) EXEMPTION FOR DIRECT FARM MARKETING.—

7 “(1) IN GENERAL.—A farm shall be exempt
8 from the requirements under this section in a cal-
9 endar year if—

10 “(A) during the previous 3-year period, the
11 average annual monetary value of the food sold
12 by such farm directly to qualified end-users
13 during such period exceeded the average annual
14 monetary value of the food sold by such farm
15 to all other buyers during such period; and

16 “(B) the average annual monetary value of
17 all food sold during such period was less than
18 \$500,000, adjusted for inflation.

19 “(2) NOTIFICATION TO CONSUMERS.—

20 “(A) IN GENERAL.—A farm that is exempt
21 from the requirements under this section
22 shall—

23 “(i) with respect to a food for which
24 a food packaging label is required by the
25 Secretary under any other provision of this

1 Act, include prominently and conspicuously
2 on such label the name and business ad-
3 dress of the farm where the produce was
4 grown; or

5 “(ii) with respect to a food for which
6 a food packaging label is not required by
7 the Secretary under any other provision of
8 this Act, prominently and conspicuously
9 display, at the point of purchase, the name
10 and business address of the farm where
11 the produce was grown, on a label, poster,
12 sign, placard, or document delivered con-
13 temporaneously with the food in the nor-
14 mal course of business, or, in the case of
15 Internet sales, in an electronic notice.

16 “(B) NO ADDITIONAL LABEL.—Subpara-
17 graph (A) does not provide authority to the
18 Secretary to require a label that is in addition
19 to any label required under any other provision
20 of this Act.

21 “(3) WITHDRAWAL; RULE OF CONSTRUC-
22 TION.—

23 “(A) IN GENERAL.—In the event of an ac-
24 tive investigation of a foodborne illness out-
25 break that is directly linked to a farm subject

1 to an exemption under this subsection, or if the
2 Secretary determines that it is necessary to pro-
3 tect the public health and prevent or mitigate
4 a foodborne illness outbreak based on conduct
5 or conditions associated with a farm that are
6 material to the safety of the food produced or
7 harvested at such farm, the Secretary may
8 withdraw the exemption provided to such farm
9 under this subsection.

10 “(B) RULE OF CONSTRUCTION.—Nothing
11 in this subsection shall be construed to expand
12 or limit the inspection authority of the Sec-
13 retary.

14 “(4) DEFINITIONS.—

15 “(A) QUALIFIED END-USER.—In this sub-
16 section, the term ‘qualified end-user’, with re-
17 spect to a food means—

18 “(i) the consumer of the food; or

19 “(ii) a restaurant or retail food estab-
20 lishment (as those terms are defined by the
21 Secretary for purposes of section 415) that
22 is located—

23 “(I) in the same State as the
24 farm that produced the food; or

1 “(II) not more than 275 miles
2 from such farm.

3 “(B) CONSUMER.—For purposes of sub-
4 paragraph (A), the term ‘consumer’ does not
5 include a business.

6 “(5) NO PREEMPTION.—Nothing in this sub-
7 section preempts State, local, county, or other non-
8 Federal law regarding the safe production, har-
9 vesting, holding, transportation, and sale of fresh
10 fruits and vegetables. Compliance with this sub-
11 section shall not relieve any person from liability at
12 common law or under State statutory law.

13 “(6) LIMITATION OF EFFECT.—Nothing in this
14 subsection shall prevent the Secretary from exer-
15 cising any authority granted in the other sections of
16 this Act.

17 “(g) CLARIFICATION.—This section shall not apply to
18 produce that is produced by an individual for personal
19 consumption.

20 “(h) EXCEPTION FOR ACTIVITIES OF FACILITIES
21 SUBJECT TO SECTION 418.—This section shall not apply
22 to activities of a facility that are subject to section 418.”.

23 (b) SMALL ENTITY COMPLIANCE POLICY GUIDE.—
24 Not later than 180 days after the issuance of regulations
25 under section 419 of the Federal Food, Drug, and Cos-

1 metic Act (as added by subsection (a)), the Secretary of
2 Health and Human Services shall issue a small entity
3 compliance policy guide setting forth in plain language the
4 requirements of such section 419 and to assist small enti-
5 ties in complying with standards for safe production and
6 harvesting and other activities required under such sec-
7 tion.

8 (c) PROHIBITED ACTS.—Section 301 (21 U.S.C.
9 331), as amended by section 6103, is amended by adding
10 at the end the following:

11 “(vv) The failure to comply with the requirements
12 under section 419.”.

13 (d) NO EFFECT ON HACCP AUTHORITIES.—Noth-
14 ing in the amendments made by this section limits the au-
15 thority of the Secretary under the Federal Food, Drug,
16 and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public
17 Health Service Act (42 U.S.C. 201 et seq.) to revise, issue,
18 or enforce product and category-specific regulations, such
19 as the Seafood Hazard Analysis Critical Controls Points
20 Program, the Juice Hazard Analysis Critical Control Pro-
21 gram, and the Thermally Processed Low-Acid Foods
22 Packaged in Hermetically Sealed Containers standards.

1 **SEC. 6106. PROTECTION AGAINST INTENTIONAL ADULTER-**
2 **ATION.**

3 (a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et
4 seq.), as amended by section 6105, is amended by adding
5 at the end the following:

6 **“SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERA-**
7 **TION.**

8 “(a) DETERMINATIONS.—

9 “(1) IN GENERAL.—The Secretary shall—

10 “(A) conduct a vulnerability assessment of
11 the food system, including by consideration of
12 the Department of Homeland Security biologi-
13 cal, chemical, radiological, or other terrorism
14 risk assessments;

15 “(B) consider the best available under-
16 standing of uncertainties, risks, costs, and ben-
17 efits associated with guarding against inten-
18 tional adulteration of food at vulnerable points;
19 and

20 “(C) determine the types of science-based
21 mitigation strategies or measures that are nec-
22 essary to protect against the intentional adul-
23 teration of food.

24 “(2) LIMITED DISTRIBUTION.—In the interest
25 of national security, the Secretary, in consultation
26 with the Secretary of Homeland Security, may deter-

1 mine the time, manner, and form in which deter-
2 minations made under paragraph (1) are made pub-
3 licly available.

4 “(b) REGULATIONS.—Not later than 18 months after
5 the date of enactment of the FDA Food Safety Moderniza-
6 tion Act, the Secretary, in coordination with the Secretary
7 of Homeland Security and in consultation with the Sec-
8 retary of Agriculture, shall promulgate regulations to pro-
9 tect against the intentional adulteration of food subject
10 to this Act. Such regulations shall—

11 “(1) specify how a person shall assess whether
12 the person is required to implement mitigation strat-
13 egies or measures intended to protect against the in-
14 tentional adulteration of food; and

15 “(2) specify appropriate science-based mitiga-
16 tion strategies or measures to prepare and protect
17 the food supply chain at specific vulnerable points,
18 as appropriate.

19 “(c) APPLICABILITY.—Regulations promulgated
20 under subsection (b) shall apply only to food for which
21 there is a high risk of intentional contamination, as deter-
22 mined by the Secretary, in consultation with the Secretary
23 of Homeland Security, under subsection (a), that could
24 cause serious adverse health consequences or death to hu-
25 mans or animals and shall include those foods—

1 “(1) for which the Secretary has identified clear
2 vulnerabilities (including short shelf-life or suscepti-
3 bility to intentional contamination at critical control
4 points); and

5 “(2) in bulk or batch form, prior to being pack-
6 aged for the final consumer.

7 “(d) EXCEPTION.—This section shall not apply to
8 farms, except for those that produce milk.

9 “(e) DEFINITION.—For purposes of this section, the
10 term ‘farm’ has the meaning given that term in section
11 1.227 of title 21, Code of Federal Regulations (or any suc-
12 cessor regulation).”.

13 (b) GUIDANCE DOCUMENTS.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this Act, the Secretary of
16 Health and Human Services, in consultation with
17 the Secretary of Homeland Security and the Sec-
18 retary of Agriculture, shall issue guidance docu-
19 ments related to protection against the intentional
20 adulteration of food, including mitigation strategies
21 or measures to guard against such adulteration as
22 required under section 420 of the Federal Food,
23 Drug, and Cosmetic Act, as added by subsection (a).

24 (2) CONTENT.—The guidance documents issued
25 under paragraph (1) shall—

1 (A) include a model assessment for a per-
2 son to use under subsection (b)(1) of section
3 420 of the Federal Food, Drug, and Cosmetic
4 Act, as added by subsection (a);

5 (B) include examples of mitigation strate-
6 gies or measures described in subsection (b)(2)
7 of such section; and

8 (C) specify situations in which the exam-
9 ples of mitigation strategies or measures de-
10 scribed in subsection (b)(2) of such section are
11 appropriate.

12 (3) LIMITED DISTRIBUTION.—In the interest of
13 national security, the Secretary of Health and
14 Human Services, in consultation with the Secretary
15 of Homeland Security, may determine the time,
16 manner, and form in which the guidance documents
17 issued under paragraph (1) are made public, includ-
18 ing by releasing such documents to targeted audi-
19 ences.

20 (c) PERIODIC REVIEW.—The Secretary of Health and
21 Human Services shall periodically review and, as appro-
22 priate, update the regulations under section 420(b) of the
23 Federal Food, Drug, and Cosmetic Act, as added by sub-
24 section (a), and the guidance documents under subsection
25 (b).

1 (d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331
2 et seq.), as amended by section 6105, is amended by add-
3 ing at the end the following:

4 “(ww) The failure to comply with section 420.”.

5 **SEC. 6107. AUTHORITY TO COLLECT FEES.**

6 (a) FEES FOR REINSPECTION, RECALL, AND IMPOR-
7 TATION ACTIVITIES.—Subchapter C of chapter VII (21
8 U.S.C. 379f et seq.) is amended by adding at the end the
9 following:

10 **“PART 6—FEES RELATED TO FOOD**

11 **“SEC. 743. AUTHORITY TO COLLECT AND USE FEES.**

12 “(a) IN GENERAL.—

13 “(1) PURPOSE AND AUTHORITY.—For fiscal
14 year 2010 and each subsequent fiscal year, the Sec-
15 retary shall, in accordance with this section, assess
16 and collect fees from—

17 “(A) the responsible party for each domes-
18 tic facility (as defined in section 415(b)) and
19 the United States agent for each foreign facility
20 subject to a reinspection in such fiscal year, to
21 cover reinspection-related costs for such year;

22 “(B) the responsible party for a domestic
23 facility (as defined in section 415(b)) and an
24 importer who does not comply with a recall
25 order under section 423 or under section 412(f)

1 in such fiscal year, to cover food recall activities
2 associated with such order performed by the
3 Secretary, including technical assistance, follow-
4 up effectiveness checks, and public notifications,
5 for such year;

6 “(C) each importer participating in the
7 voluntary qualified importer program under sec-
8 tion 806 in such year, to cover the administra-
9 tive costs of such program for such year; and

10 “(D) each importer subject to a reinspec-
11 tion in such fiscal year, to cover reinspection-re-
12 lated costs for such year.

13 “(2) DEFINITIONS.—For purposes of this sec-
14 tion—

15 “(A) the term ‘reinspection’ means—

16 “(i) with respect to domestic facilities
17 (as defined in section 415(b)), 1 or more
18 inspections conducted under section 704
19 subsequent to an inspection conducted
20 under such provision which identified non-
21 compliance materially related to a food
22 safety requirement of this Act, specifically
23 to determine whether compliance has been
24 achieved to the Secretary’s satisfaction;
25 and

1 “(ii) with respect to importers, 1 or
2 more examinations conducted under sec-
3 tion 801 subsequent to an examination
4 conducted under such provision which
5 identified noncompliance materially related
6 to a food safety requirement of this Act,
7 specifically to determine whether compli-
8 ance has been achieved to the Secretary’s
9 satisfaction;

10 “(B) the term ‘reinspection-related costs’
11 means all expenses, including administrative ex-
12 penses, incurred in connection with—

13 “(i) arranging, conducting, and evalu-
14 ating the results of reinspections; and

15 “(ii) assessing and collecting reinspec-
16 tion fees under this section; and

17 “(C) the term ‘responsible party’ has the
18 meaning given such term in section 417(a)(1).

19 “(b) ESTABLISHMENT OF FEES.—

20 “(1) IN GENERAL.—Subject to subsections (c)
21 and (d), the Secretary shall establish the fees to be
22 collected under this section for each fiscal year speci-
23 fied in subsection (a)(1), based on the methodology
24 described under paragraph (2), and shall publish

1 such fees in a Federal Register notice not later than
2 60 days before the start of each such year.

3 “(2) FEE METHODOLOGY.—

4 “(A) FEES.—Fees amounts established for
5 collection—

6 “(i) under subparagraph (A) of sub-
7 section (a)(1) for a fiscal year shall be
8 based on the Secretary’s estimate of 100
9 percent of the costs of the reinspection-re-
10 lated activities (including by type or level
11 of reinspection activity, as the Secretary
12 determines applicable) described in such
13 subparagraph (A) for such year;

14 “(ii) under subparagraph (B) of sub-
15 section (a)(1) for a fiscal year shall be
16 based on the Secretary’s estimate of 100
17 percent of the costs of the activities de-
18 scribed in such subparagraph (B) for such
19 year;

20 “(iii) under subparagraph (C) of sub-
21 section (a)(1) for a fiscal year shall be
22 based on the Secretary’s estimate of 100
23 percent of the costs of the activities de-
24 scribed in such subparagraph (C) for such
25 year; and

1 “(iv) under subparagraph (D) of sub-
2 section (a)(1) for a fiscal year shall be
3 based on the Secretary’s estimate of 100
4 percent of the costs of the activities de-
5 scribed in such subparagraph (D) for such
6 year.

7 “(B) OTHER CONSIDERATIONS.—

8 “(i) VOLUNTARY QUALIFIED IM-
9 PORTER PROGRAM.—In establishing the fee
10 amounts under subparagraph (A)(iii) for a
11 fiscal year, the Secretary shall provide for
12 the number of importers who have sub-
13 mitted to the Secretary a notice under sec-
14 tion 806(c) informing the Secretary of the
15 intent of such importer to participate in
16 the program under section 806 in such fis-
17 cal year.

18 “(ii) CREDITING OF FEES.—In estab-
19 lishing the fee amounts under subpara-
20 graph (A) for a fiscal year, the Secretary
21 shall provide for the crediting of fees from
22 the previous year to the next year if the
23 Secretary overestimated the amount of fees
24 needed to carry out such activities, and
25 consider the need to account for any ad-

1 justment of fees and such other factors as
2 the Secretary determines appropriate.

3 “(iii) PUBLISHED GUIDELINES.—Not
4 later than 180 days after the date of en-
5 actment of the FDA Food Safety Mod-
6 ernization Act, the Secretary shall publish
7 in the Federal Register a proposed set of
8 guidelines in consideration of the burden of
9 fee amounts on small business. Such con-
10 sideration may include reduced fee
11 amounts for small businesses. The Sec-
12 retary shall provide for a period of public
13 comment on such guidelines. The Secretary
14 shall adjust the fee schedule for small busi-
15 nesses subject to such fees only through
16 notice and comment rulemaking.

17 “(3) USE OF FEES.—The Secretary shall make
18 all of the fees collected pursuant to clause (i), (ii),
19 (iii), and (iv) of paragraph (2)(A) available solely to
20 pay for the costs referred to in such clause (i), (ii),
21 (iii), and (iv) of paragraph (2)(A), respectively.

22 “(c) LIMITATIONS.—

23 “(1) IN GENERAL.—Fees under subsection (a)
24 shall be refunded for a fiscal year beginning after
25 fiscal year 2010 unless the amount of the total ap-

1 propriations for food safety activities at the Food
2 and Drug Administration for such fiscal year (ex-
3 cluding the amount of fees appropriated for such fis-
4 cal year) is equal to or greater than the amount of
5 appropriations for food safety activities at the Food
6 and Drug Administration for fiscal year 2009 (ex-
7 cluding the amount of fees appropriated for such fis-
8 cal year), multiplied by the adjustment factor under
9 paragraph (3).

10 “(2) AUTHORITY.—If—

11 “(A) the Secretary does not assess fees
12 under subsection (a) for a portion of a fiscal
13 year because paragraph (1) applies; and

14 “(B) at a later date in such fiscal year,
15 such paragraph (1) ceases to apply,

16 the Secretary may assess and collect such fees under
17 subsection (a), without any modification to the rate
18 of such fees, notwithstanding the provisions of sub-
19 section (a) relating to the date fees are to be paid.

20 “(3) ADJUSTMENT FACTOR.—

21 “(A) IN GENERAL.—The adjustment factor
22 described in paragraph (1) shall be the total
23 percentage change that occurred in the Con-
24 sumer Price Index for all urban consumers (all
25 items; United States city average) for the 12-

1 month period ending June 30 preceding the fis-
2 cal year, but in no case shall such adjustment
3 factor be negative.

4 “(B) COMPOUNDED BASIS.—The adjust-
5 ment under subparagraph (A) made each fiscal
6 year shall be added on a compounded basis to
7 the sum of all adjustments made each fiscal
8 year after fiscal year 2009.

9 “(4) LIMITATION ON AMOUNT OF CERTAIN
10 FEES.—

11 “(A) IN GENERAL.—Notwithstanding any
12 other provision of this section and subject to
13 subparagraph (B), the Secretary may not col-
14 lect fees in a fiscal year such that the amount
15 collected—

16 “(i) under subparagraph (B) of sub-
17 section (a)(1) exceeds \$20,000,000; and

18 “(ii) under subparagraphs (A) and
19 (D) of subsection (a)(1) exceeds
20 \$25,000,000 combined.

21 “(B) EXCEPTION.—If a domestic facility
22 (as defined in section 415(b)) or an importer
23 becomes subject to a fee described in subpara-
24 graph (A), (B), or (D) of subsection (a)(1)
25 after the maximum amount of fees has been

1 collected by the Secretary under subparagraph
2 (A), the Secretary may collect a fee from such
3 facility or importer.

4 “(d) CREDITING AND AVAILABILITY OF FEES.—Fees
5 authorized under subsection (a) shall be collected and
6 available for obligation only to the extent and in the
7 amount provided in appropriations Acts. Such fees are au-
8 thorized to remain available until expended. Such sums
9 as may be necessary may be transferred from the Food
10 and Drug Administration salaries and expenses account
11 without fiscal year limitation to such appropriation ac-
12 count for salaries and expenses with such fiscal year limi-
13 tation. The sums transferred shall be available solely for
14 the purpose of paying the operating expenses of the Food
15 and Drug Administration employees and contractors per-
16 forming activities associated with these food safety fees.

17 “(e) COLLECTION OF FEES.—

18 “(1) IN GENERAL.—The Secretary shall specify
19 in the Federal Register notice described in sub-
20 section (b)(1) the time and manner in which fees as-
21 sessed under this section shall be collected.

22 “(2) COLLECTION OF UNPAID FEES.—In any
23 case where the Secretary does not receive payment
24 of a fee assessed under this section within 30 days
25 after it is due, such fee shall be treated as a claim

1 of the United States Government subject to provi-
2 sions of subchapter II of chapter 37 of title 31,
3 United States Code.

4 “(f) ANNUAL REPORT TO CONGRESS.—Not later
5 than 120 days after each fiscal year for which fees are
6 assessed under this section, the Secretary shall submit a
7 report to the Committee on Health, Education, Labor, and
8 Pensions of the Senate and the Committee on Energy and
9 Commerce of the House of Representatives, to include a
10 description of fees assessed and collected for each such
11 year and a summary description of the entities paying
12 such fees and the types of business in which such entities
13 engage.

14 “(g) AUTHORIZATION OF APPROPRIATIONS.—For fis-
15 cal year 2010 and each fiscal year thereafter, there is au-
16 thorized to be appropriated for fees under this section an
17 amount equal to the total revenue amount determined
18 under subsection (b) for the fiscal year, as adjusted or
19 otherwise affected under the other provisions of this sec-
20 tion.”.

21 (b) EXPORT CERTIFICATION FEES FOR FOODS AND
22 ANIMAL FEED.—

23 (1) AUTHORITY FOR EXPORT CERTIFICATIONS
24 FOR FOOD, INCLUDING ANIMAL FEED.—Section

1 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amend-
2 ed—

3 (A) in the matter preceding clause (i), by
4 striking “a drug” and inserting “a food, drug”;

5 (B) in clause (i) by striking “exported
6 drug” and inserting “exported food, drug”; and

7 (C) in clause (ii) by striking “the drug”
8 each place it appears and inserting “the food,
9 drug”.

10 (2) CLARIFICATION OF CERTIFICATION.—Sec-
11 tion 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by
12 inserting after subparagraph (B) the following new
13 subparagraph:

14 “(C) For purposes of this paragraph, a certification
15 by the Secretary shall be made on such basis, and in such
16 form (including a publicly available listing) as the Sec-
17 retary determines appropriate.”.

18 (3) LIMITATIONS ON USE AND AMOUNT OF
19 FEES.—Paragraph (4) of section 801(e) (21 U.S.C.
20 381(e)) is amended by adding at the end the fol-
21 lowing:

22 “(D) With regard to fees pursuant to subparagraph
23 (B) in connection with written export certifications for
24 food:

1 “(i) Such fees shall be collected and available
2 solely for the costs of the Food and Drug Adminis-
3 tration associated with issuing such certifications.

4 “(ii) Such fees may not be retained in an
5 amount that exceeds such costs.”.

6 **SEC. 6108. NATIONAL AGRICULTURE AND FOOD DEFENSE**
7 **STRATEGY.**

8 (a) DEVELOPMENT AND SUBMISSION OF STRAT-
9 EGY.—

10 (1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of this Act, the Secretary of
12 Health and Human Services and the Secretary of
13 Agriculture, in coordination with the Secretary of
14 Homeland Security, shall prepare and transmit to
15 the relevant committees of Congress, and make pub-
16 licly available on the Internet Web sites of the De-
17 partment of Health and Human Services and the
18 Department of Agriculture, the National Agriculture
19 and Food Defense Strategy.

20 (2) IMPLEMENTATION PLAN.—The strategy
21 shall include an implementation plan for use by the
22 Secretaries described under paragraph (1) in car-
23 rying out the strategy.

24 (3) RESEARCH.—The strategy shall include a
25 coordinated research agenda for use by the Secre-

1 taries described under paragraph (1) in conducting
2 research to support the goals and activities described
3 in paragraphs (1) and (2) of subsection (b).

4 (4) REVISIONS.—Not later than 4 years after
5 the date on which the strategy is submitted to the
6 relevant committees of Congress under paragraph
7 (1), and not less frequently than every 4 years there-
8 after, the Secretary of Health and Human Services
9 and the Secretary of Agriculture, in coordination
10 with the Secretary of Homeland Security, shall re-
11 vise and submit to the relevant committees of Con-
12 gress the strategy.

13 (5) CONSISTENCY WITH EXISTING PLANS.—The
14 strategy described in paragraph (1) shall be con-
15 sistent with—

16 (A) the National Incident Management
17 System;

18 (B) the National Response Framework;

19 (C) the National Infrastructure Protection
20 Plan;

21 (D) the National Preparedness Goals; and

22 (E) other relevant national strategies.

23 (b) COMPONENTS.—

24 (1) IN GENERAL.—The strategy shall include a
25 description of the process to be used by the Depart-

1 ment of Health and Human Services, the Depart-
2 ment of Agriculture, and the Department of Home-
3 land Security—

4 (A) to achieve each goal described in para-
5 graph (2); and

6 (B) to evaluate the progress made by Fed-
7 eral, State, local, and tribal governments to-
8 wards the achievement of each goal described in
9 paragraph (2).

10 (2) GOALS.—The strategy shall include a de-
11 scription of the process to be used by the Depart-
12 ment of Health and Human Services, the Depart-
13 ment of Agriculture, and the Department of Home-
14 land Security to achieve the following goals:

15 (A) PREPAREDNESS GOAL.—Enhance the
16 preparedness of the agriculture and food system
17 by—

18 (i) conducting vulnerability assess-
19 ments of the agriculture and food system;

20 (ii) mitigating vulnerabilities of the
21 system;

22 (iii) improving communication and
23 training relating to the system;

1 (iv) developing and conducting exer-
2 cises to test decontamination and disposal
3 plans;

4 (v) developing modeling tools to im-
5 prove event consequence assessment and
6 decision support; and

7 (vi) preparing risk communication
8 tools and enhancing public awareness
9 through outreach.

10 (B) DETECTION GOAL.—Improve agri-
11 culture and food system detection capabilities
12 by—

13 (i) identifying contamination in food
14 products at the earliest possible time; and

15 (ii) conducting surveillance to prevent
16 the spread of diseases.

17 (C) EMERGENCY RESPONSE GOAL.—En-
18 sure an efficient response to agriculture and
19 food emergencies by—

20 (i) immediately investigating animal
21 disease outbreaks and suspected food con-
22 tamination;

23 (ii) preventing additional human ill-
24 nesses;

- 1 (iii) organizing, training, and equip-
2 ping animal, plant, and food emergency re-
3 sponse teams of—
- 4 (I) the Federal Government; and
5 (II) State, local, and tribal gov-
6 ernments;
- 7 (iv) designing, developing, and evalu-
8 ating training and exercises carried out
9 under agriculture and food defense plans;
10 and
- 11 (v) ensuring consistent and organized
12 risk communication to the public by—
- 13 (I) the Federal Government;
14 (II) State, local, and tribal gov-
15 ernments; and
16 (III) the private sector.
- 17 (D) RECOVERY GOAL.—Secure agriculture
18 and food production after an agriculture or food
19 emergency by—
- 20 (i) working with the private sector to
21 develop business recovery plans to rapidly
22 resume agriculture, food production, and
23 international trade;

1 (ii) conducting exercises of the plans
2 described in subparagraph (C) with the
3 goal of long-term recovery results;

4 (iii) rapidly removing, and effectively
5 disposing of—

6 (I) contaminated agriculture and
7 food products; and

8 (II) infected plants and animals;
9 and

10 (iv) decontaminating and restoring
11 areas affected by an agriculture or food
12 emergency.

13 (3) EVALUATION.—The Secretary, in coordina-
14 tion with the Secretary of Agriculture and the Sec-
15 retary of Homeland Security, shall—

16 (A) develop metrics to measure progress
17 for the evaluation process described in para-
18 graph (1)(B); and

19 (B) report on the progress measured in
20 subparagraph (A) as part of the National Agri-
21 culture and Food Defense strategy described in
22 subsection (a)(1).

23 (c) LIMITED DISTRIBUTION.—In the interest of na-
24 tional security, the Secretary of Health and Human Serv-
25 ices and the Secretary of Agriculture, in coordination with

1 the Secretary of Homeland Security, may determine the
2 manner and format in which the National Agriculture and
3 Food Defense strategy established under this section is
4 made publicly available on the Internet Web sites of the
5 Department of Health and Human Services, the Depart-
6 ment of Homeland Security, and the Department of Agri-
7 culture, as described in subsection (a)(1).

8 **SEC. 6109. FOOD AND AGRICULTURE COORDINATING COUN-**
9 **CILS.**

10 The Secretary of Homeland Security, in coordination
11 with the Secretary of Health and Human Services and the
12 Secretary of Agriculture, shall within 180 days of enact-
13 ment of this Act, and annually thereafter, submit to the
14 relevant committees of Congress, and make publicly avail-
15 able on the Internet Web site of the Department of Home-
16 land Security, a report on the activities of the Food and
17 Agriculture Government Coordinating Council and the
18 Food and Agriculture Sector Coordinating Council, includ-
19 ing the progress of such Councils on—

20 (1) facilitating partnerships between public and
21 private entities to help coordinate and enhance the
22 protection of the agriculture and food system of the
23 United States;

24 (2) providing for the regular and timely inter-
25 change of information between each council relating

1 to the security of the agriculture and food system
2 (including intelligence information);

3 (3) identifying best practices and methods for
4 improving the coordination among Federal, State,
5 local, and private sector preparedness and response
6 plans for agriculture and food defense; and

7 (4) recommending methods by which to protect
8 the economy and the public health of the United
9 States from the effects of—

10 (A) animal or plant disease outbreaks;

11 (B) food contamination; and

12 (C) natural disasters affecting agriculture
13 and food.

14 **SEC. 6110. BUILDING DOMESTIC CAPACITY.**

15 (a) IN GENERAL.—

16 (1) INITIAL REPORT.—The Secretary, in coordi-
17 nation with the Secretary of Agriculture and the
18 Secretary of Homeland Security, shall, not later
19 than 2 years after the date of enactment of this Act,
20 submit to Congress a comprehensive report that
21 identifies programs and practices that are intended
22 to promote the safety and supply chain security of
23 food and to prevent outbreaks of foodborne illness
24 and other food-related hazards that can be ad-

1 dressed through preventive activities. Such report
2 shall include a description of the following:

3 (A) Analysis of the need for further regula-
4 tions or guidance to industry.

5 (B) Outreach to food industry sectors, in-
6 cluding through the Food and Agriculture Co-
7 ordinating Councils referred to in section 6109,
8 to identify potential sources of emerging threats
9 to the safety and security of the food supply
10 and preventive strategies to address those
11 threats.

12 (C) Systems to ensure the prompt distribu-
13 tion to the food industry of information and
14 technical assistance concerning preventive strat-
15 egies.

16 (D) Communication systems to ensure that
17 information about specific threats to the safety
18 and security of the food supply are rapidly and
19 effectively disseminated.

20 (E) Surveillance systems and laboratory
21 networks to rapidly detect and respond to
22 foodborne illness outbreaks and other food-re-
23 lated hazards, including how such systems and
24 networks are integrated.

1 (F) Outreach, education, and training pro-
2 vided to States and local governments to build
3 State and local food safety and food defense ca-
4 pabilities, including progress implementing
5 strategies developed under sections 6108 and
6 6205.

7 (G) The estimated resources needed to ef-
8 fectively implement the programs and practices
9 identified in the report developed in this section
10 over a 5-year period.

11 (H) The impact of requirements under this
12 Act (including amendments made by this Act)
13 on certified organic farms and facilities (as de-
14 fined in section 415 of the Federal Food, Drug,
15 and Cosmetic Act (21 U.S.C. 350d)).

16 (I) Specific efforts taken pursuant to the
17 agreements authorized under section 421(c) of
18 the Federal Food, Drug, and Cosmetic Act (as
19 added by section 6201), together with, as nec-
20 essary, a description of any additional authori-
21 ties necessary to improve seafood safety.

22 (2) BIENNIAL REPORTS.—On a biennial basis
23 following the submission of the report under para-
24 graph (1), the Secretary shall submit to Congress a
25 report that—

1 (A) reviews previous food safety programs
2 and practices;

3 (B) outlines the success of those programs
4 and practices;

5 (C) identifies future programs and prac-
6 tices; and

7 (D) includes information related to any
8 matter described in subparagraphs (A) through
9 (H) of paragraph (1), as necessary.

10 (b) RISK-BASED ACTIVITIES.—The report developed
11 under subsection (a)(1) shall describe methods that seek
12 to ensure that resources available to the Secretary for food
13 safety-related activities are directed at those actions most
14 likely to reduce risks from food, including the use of pre-
15 ventive strategies and allocation of inspection resources.
16 The Secretary shall promptly undertake those risk-based
17 actions that are identified during the development of the
18 report as likely to contribute to the safety and security
19 of the food supply.

20 (c) CAPABILITY FOR LABORATORY ANALYSES; RE-
21 SEARCH.—The report developed under subsection (a)(1)
22 shall provide a description of methods to increase capacity
23 to undertake analyses of food samples promptly after col-
24 lection, to identify new and rapid analytical techniques,
25 including commercially available techniques that can be

1 employed at ports of entry and by Food Emergency Re-
2 sponse Network laboratories, and to provide for well-
3 equipped and staffed laboratory facilities and progress to-
4 ward laboratory accreditation under section 422 of the
5 Federal Food, Drug, and Cosmetic Act (as added by sec-
6 tion 6202).

7 (d) INFORMATION TECHNOLOGY.—The report devel-
8 oped under subsection (a)(1) shall include a description
9 of such information technology systems as may be needed
10 to identify risks and receive data from multiple sources,
11 including foreign governments, State, local, and tribal gov-
12 ernments, other Federal agencies, the food industry, lab-
13 oratories, laboratory networks, and consumers. The infor-
14 mation technology systems that the Secretary describes
15 shall also provide for the integration of the facility reg-
16 istration system under section 415 of the Federal Food,
17 Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior
18 notice system under section 801(m) of such Act (21
19 U.S.C. 381(m)) with other information technology systems
20 that are used by the Federal Government for the proc-
21 essing of food offered for import into the United States.

22 (e) AUTOMATED RISK ASSESSMENT.—The report de-
23 veloped under subsection (a)(1) shall include a description
24 of progress toward developing and improving an auto-

1 mated risk assessment system for food safety surveillance
2 and allocation of resources.

3 (f) TRACEBACK AND SURVEILLANCE REPORT.—The
4 Secretary shall include in the report developed under sub-
5 section (a)(1) an analysis of the Food and Drug Adminis-
6 tration’s performance in foodborne illness outbreaks dur-
7 ing the 5-year period preceding the date of enactment of
8 this Act involving fruits and vegetables that are raw agri-
9 cultural commodities (as defined in section 6201(r) (21
10 U.S.C. 321(r)) and recommendations for enhanced sur-
11 veillance, outbreak response, and traceability. Such find-
12 ings and recommendations shall address communication
13 and coordination with the public, industry, and State and
14 local governments, as such communication and coordina-
15 tion relates to outbreak identification and traceback.

16 (g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE
17 RESEARCH PLAN.—The Secretary, the Secretary of Agri-
18 culture, and the Secretary of Homeland Security shall, on
19 a biennial basis, submit to Congress a joint food safety
20 and food defense research plan which may include study-
21 ing the long-term health effects of foodborne illness. Such
22 biennial plan shall include a list and description of projects
23 conducted during the previous 2-year period and the plan
24 for projects to be conducted during the subsequent 2-year
25 period.

1 (h) EFFECTIVENESS OF PROGRAMS ADMINISTERED
2 BY THE DEPARTMENT OF HEALTH AND HUMAN SERV-
3 ICES.—

4 (1) IN GENERAL.—To determine whether exist-
5 ing Federal programs administered by the Depart-
6 ment of Health and Human Services are effective in
7 achieving the stated goals of such programs, the
8 Secretary shall, beginning not later than 1 year after
9 the date of enactment of this Act—

10 (A) conduct an annual evaluation of each
11 program of such Department to determine the
12 effectiveness of each such program in achieving
13 legislated intent, purposes, and objectives; and

14 (B) submit to Congress a report con-
15 cerning such evaluation.

16 (2) CONTENT.—The report described under
17 paragraph (1)(B) shall—

18 (A) include conclusions concerning the rea-
19 sons that such existing programs have proven
20 successful or not successful and what factors
21 contributed to such conclusions;

22 (B) include recommendations for consoli-
23 dation and elimination to reduce duplication
24 and inefficiencies in such programs at such De-

1 partment as identified during the evaluation
2 conduct under this subsection; and

3 (C) be made publicly available in a publica-
4 tion entitled “Guide to the U.S. Department of
5 Health and Human Services Programs”.

6 (i) UNIQUE IDENTIFICATION NUMBERS.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of enactment of this Act, the Secretary, act-
9 ing through the Commissioner of Food and Drugs,
10 shall conduct a study regarding the need for, and
11 challenges associated with, development and imple-
12 mentation of a program that requires a unique iden-
13 tification number for each food facility registered
14 with the Secretary and, as appropriate, each broker
15 that imports food into the United States. Such study
16 shall include an evaluation of the costs associated
17 with development and implementation of such a sys-
18 tem, and make recommendations about what new
19 authorities, if any, would be necessary to develop
20 and implement such a system.

21 (2) REPORT.—Not later than 15 months after
22 the date of enactment of this Act, the Secretary
23 shall submit to Congress a report that describes the
24 findings of the study conducted under paragraph (1)

1 and that includes any recommendations determined
2 appropriate by the Secretary.

3 **SEC. 6111. SANITARY TRANSPORTATION OF FOOD.**

4 (a) IN GENERAL.—Not later than 18 months after
5 the date of enactment of this Act, the Secretary shall pro-
6 mulgate regulations described in section 416(b) of the
7 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
8 350e(b)).

9 (b) FOOD TRANSPORTATION STUDY.—The Secretary,
10 acting through the Commissioner of Food and Drugs,
11 shall conduct a study of the transportation of food for con-
12 sumption in the United States, including transportation
13 by air, that includes an examination of the unique needs
14 of rural and frontier areas with regard to the delivery of
15 safe food.

16 **SEC. 6112. FOOD ALLERGY AND ANAPHYLAXIS MANAGE-**
17 **MENT.**

18 (a) DEFINITIONS.—In this section:

19 (1) EARLY CHILDHOOD EDUCATION PRO-
20 GRAM.—The term “early childhood education pro-
21 gram” means—

22 (A) a Head Start program or an Early
23 Head Start program carried out under the
24 Head Start Act (42 U.S.C. 9831 et seq.);

1 (B) a State licensed or regulated child care
2 program or school; or

3 (C) a State prekindergarten program that
4 serves children from birth through kinder-
5 garten.

6 (2) ESEA DEFINITIONS.—The terms “local
7 educational agency”, “secondary school”, “elemen-
8 tary school”, and “parent” have the meanings given
9 the terms in section 9101 of the Elementary and
10 Secondary Education Act of 1965 (20 U.S.C. 7801).

11 (3) SCHOOL.—The term “school” includes pub-
12 lic—

13 (A) kindergartens;

14 (B) elementary schools; and

15 (C) secondary schools.

16 (4) SECRETARY.—The term “Secretary” means
17 the Secretary of Health and Human Services.

18 (b) ESTABLISHMENT OF VOLUNTARY FOOD AL-
19 LERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

20 (1) ESTABLISHMENT.—

21 (A) IN GENERAL.—Not later than 1 year
22 after the date of enactment of this Act, the Sec-
23 retary, in consultation with the Secretary of
24 Education, shall—

1 (i) develop guidelines to be used on a
2 voluntary basis to develop plans for indi-
3 viduals to manage the risk of food allergy
4 and anaphylaxis in schools and early child-
5 hood education programs; and

6 (ii) make such guidelines available to
7 local educational agencies, schools, early
8 childhood education programs, and other
9 interested entities and individuals to be im-
10 plemented on a voluntary basis only.

11 (B) APPLICABILITY OF FERPA.—Each plan
12 described in subparagraph (A) that is developed
13 for an individual shall be considered an edu-
14 cation record for the purpose of section 444 of
15 the General Education Provisions Act (com-
16 monly referred to as the “Family Educational
17 Rights and Privacy Act of 1974”) (20 U.S.C.
18 1232g).

19 (2) CONTENTS.—The voluntary guidelines de-
20 veloped by the Secretary under paragraph (1) shall
21 address each of the following and may be updated
22 as the Secretary determines necessary:

23 (A) Parental obligation to provide the
24 school or early childhood education program,
25 prior to the start of every school year, with—

1 (i) documentation from their child's
2 physician or nurse—

3 (I) supporting a diagnosis of food
4 allergy, and any risk of anaphylaxis, if
5 applicable;

6 (II) identifying any food to which
7 the child is allergic;

8 (III) describing, if appropriate,
9 any prior history of anaphylaxis;

10 (IV) listing any medication pre-
11 scribed for the child for the treatment
12 of anaphylaxis;

13 (V) detailing emergency treat-
14 ment procedures in the event of a re-
15 action;

16 (VI) listing the signs and symp-
17 toms of a reaction; and

18 (VII) assessing the child's readi-
19 ness for self-administration of pre-
20 scription medication; and

21 (ii) a list of substitute meals that may
22 be offered to the child by school or early
23 childhood education program food service
24 personnel.

1 (B) The creation and maintenance of an
2 individual plan for food allergy management, in
3 consultation with the parent, tailored to the
4 needs of each child with a documented risk for
5 anaphylaxis, including any procedures for the
6 self-administration of medication by such chil-
7 dren in instances where—

8 (i) the children are capable of self-ad-
9 ministering medication; and

10 (ii) such administration is not prohib-
11 ited by State law.

12 (C) Communication strategies between in-
13 dividual schools or early childhood education
14 programs and providers of emergency medical
15 services, including appropriate instructions for
16 emergency medical response.

17 (D) Strategies to reduce the risk of expo-
18 sure to anaphylactic causative agents in class-
19 rooms and common school or early childhood
20 education program areas such as cafeterias.

21 (E) The dissemination of general informa-
22 tion on life-threatening food allergies to school
23 or early childhood education program staff, par-
24 ents, and children.

1 (F) Food allergy management training of
2 school or early childhood education program
3 personnel who regularly come into contact with
4 children with life-threatening food allergies.

5 (G) The authorization and training of
6 school or early childhood education program
7 personnel to administer epinephrine when the
8 nurse is not immediately available.

9 (H) The timely accessibility of epinephrine
10 by school or early childhood education program
11 personnel when the nurse is not immediately
12 available.

13 (I) The creation of a plan contained in
14 each individual plan for food allergy manage-
15 ment that addresses the appropriate response to
16 an incident of anaphylaxis of a child while such
17 child is engaged in extracurricular programs of
18 a school or early childhood education program,
19 such as nonacademic outings and field trips,
20 before- and after-school programs or before-
21 and after-early child education program pro-
22 grams, and school-sponsored or early childhood
23 education program-sponsored programs held on
24 weekends.

1 (J) Maintenance of information for each
2 administration of epinephrine to a child at risk
3 for anaphylaxis and prompt notification to par-
4 ents.

5 (K) Other elements the Secretary deter-
6 mines necessary for the management of food al-
7 lergies and anaphylaxis in schools and early
8 childhood education programs.

9 (3) RELATION TO STATE LAW.—Nothing in this
10 section or the guidelines developed by the Secretary
11 under paragraph (1) shall be construed to preempt
12 State law, including any State law regarding wheth-
13 er students at risk for anaphylaxis may self-admin-
14 ister medication.

15 (c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT
16 GRANTS.—

17 (1) IN GENERAL.—The Secretary may award
18 grants to local educational agencies to assist such
19 agencies with implementing voluntary food allergy
20 and anaphylaxis management guidelines described in
21 subsection (b).

22 (2) APPLICATION.—

23 (A) IN GENERAL.—To be eligible to receive
24 a grant under this subsection, a local edu-
25 cational agency shall submit an application to

1 the Secretary at such time, in such manner,
2 and including such information as the Secretary
3 may reasonably require.

4 (B) CONTENTS.—Each application sub-
5 mitted under subparagraph (A) shall include—

6 (i) an assurance that the local edu-
7 cational agency has developed plans in ac-
8 cordance with the food allergy and anaphy-
9 laxis management guidelines described in
10 subsection (b);

11 (ii) a description of the activities to be
12 funded by the grant in carrying out the
13 food allergy and anaphylaxis management
14 guidelines, including—

15 (I) how the guidelines will be car-
16 ried out at individual schools served
17 by the local educational agency;

18 (II) how the local educational
19 agency will inform parents and stu-
20 dents of the guidelines in place;

21 (III) how school nurses, teachers,
22 administrators, and other school-based
23 staff will be made aware of, and given
24 training on, when applicable, the
25 guidelines in place; and

1 (IV) any other activities that the
2 Secretary determines appropriate;

3 (iii) an itemization of how grant funds
4 received under this subsection will be ex-
5 pended;

6 (iv) a description of how adoption of
7 the guidelines and implementation of grant
8 activities will be monitored; and

9 (v) an agreement by the local edu-
10 cational agency to report information re-
11 quired by the Secretary to conduct evalua-
12 tions under this subsection.

13 (3) USE OF FUNDS.—Each local educational
14 agency that receives a grant under this subsection
15 may use the grant funds for the following:

16 (A) Purchase of materials and supplies, in-
17 cluding limited medical supplies such as epi-
18 nephrine and disposable wet wipes, to support
19 carrying out the food allergy and anaphylaxis
20 management guidelines described in subsection
21 (b).

22 (B) In partnership with local health de-
23 partments, school nurse, teacher, and personnel
24 training for food allergy management.

1 (C) Programs that educate students as to
2 the presence of, and policies and procedures in
3 place related to, food allergies and anaphylactic
4 shock.

5 (D) Outreach to parents.

6 (E) Any other activities consistent with the
7 guidelines described in subsection (b).

8 (4) DURATION OF AWARDS.—The Secretary
9 may award grants under this subsection for a period
10 of not more than 2 years. In the event the Secretary
11 conducts a program evaluation under this sub-
12 section, funding in the second year of the grant,
13 where applicable, shall be contingent on a successful
14 program evaluation by the Secretary after the first
15 year.

16 (5) LIMITATION ON GRANT FUNDING.—The
17 Secretary may not provide grant funding to a local
18 educational agency under this subsection after such
19 local educational agency has received 2 years of
20 grant funding under this subsection.

21 (6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—
22 A grant awarded under this subsection may not be
23 made in an amount that is more than \$50,000 an-
24 nually.

1 (7) PRIORITY.—In awarding grants under this
2 subsection, the Secretary shall give priority to local
3 educational agencies with the highest percentages of
4 children who are counted under section 1124(c) of
5 the Elementary and Secondary Education Act of
6 1965 (20 U.S.C. 6333(c)).

7 (8) MATCHING FUNDS.—

8 (A) IN GENERAL.—The Secretary may not
9 award a grant under this subsection unless the
10 local educational agency agrees that, with re-
11 spect to the costs to be incurred by such local
12 educational agency in carrying out the grant ac-
13 tivities, the local educational agency shall make
14 available (directly or through donations from
15 public or private entities) non-Federal funds to-
16 ward such costs in an amount equal to not less
17 than 25 percent of the amount of the grant.

18 (B) DETERMINATION OF AMOUNT OF NON-
19 FEDERAL CONTRIBUTION.—Non-Federal funds
20 required under subparagraph (A) may be cash
21 or in kind, including plant, equipment, or serv-
22 ices. Amounts provided by the Federal Govern-
23 ment, and any portion of any service subsidized
24 by the Federal Government, may not be in-

1 cluded in determining the amount of such non-
2 Federal funds.

3 (9) ADMINISTRATIVE FUNDS.—A local edu-
4 cational agency that receives a grant under this sub-
5 section may use not more than 2 percent of the
6 grant amount for administrative costs related to car-
7 rying out this subsection.

8 (10) PROGRESS AND EVALUATIONS.—At the
9 completion of the grant period referred to in para-
10 graph (4), a local educational agency shall provide
11 the Secretary with information on how grant funds
12 were spent and the status of implementation of the
13 food allergy and anaphylaxis management guidelines
14 described in subsection (b).

15 (11) SUPPLEMENT, NOT SUPPLANT.—Grant
16 funds received under this subsection shall be used to
17 supplement, and not supplant, non-Federal funds
18 and any other Federal funds available to carry out
19 the activities described in this subsection.

20 (12) AUTHORIZATION OF APPROPRIATIONS.—
21 There is authorized to be appropriated to carry out
22 this subsection \$30,000,000 for fiscal year 2011 and
23 such sums as may be necessary for each of the 4
24 succeeding fiscal years.

25 (d) VOLUNTARY NATURE OF GUIDELINES.—

1 (1) IN GENERAL.—The food allergy and ana-
2 phylaxis management guidelines developed by the
3 Secretary under subsection (b) are voluntary. Noth-
4 ing in this section or the guidelines developed by the
5 Secretary under subsection (b) shall be construed to
6 require a local educational agency to implement such
7 guidelines.

8 (2) EXCEPTION.—Notwithstanding paragraph
9 (1), the Secretary may enforce an agreement by a
10 local educational agency to implement food allergy
11 and anaphylaxis management guidelines as a condi-
12 tion of the receipt of a grant under subsection (c).

13 **SEC. 6113. NEW DIETARY INGREDIENTS.**

14 (a) IN GENERAL.—Section 413 of the Federal Food,
15 Drug, and Cosmetic Act (21 U.S.C. 350b) is amended—

16 (1) by redesignating subsection (c) as sub-
17 section (d); and

18 (2) by inserting after subsection (b) the fol-
19 lowing:

20 “(c) NOTIFICATION.—

21 “(1) IN GENERAL.—If the Secretary determines
22 that the information in a new dietary ingredient no-
23 tification submitted under this section for an article
24 purported to be a new dietary ingredient is inad-
25 equiate to establish that a dietary supplement con-

1 taining such article will reasonably be expected to be
2 safe because the article may be, or may contain, an
3 anabolic steroid or an analogue of an anabolic ster-
4 oid, the Secretary shall notify the Drug Enforcement
5 Administration of such determination. Such notifica-
6 tion by the Secretary shall include, at a minimum,
7 the name of the dietary supplement or article, the
8 name of the person or persons who marketed the
9 product or made the submission of information re-
10 regarding the article to the Secretary under this sec-
11 tion, and any contact information for such person or
12 persons that the Secretary has.

13 “(2) DEFINITIONS.—For purposes of this sub-
14 section—

15 “(A) the term ‘anabolic steroid’ has the
16 meaning given such term in section 102(41) of
17 the Controlled Substances Act; and

18 “(B) the term ‘analogue of an anabolic
19 steroid’ means a substance whose chemical
20 structure is substantially similar to the chem-
21 ical structure of an anabolic steroid.”.

22 (b) GUIDANCE.—Not later than 180 days after the
23 date of enactment of this Act, the Secretary shall publish
24 guidance that clarifies when a dietary supplement ingre-
25 dient is a new dietary ingredient, when the manufacturer

1 or distributor of a dietary ingredient or dietary supple-
2 ment should provide the Secretary with information as de-
3 scribed in section 413(a)(2) of the Federal Food, Drug,
4 and Cosmetic Act, the evidence needed to document the
5 safety of new dietary ingredients, and appropriate meth-
6 ods for establishing the identify of a new dietary ingre-
7 dient.

8 **SEC. 6114. REQUIREMENT FOR GUIDANCE RELATING TO**
9 **POST-HARVEST PROCESSING OF RAW OYS-**
10 **TERS.**

11 (a) IN GENERAL.—Not later than 90 days prior to
12 the issuance of any guidance, regulation, or suggested
13 amendment by the Food and Drug Administration to the
14 National Shellfish Sanitation Program’s Model Ordinance,
15 or the issuance of any guidance or regulation by the Food
16 and Drug Administration relating to the Seafood Hazard
17 Analysis Critical Control Points Program of the Food and
18 Drug Administration (parts 123 and 1240 of title 21,
19 Code of Federal Regulations (or any successor regula-
20 tions), where such guidance, regulation, or suggested
21 amendment relates to post-harvest processing for raw oys-
22 ters, the Secretary shall prepare and submit to the Com-
23 mittee on Health, Education, Labor, and Pensions of the
24 Senate and the Committee on Energy and Commerce of

1 the House of Representatives a report which shall in-
2 clude—

3 (1) an assessment of how post-harvest proc-
4 essing or other equivalent controls feasibly may be
5 implemented in the fastest, safest, and most eco-
6 nomical manner;

7 (2) the projected public health benefits of any
8 proposed post-harvest processing;

9 (3) the projected costs of compliance with such
10 post-harvest processing measures;

11 (4) the impact post-harvest processing is ex-
12 pected to have on the sales, cost, and availability of
13 raw oysters;

14 (5) criteria for ensuring post-harvest processing
15 standards will be applied equally to shellfish im-
16 ported from all nations of origin;

17 (6) an evaluation of alternative measures to
18 prevent, eliminate, or reduce to an acceptable level
19 the occurrence of foodborne illness; and

20 (7) the extent to which the Food and Drug Ad-
21 ministration has consulted with the States and other
22 regulatory agencies, as appropriate, with regard to
23 post-harvest processing measures.

24 (b) LIMITATION.—Subsection (a) shall not apply to
25 the guidance described in section 6103(h).

1 (c) REVIEW AND EVALUATION.—Not later than 30
2 days after the Secretary issues a proposed regulation or
3 guidance described in subsection (a), the Comptroller Gen-
4 eral of the United States shall—

5 (1) review and evaluate the report described in
6 subsection (a) and report to Congress on the find-
7 ings of the estimates and analysis in the report;

8 (2) compare such proposed regulation or guid-
9 ance to similar regulations or guidance with respect
10 to other regulated foods, including a comparison of
11 risks the Secretary may find associated with seafood
12 and the instances of those risks in such other regu-
13 lated foods; and

14 (3) evaluate the impact of post-harvest proc-
15 essing on the competitiveness of the domestic oyster
16 industry in the United States and in international
17 markets.

18 (d) WAIVER.—The requirement of preparing a report
19 under subsection (a) shall be waived if the Secretary issues
20 a guidance that is adopted as a consensus agreement be-
21 tween Federal and State regulators and the oyster indus-
22 try, acting through the Interstate Shellfish Sanitation
23 Conference.

24 (e) PUBLIC ACCESS.—Any report prepared under
25 this section shall be made available to the public.

1 **SEC. 6115. PORT SHOPPING.**

2 Until the date on which the Secretary promulgates
3 a final rule that implements the amendments made by sec-
4 tion 308 of the Public Health Security and Bioterrorism
5 Preparedness and Response Act of 2002 (Public Law
6 107–188), the Secretary shall notify the Secretary of
7 Homeland Security of all instances in which the Secretary
8 refuses to admit a food into the United States under sec-
9 tion 801(a) of the Federal Food, Drug, and Cosmetic Act
10 (21 U.S.C. 381(a)) so that the Secretary of Homeland Se-
11 curity, acting through the Commissioner of Customs and
12 Border Protection, may prevent food refused admittance
13 into the United States by a United States port of entry
14 from being admitted by another United States port of
15 entry, through the notification of other such United States
16 ports of entry.

17 **SEC. 6116. ALCOHOL-RELATED FACILITIES.**

18 (a) IN GENERAL.—Except as provided by sections
19 6102, 6206, 6207, 6302, 6304, 6402, 6403, and 6404 of
20 this Act, and the amendments made by such sections,
21 nothing in this Act, or the amendments made by this Act,
22 shall be construed to apply to a facility that—

23 (1) under the Federal Alcohol Administration
24 Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle
25 E of the Internal Revenue Code of 1986 (26 U.S.C.
26 5001 et seq.) is required to obtain a permit or to

1 register with the Secretary of the Treasury as a con-
2 dition of doing business in the United States; and

3 (2) under section 415 of the Federal Food,
4 Drug, and Cosmetic Act (21 U.S.C. 350d) is re-
5 quired to register as a facility because such facility
6 is engaged in manufacturing, processing, packing, or
7 holding 1 or more alcoholic beverages, with respect
8 to the activities of such facility that relate to the
9 manufacturing, processing, packing, or holding of al-
10 coholic beverages.

11 (b) LIMITED RECEIPT AND DISTRIBUTION OF NON-
12 ALCOHOL FOOD.—Subsection (a) shall not apply to a fa-
13 cility engaged in the receipt and distribution of any non-
14 alcohol food, except that such paragraph shall apply to a
15 facility described in such paragraph that receives and dis-
16 tributes nonalcohol food, provided such food is received
17 and distributed—

18 (1) in a prepackaged form that prevents any di-
19 rect human contact with such food; and

20 (2) in amounts that constitute not more than 5
21 percent of the overall sales of such facility, as deter-
22 mined by the Secretary of the Treasury.

23 (c) RULE OF CONSTRUCTION.—Except as provided in
24 subsections (a) and (b), this section shall not be construed
25 to exempt any food, other than alcoholic beverages, as de-

1 fined in section 214 of the Federal Alcohol Administration
2 Act (27 U.S.C. 214), from the requirements of this Act
3 (including the amendments made by this Act).

4 **TITLE II—IMPROVING CAPACITY**
5 **TO DETECT AND RESPOND TO**
6 **FOOD SAFETY PROBLEMS**

7 **SEC. 6201. TARGETING OF INSPECTION RESOURCES FOR**
8 **DOMESTIC FACILITIES, FOREIGN FACILITIES,**
9 **AND PORTS OF ENTRY; ANNUAL REPORT.**

10 (a) TARGETING OF INSPECTION RESOURCES FOR
11 DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS
12 OF ENTRY.—Chapter IV (21 U.S.C. 341 et seq.), as
13 amended by section 6106, is amended by adding at the
14 end the following:

15 **“SEC. 421. TARGETING OF INSPECTION RESOURCES FOR**
16 **DOMESTIC FACILITIES, FOREIGN FACILITIES,**
17 **AND PORTS OF ENTRY; ANNUAL REPORT.**

18 “(a) IDENTIFICATION AND INSPECTION OF FACILI-
19 TIES.—

20 “(1) IDENTIFICATION.—The Secretary shall
21 identify high-risk facilities and shall allocate re-
22 sources to inspect facilities according to the known
23 safety risks of the facilities, which shall be based on
24 the following factors:

1 “(A) The known safety risks of the food
2 manufactured, processed, packed, or held at the
3 facility.

4 “(B) The compliance history of a facility,
5 including with regard to food recalls, outbreaks
6 of foodborne illness, and violations of food safe-
7 ty standards.

8 “(C) The rigor and effectiveness of the fa-
9 cility’s hazard analysis and risk-based preven-
10 tive controls.

11 “(D) Whether the food manufactured,
12 processed, packed, or held at the facility meets
13 the criteria for priority under section 801(h)(1).

14 “(E) Whether the food or the facility that
15 manufactured, processed, packed, or held such
16 food has received a certification as described in
17 section 801(q) or 806, as appropriate.

18 “(F) Any other criteria deemed necessary
19 and appropriate by the Secretary for purposes
20 of allocating inspection resources.

21 “(2) INSPECTIONS.—

22 “(A) IN GENERAL.—Beginning on the date
23 of enactment of the FDA Food Safety Mod-
24 ernization Act, the Secretary shall increase the
25 frequency of inspection of all facilities.

1 “(B) DOMESTIC HIGH-RISK FACILITIES.—
2 The Secretary shall increase the frequency of
3 inspection of domestic facilities identified under
4 paragraph (1) as high-risk facilities such that
5 each such facility is inspected—

6 “(i) not less often than once in the 5-
7 year period following the date of enactment
8 of the FDA Food Safety Modernization
9 Act; and

10 “(ii) not less often than once every 3
11 years thereafter.

12 “(C) DOMESTIC NON-HIGH-RISK FACILI-
13 TIES.—The Secretary shall ensure that each do-
14 mestic facility that is not identified under para-
15 graph (1) as a high-risk facility is inspected—

16 “(i) not less often than once in the 7-
17 year period following the date of enactment
18 of the FDA Food Safety Modernization
19 Act; and

20 “(ii) not less often than once every 5
21 years thereafter.

22 “(D) FOREIGN FACILITIES.—

23 “(i) YEAR 1.—In the 1-year period
24 following the date of enactment of the
25 FDA Food Safety Modernization Act, the

1 Secretary shall inspect not fewer than 600
2 foreign facilities.

3 “(ii) SUBSEQUENT YEARS.—In each
4 of the 5 years following the 1-year period
5 described in clause (i), the Secretary shall
6 inspect not fewer than twice the number of
7 foreign facilities inspected by the Secretary
8 during the previous year.

9 “(E) RELIANCE ON FEDERAL, STATE, OR
10 LOCAL INSPECTIONS.—In meeting the inspec-
11 tion requirements under this subsection for do-
12 mestic facilities, the Secretary may rely on in-
13 spections conducted by other Federal, State, or
14 local agencies under interagency agreements,
15 contracts, memoranda of understanding, or
16 other obligations.

17 “(b) IDENTIFICATION AND INSPECTION AT PORTS OF
18 ENTRY.—The Secretary, in consultation with the Sec-
19 retary of Homeland Security, shall allocate resources to
20 inspect any article of food imported into the United States
21 according to the known safety risks of the article of food,
22 which shall be based on the following factors:

23 “(1) The known safety risks of the food im-
24 ported.

1 “(2) The known safety risks of the countries or
2 regions of origin and countries through which such
3 article of food is transported.

4 “(3) The compliance history of the importer, in-
5 cluding with regard to food recalls, outbreaks of
6 foodborne illness, and violations of food safety stand-
7 ards.

8 “(4) The rigor and effectiveness of the activities
9 conducted by the importer of such article of food to
10 satisfy the requirements of the foreign supplier
11 verification program under section 805.

12 “(5) Whether the food importer participates in
13 the voluntary qualified importer program under sec-
14 tion 806.

15 “(6) Whether the food meets the criteria for
16 priority under section 801(h)(1).

17 “(7) Whether the food or the facility that man-
18 ufactured, processed, packed, or held such food re-
19 ceived a certification as described in section 801(q)
20 or 806.

21 “(8) Any other criteria deemed necessary and
22 appropriate by the Secretary for purposes of allo-
23 cating inspection resources.

24 “(c) INTERAGENCY AGREEMENTS WITH RESPECT TO
25 SEAFOOD.—

1 “(1) IN GENERAL.—The Secretary of Health
2 and Human Services, the Secretary of Commerce,
3 the Secretary of Homeland Security, the Chairman
4 of the Federal Trade Commission, and the heads of
5 other appropriate agencies may enter into such
6 agreements as may be necessary or appropriate to
7 improve seafood safety.

8 “(2) SCOPE OF AGREEMENTS.—The agreements
9 under paragraph (1) may include—

10 “(A) cooperative arrangements for exam-
11 ining and testing seafood imports that leverage
12 the resources, capabilities, and authorities of
13 each party to the agreement;

14 “(B) coordination of inspections of foreign
15 facilities to increase the percentage of imported
16 seafood and seafood facilities inspected;

17 “(C) standardization of data on seafood
18 names, inspection records, and laboratory test-
19 ing to improve interagency coordination;

20 “(D) coordination to detect and investigate
21 violations under applicable Federal law;

22 “(E) a process, including the use or modi-
23 fication of existing processes, by which officers
24 and employees of the National Oceanic and At-
25 mospheric Administration may be duly des-

1 ignated by the Secretary to carry out seafood
2 examinations and investigations under section
3 801 of this Act or section 203 of the Food Al-
4 lergen Labeling and Consumer Protection Act
5 of 2004;

6 “(F) the sharing of information concerning
7 observed noncompliance with United States
8 food requirements domestically and in foreign
9 nations and new regulatory decisions and poli-
10 cies that may affect the safety of food imported
11 into the United States;

12 “(G) conducting joint training on subjects
13 that affect and strengthen seafood inspection
14 effectiveness by Federal authorities; and

15 “(H) outreach on Federal efforts to en-
16 hance seafood safety and compliance with Fed-
17 eral food safety requirements.

18 “(d) COORDINATION.—The Secretary shall improve
19 coordination and cooperation with the Secretary of Agri-
20 culture and the Secretary of Homeland Security to target
21 food inspection resources.

22 “(e) FACILITY.—For purposes of this section, the
23 term ‘facility’ means a domestic facility or a foreign facil-
24 ity that is required to register under section 415.”.

1 (b) ANNUAL REPORT.—Section 1003 (21 U.S.C.
2 393) is amended by adding at the end the following:

3 “(h) ANNUAL REPORT REGARDING FOOD.—Not
4 later than February 1 of each year, the Secretary shall
5 submit to Congress a report, including efforts to coordi-
6 nate and cooperate with other Federal agencies with re-
7 sponsibilities for food inspections, regarding—

8 “(1) information about food facilities includ-
9 ing—

10 “(A) the appropriations used to inspect fa-
11 cilities registered pursuant to section 415 in the
12 previous fiscal year;

13 “(B) the average cost of both a non-high-
14 risk food facility inspection and a high-risk food
15 facility inspection, if such a difference exists, in
16 the previous fiscal year;

17 “(C) the number of domestic facilities and
18 the number of foreign facilities registered pur-
19 suant to section 415 that the Secretary in-
20 spected in the previous fiscal year;

21 “(D) the number of domestic facilities and
22 the number of foreign facilities registered pur-
23 suant to section 415 that were scheduled for in-
24 spection in the previous fiscal year and which
25 the Secretary did not inspect in such year;

1 “(E) the number of high-risk facilities
2 identified pursuant to section 421 that the Sec-
3 retary inspected in the previous fiscal year; and

4 “(F) the number of high-risk facilities
5 identified pursuant to section 421 that were
6 scheduled for inspection in the previous fiscal
7 year and which the Secretary did not inspect in
8 such year.

9 “(2) information about food imports includ-
10 ing—

11 “(A) the number of lines of food imported
12 into the United States that the Secretary phys-
13 ically inspected or sampled in the previous fiscal
14 year;

15 “(B) the number of lines of food imported
16 into the United States that the Secretary did
17 not physically inspect or sample in the previous
18 fiscal year; and

19 “(C) the average cost of physically inspect-
20 ing or sampling a line of food subject to this
21 Act that is imported or offered for import into
22 the United States; and

23 “(3) information on the foreign offices of the
24 Food and Drug Administration including—

1 “(A) the number of foreign offices estab-
2 lished; and

3 “(B) the number of personnel permanently
4 stationed in each foreign office.

5 “(i) PUBLIC AVAILABILITY OF ANNUAL FOOD RE-
6 PORTS.—The Secretary shall make the reports required
7 under subsection (h) available to the public on the Internet
8 Web site of the Food and Drug Administration.”.

9 (c) ADVISORY COMMITTEE CONSULTATION.—In allo-
10 cating inspection resources as described in section 421 of
11 the Federal Food, Drug, and Cosmetic Act (as added by
12 subsection (a)), the Secretary may, as appropriate, consult
13 with any relevant advisory committee within the Depart-
14 ment of Health and Human Services.

15 **SEC. 6202. LABORATORY ACCREDITATION FOR ANALYSES**
16 **OF FOODS.**

17 (a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et
18 seq.), as amended by section 6201, is amended by adding
19 at the end the following:

20 **“SEC. 422. LABORATORY ACCREDITATION FOR ANALYSES**
21 **OF FOODS.**

22 “(a) RECOGNITION OF LABORATORY ACCREDITA-
23 TION.—

1 “(1) IN GENERAL.—Not later than 2 years
2 after the date of enactment of the FDA Food Safety
3 Modernization Act, the Secretary shall—

4 “(A) establish a program for the testing of
5 food by accredited laboratories;

6 “(B) establish a publicly available registry
7 of accreditation bodies recognized by the Sec-
8 retary and laboratories accredited by a recog-
9 nized accreditation body, including the name of,
10 contact information for, and other information
11 deemed appropriate by the Secretary about
12 such bodies and laboratories; and

13 “(C) require, as a condition of recognition
14 or accreditation, as appropriate, that recognized
15 accreditation bodies and accredited laboratories
16 report to the Secretary any changes that would
17 affect the recognition of such accreditation body
18 or the accreditation of such laboratory.

19 “(2) PROGRAM REQUIREMENTS.—The program
20 established under paragraph (1)(A) shall provide for
21 the recognition of laboratory accreditation bodies
22 that meet criteria established by the Secretary for
23 accreditation of laboratories, including independent
24 private laboratories and laboratories run and oper-
25 ated by a Federal agency (including the Department

1 of Commerce), State, or locality with a demonstrated
2 capability to conduct 1 or more sampling and analyt-
3 ical testing methodologies for food.

4 “(3) INCREASING THE NUMBER OF QUALIFIED
5 LABORATORIES.—The Secretary shall work with the
6 laboratory accreditation bodies recognized under
7 paragraph (1), as appropriate, to increase the num-
8 ber of qualified laboratories that are eligible to per-
9 form testing under subsection (b) beyond the num-
10 ber so qualified on the date of enactment of the
11 FDA Food Safety Modernization Act.

12 “(4) LIMITED DISTRIBUTION.—In the interest
13 of national security, the Secretary, in coordination
14 with the Secretary of Homeland Security, may deter-
15 mine the time, manner, and form in which the reg-
16 istry established under paragraph (1)(B) is made
17 publicly available.

18 “(5) FOREIGN LABORATORIES.—Accreditation
19 bodies recognized by the Secretary under paragraph
20 (1) may accredit laboratories that operate outside
21 the United States, so long as such laboratories meet
22 the accreditation standards applicable to domestic
23 laboratories accredited under this section.

24 “(6) MODEL LABORATORY STANDARDS.—The
25 Secretary shall develop model standards that a lab-

1 oratory shall meet to be accredited by a recognized
2 accreditation body for a specified sampling or ana-
3 lytical testing methodology and included in the reg-
4 istry provided for under paragraph (1). In devel-
5 oping the model standards, the Secretary shall con-
6 sult existing standards for guidance. The model
7 standards shall include—

8 “(A) methods to ensure that—

9 “(i) appropriate sampling, analytical
10 procedures (including rapid analytical pro-
11 cedures), and commercially available tech-
12 niques are followed and reports of analyses
13 are certified as true and accurate;

14 “(ii) internal quality systems are es-
15 tablished and maintained;

16 “(iii) procedures exist to evaluate and
17 respond promptly to complaints regarding
18 analyses and other activities for which the
19 laboratory is accredited; and

20 “(iv) individuals who conduct the
21 sampling and analyses are qualified by
22 training and experience to do so; and

23 “(B) any other criteria determined appro-
24 priate by the Secretary.

1 “(7) REVIEW OF RECOGNITION.—To ensure
2 compliance with the requirements of this section, the
3 Secretary—

4 “(A) shall periodically, and in no case less
5 than once every 5 years, reevaluate accredita-
6 tion bodies recognized under paragraph (1) and
7 may accompany auditors from an accreditation
8 body to assess whether the accreditation body
9 meets the criteria for recognition; and

10 “(B) shall promptly revoke the recognition
11 of any accreditation body found not to be in
12 compliance with the requirements of this sec-
13 tion, specifying, as appropriate, any terms and
14 conditions necessary for laboratories accredited
15 by such body to continue to perform testing as
16 described in this section.

17 “(b) TESTING PROCEDURES.—

18 “(1) IN GENERAL.—Not later than 30 months
19 after the date of enactment of the FDA Food Safety
20 Modernization Act, food testing shall be conducted
21 by Federal laboratories or non-Federal laboratories
22 that have been accredited for the appropriate sam-
23 pling or analytical testing methodology or meth-
24 odologies by a recognized accreditation body on the
25 registry established by the Secretary under sub-

1 section (a)(1)(B) whenever such testing is con-
2 ducted—

3 “(A) by or on behalf of an owner or con-
4 signee—

5 “(i) in response to a specific testing
6 requirement under this Act or imple-
7 menting regulations, when applied to ad-
8 dress an identified or suspected food safety
9 problem; and

10 “(ii) as required by the Secretary, as
11 the Secretary deems appropriate, to ad-
12 dress an identified or suspected food safety
13 problem; or

14 “(B) on behalf of an owner or consignee—

15 “(i) in support of admission of an ar-
16 ticle of food under section 801(a); and

17 “(ii) under an Import Alert that re-
18 quires successful consecutive tests.

19 “(2) RESULTS OF TESTING.—The results of
20 any such testing shall be sent directly to the Food
21 and Drug Administration, except the Secretary may
22 by regulation exempt test results from such submis-
23 sion requirement if the Secretary determines that
24 such results do not contribute to the protection of
25 public health. Test results required to be submitted

1 may be submitted to the Food and Drug Adminis-
2 tration through electronic means.

3 “(3) EXCEPTION.—The Secretary may waive
4 requirements under this subsection if—

5 “(A) a new methodology or methodologies
6 have been developed and validated but a labora-
7 tory has not yet been accredited to perform
8 such methodology or methodologies; and

9 “(B) the use of such methodology or meth-
10 odologies are necessary to prevent, control, or
11 mitigate a food emergency or foodborne illness
12 outbreak.

13 “(c) REVIEW BY SECRETARY.—If food sampling and
14 testing performed by a laboratory run and operated by a
15 State or locality that is accredited by a recognized accredi-
16 tation body on the registry established by the Secretary
17 under subsection (a) result in a State recalling a food, the
18 Secretary shall review the sampling and testing results for
19 the purpose of determining the need for a national recall
20 or other compliance and enforcement activities.

21 “(d) NO LIMIT ON SECRETARIAL AUTHORITY.—
22 Nothing in this section shall be construed to limit the abil-
23 ity of the Secretary to review and act upon information
24 from food testing, including determining the sufficiency of
25 such information and testing.”.

1 (b) FOOD EMERGENCY RESPONSE NETWORK.—The
2 Secretary, in coordination with the Secretary of Agri-
3 culture, the Secretary of Homeland Security, and State,
4 local, and tribal governments shall, not later than 180
5 days after the date of enactment of this Act, and biennially
6 thereafter, submit to the relevant committees of Congress,
7 and make publicly available on the Internet Web site of
8 the Department of Health and Human Services, a report
9 on the progress in implementing a national food emer-
10 gency response laboratory network that—

11 (1) provides ongoing surveillance, rapid detec-
12 tion, and surge capacity for large-scale food-related
13 emergencies, including intentional adulteration of
14 the food supply;

15 (2) coordinates the food laboratory capacities of
16 State, local, and tribal food laboratories, including
17 the adoption of novel surveillance and identification
18 technologies and the sharing of data among Federal
19 agencies and State laboratories to develop national
20 situational awareness;

21 (3) provides accessible, timely, accurate, and
22 consistent food laboratory services throughout the
23 United States;

24 (4) develops and implements a methods reposi-
25 tory for use by Federal, State, and local officials;

1 (5) responds to food-related emergencies; and
2 (6) is integrated with relevant laboratory net-
3 works administered by other Federal agencies.

4 **SEC. 6203. INTEGRATED CONSORTIUM OF LABORATORY**
5 **NETWORKS.**

6 (a) IN GENERAL.—The Secretary of Homeland Secu-
7 rity, in coordination with the Secretary of Health and
8 Human Services, the Secretary of Agriculture, the Sec-
9 retary of Commerce, and the Administrator of the Envi-
10 ronmental Protection Agency, shall maintain an agree-
11 ment through which relevant laboratory network members,
12 as determined by the Secretary of Homeland Security,
13 shall—

14 (1) agree on common laboratory methods in
15 order to reduce the time required to detect and re-
16 spond to foodborne illness outbreaks and facilitate
17 the sharing of knowledge and information relating to
18 animal health, agriculture, and human health;

19 (2) identify means by which laboratory network
20 members could work cooperatively—

21 (A) to optimize national laboratory pre-
22 paredness; and

23 (B) to provide surge capacity during emer-
24 gencies; and

1 (3) engage in ongoing dialogue and build rela-
2 tionships that will support a more effective and inte-
3 grated response during emergencies.

4 (b) REPORTING REQUIREMENT.—The Secretary of
5 Homeland Security shall, on a biennial basis, submit to
6 the relevant committees of Congress, and make publicly
7 available on the Internet Web site of the Department of
8 Homeland Security, a report on the progress of the inte-
9 grated consortium of laboratory networks, as established
10 under subsection (a), in carrying out this section.

11 **SEC. 6204. ENHANCING TRACKING AND TRACING OF FOOD**
12 **AND RECORDKEEPING.**

13 (a) PILOT PROJECTS.—

14 (1) IN GENERAL.—Not later than 270 days
15 after the date of enactment of this Act, the Sec-
16 retary of Health and Human Services (referred to in
17 this section as the “Secretary”), taking into account
18 recommendations from the Secretary of Agriculture
19 and representatives of State departments of health
20 and agriculture, shall establish pilot projects in co-
21 ordination with the food industry to explore and
22 evaluate methods to rapidly and effectively identify
23 recipients of food to prevent or mitigate a foodborne
24 illness outbreak and to address credible threats of
25 serious adverse health consequences or death to hu-

1 mans or animals as a result of such food being adul-
2 terated under section 402 of the Federal Food,
3 Drug, and Cosmetic Act (21 U.S.C. 342) or mis-
4 branded under section 403(w) of such Act (21
5 U.S.C. 343(w)).

6 (2) CONTENT.—The Secretary shall conduct 1
7 or more pilot projects under paragraph (1) in coordi-
8 nation with the processed food sector and 1 or more
9 such pilot projects in coordination with processors or
10 distributors of fruits and vegetables that are raw ag-
11 ricultural commodities. The Secretary shall ensure
12 that the pilot projects under paragraph (1) reflect
13 the diversity of the food supply and include at least
14 3 different types of foods that have been the subject
15 of significant outbreaks during the 5-year period
16 preceding the date of enactment of this Act, and are
17 selected in order to—

18 (A) develop and demonstrate methods for
19 rapid and effective tracking and tracing of
20 foods in a manner that is practicable for facili-
21 ties of varying sizes, including small businesses;

22 (B) develop and demonstrate appropriate
23 technologies, including technologies existing on
24 the date of enactment of this Act, that enhance
25 the tracking and tracing of food; and

1 (C) inform the promulgation of regulations
2 under subsection (d).

3 (3) REPORT.—Not later than 18 months after
4 the date of enactment of this Act, the Secretary
5 shall report to Congress on the findings of the pilot
6 projects under this subsection together with rec-
7 ommendations for improving the tracking and trac-
8 ing of food.

9 (b) ADDITIONAL DATA GATHERING.—

10 (1) IN GENERAL.—The Secretary, in coordina-
11 tion with the Secretary of Agriculture and multiple
12 representatives of State departments of health and
13 agriculture, shall assess—

14 (A) the costs and benefits associated with
15 the adoption and use of several product tracing
16 technologies, including technologies used in the
17 pilot projects under subsection (a);

18 (B) the feasibility of such technologies for
19 different sectors of the food industry, including
20 small businesses; and

21 (C) whether such technologies are compat-
22 ible with the requirements of this subsection.

23 (2) REQUIREMENTS.—To the extent prac-
24 ticable, in carrying out paragraph (1), the Secretary
25 shall—

1 (A) evaluate domestic and international
2 product tracing practices in commercial use;

3 (B) consider international efforts, includ-
4 ing an assessment of whether product tracing
5 requirements developed under this section are
6 compatible with global tracing systems, as ap-
7 propriate; and

8 (C) consult with a diverse and broad range
9 of experts and stakeholders, including rep-
10 resentatives of the food industry, agricultural
11 producers, and nongovernmental organizations
12 that represent the interests of consumers.

13 (c) PRODUCT TRACING SYSTEM.—The Secretary, in
14 consultation with the Secretary of Agriculture, shall, as
15 appropriate, establish within the Food and Drug Adminis-
16 tration a product tracing system to receive information
17 that improves the capacity of the Secretary to effectively
18 and rapidly track and trace food that is in the United
19 States or offered for import into the United States. Prior
20 to the establishment of such product tracing system, the
21 Secretary shall examine the results of applicable pilot
22 projects and shall ensure that the activities of such system
23 are adequately supported by the results of such pilot
24 projects.

1 (d) ADDITIONAL RECORDKEEPING REQUIREMENTS
2 FOR HIGH-RISK FOODS.—

3 (1) IN GENERAL.—In order to rapidly and ef-
4 fectively identify recipients of a food to prevent or
5 mitigate a foodborne illness outbreak and to address
6 credible threats of serious adverse health con-
7 sequences or death to humans or animals as a result
8 of such food being adulterated under section 402 of
9 the Federal Food, Drug, and Cosmetic Act or mis-
10 branded under section 403(w) of such Act, not later
11 than 2 years after the date of enactment of this Act,
12 the Secretary shall publish a notice of proposed rule-
13 making to establish recordkeeping requirements, in
14 addition to the requirements under section 414 of
15 the Federal Food, Drug, and Cosmetic Act (21
16 U.S.C. 350c) and subpart J of part 1 of title 21,
17 Code of Federal Regulations (or any successor regu-
18 lations), for facilities that manufacture, process,
19 pack, or hold foods that the Secretary designates
20 under paragraph (2) as high-risk foods. The Sec-
21 retary shall set an appropriate effective date of such
22 additional requirements for foods designated as high
23 risk that takes into account the length of time nec-
24 essary to comply with such requirements. Such re-
25 quirements shall—

1 (A) relate only to information that is rea-
2 sonably available and appropriate;

3 (B) be science-based;

4 (C) not prescribe specific technologies for
5 the maintenance of records;

6 (D) ensure that the public health benefits
7 of imposing additional recordkeeping require-
8 ments outweigh the cost of compliance with
9 such requirements;

10 (E) be scale-appropriate and practicable
11 for facilities of varying sizes and capabilities
12 with respect to costs and recordkeeping bur-
13 dens, and not require the creation and mainte-
14 nance of duplicate records where the informa-
15 tion is contained in other company records kept
16 in the normal course of business;

17 (F) minimize the number of different rec-
18 ordkeeping requirements for facilities that han-
19 dle more than 1 type of food;

20 (G) to the extent practicable, not require a
21 facility to change business systems to comply
22 with such requirements;

23 (H) allow any person subject to this sub-
24 section to maintain records required under this
25 subsection at a central or reasonably accessible

1 location provided that such records can be made
2 available to the Secretary not later than 24
3 hours after the Secretary requests such records;

4 (I) include a process by which the Sec-
5 retary may issue a waiver of the requirements
6 under this subsection if the Secretary deter-
7 mines that such requirements would result in
8 an economic hardship for an individual facility
9 or a type of facility;

10 (J) be commensurate with the known safe-
11 ty risks of the designated food;

12 (K) take into account international trade
13 obligations;

14 (L) not require—

15 (i) a full pedigree, or a record of the
16 complete previous distribution history of
17 the food from the point of origin of such
18 food;

19 (ii) records of recipients of a food be-
20 yond the immediate subsequent recipient of
21 such food; or

22 (iii) product tracking to the case level
23 by persons subject to such requirements;
24 and

1 (M) include a process by which the Sec-
2 retary may remove a high-risk food designation
3 developed under paragraph (2) for a food or
4 type of food.

5 (2) DESIGNATION OF HIGH-RISK FOODS.—

6 (A) IN GENERAL.—Not later than 1 year
7 after the date of enactment of this Act, and
8 thereafter as the Secretary determines nec-
9 essary, the Secretary shall designate high-risk
10 foods for which the additional recordkeeping re-
11 quirements described in paragraph (1) are ap-
12 propriate and necessary to protect the public
13 health. Each such designation shall be based
14 on—

15 (i) the known safety risks of a par-
16 ticular food, including the history and se-
17 verity of foodborne illness outbreaks attrib-
18 uted to such food, taking into consider-
19 ation foodborne illness data collected by
20 the Centers for Disease Control and Pre-
21 vention;

22 (ii) the likelihood that a particular
23 food has a high potential risk for micro-
24 biological or chemical contamination or
25 would support the growth of pathogenic

1 microorganisms due to the nature of the
2 food or the processes used to produce such
3 food;

4 (iii) the point in the manufacturing
5 process of the food where contamination is
6 most likely to occur;

7 (iv) the likelihood of contamination
8 and steps taken during the manufacturing
9 process to reduce the possibility of con-
10 tamination;

11 (v) the likelihood that consuming a
12 particular food will result in a foodborne
13 illness due to contamination of the food;
14 and

15 (vi) the likely or known severity, in-
16 cluding health and economic impacts, of a
17 foodborne illness attributed to a particular
18 food.

19 (B) LIST OF HIGH-RISK FOODS.—At the
20 time the Secretary promulgates the final rules
21 under paragraph (1), the Secretary shall pub-
22 lish the list of the foods designated under sub-
23 paragraph (A) as high-risk foods on the Inter-
24 net website of the Food and Drug Administra-
25 tion. The Secretary may update the list to des-

1 designate new high-risk foods and to remove foods
2 that are no longer deemed to be high-risk foods,
3 provided that each such update to the list is
4 consistent with the requirements of this sub-
5 section and notice of such update is published
6 in the Federal Register.

7 (3) PROTECTION OF SENSITIVE INFORMA-
8 TION.—In promulgating regulations under this sub-
9 section, the Secretary shall take appropriate meas-
10 ures to ensure that there are effective procedures to
11 prevent the unauthorized disclosure of any trade se-
12 cret or confidential information that is obtained by
13 the Secretary pursuant to this section, including
14 periodic risk assessment and planning to prevent un-
15 authorized release and controls to—

16 (A) prevent unauthorized reproduction of
17 trade secret or confidential information;

18 (B) prevent unauthorized access to trade
19 secret or confidential information; and

20 (C) maintain records with respect to access
21 by any person to trade secret or confidential in-
22 formation maintained by the agency.

23 (4) PUBLIC INPUT.—During the comment pe-
24 riod in the notice of proposed rulemaking under
25 paragraph (1), the Secretary shall conduct not less

1 than 3 public meetings in diverse geographical areas
2 of the United States to provide persons in different
3 regions an opportunity to comment.

4 (5) RETENTION OF RECORDS.—Except as oth-
5 erwise provided in this subsection, the Secretary may
6 require that a facility retain records under this sub-
7 section for not more than 2 years, taking into con-
8 sideration the risk of spoilage, loss of value, or loss
9 of palatability of the applicable food when deter-
10 mining the appropriate timeframes.

11 (6) LIMITATIONS.—

12 (A) FARM-TO-SCHOOL PROGRAMS.—In es-
13 tablishing requirements under this subsection,
14 the Secretary shall, in consultation with the
15 Secretary of Agriculture, consider the impact of
16 requirements on farm-to-school or farm-to-insti-
17 tution programs of the Department of Agri-
18 culture and other farm-to-school and farm-to-
19 institution programs outside such agency, and
20 shall modify the requirements under this sub-
21 section, as appropriate, with respect to such
22 programs so that the requirements do not place
23 undue burdens on farm-to-school or farm-to-in-
24 stitution programs.

1 (B) IDENTITY-PRESERVED LABELS WITH
2 RESPECT TO FARM SALES OF FOOD THAT IS
3 PRODUCED AND PACKAGED ON A FARM.—The
4 requirements under this subsection shall not
5 apply to a food that is produced and packaged
6 on a farm if—

7 (i) the packaging of the food main-
8 tains the integrity of the product and pre-
9 vents subsequent contamination or alter-
10 ation of the product; and

11 (ii) the labeling of the food includes
12 the name, complete address (street ad-
13 dress, town, State, country, and zip or
14 other postal code), and business phone
15 number of the farm, unless the Secretary
16 waives the requirement to include a busi-
17 ness phone number of the farm, as appro-
18 priate, in order to accommodate a religious
19 belief of the individual in charge of such
20 farm.

21 (C) FISHING VESSELS.—The requirements
22 under this subsection with respect to a food
23 that is produced through the use of a fishing
24 vessel (as defined in section 3(18) of the Mag-
25 nuson-Stevens Fishery Conservation and Man-

1 agement Act (16 U.S.C. 1802(18))) shall be
2 limited to the requirements under subparagraph
3 (F) until such time as the food is sold by the
4 owner, operator, or agent in charge of such
5 fishing vessel.

6 (D) COMMINGLED RAW AGRICULTURAL
7 COMMODITIES.—

8 (i) LIMITATION ON EXTENT OF TRAC-
9 ING.—Recordkeeping requirements under
10 this subsection with regard to any commin-
11 gled raw agricultural commodity shall be
12 limited to the requirements under subpara-
13 graph (F).

14 (ii) DEFINITIONS.—For the purposes
15 of this subparagraph—

16 (I) the term “commingled raw
17 agricultural commodity” means any
18 commodity that is combined or mixed
19 after harvesting, but before proc-
20 essing;

21 (II) the term “commingled raw
22 agricultural commodity” shall not in-
23 clude types of fruits and vegetables
24 that are raw agricultural commodities
25 for which the Secretary has deter-

1 mined that standards promulgated
2 under section 419 of the Federal
3 Food, Drug, and Cosmetic Act (as
4 added by section 6105) would mini-
5 mize the risk of serious adverse health
6 consequences or death; and

7 (III) the term “processing”
8 means operations that alter the gen-
9 eral state of the commodity, such as
10 canning, cooking, freezing, dehydra-
11 tion, milling, grinding, pasteurization,
12 or homogenization.

13 (E) EXEMPTION OF OTHER FOODS.—The
14 Secretary may, by notice in the Federal Reg-
15 ister, modify the requirements under this sub-
16 section with respect to, or exempt a food or a
17 type of facility from, the requirements of this
18 subsection (other than the requirements under
19 subparagraph (F), if applicable) if the Sec-
20 retary determines that product tracing require-
21 ments for such food (such as bulk or commin-
22 gled ingredients that are intended to be proc-
23 essed to destroy pathogens) or type of facility
24 is not necessary to protect the public health.

1 (F) RECORDKEEPING REGARDING PRE-
2 VIOUS SOURCES AND SUBSEQUENT RECIPI-
3 ENTS.—In the case of a person or food to which
4 a limitation or exemption under subparagraph
5 (C), (D), or (E) applies, if such person, or a
6 person who manufactures, processes, packs, or
7 holds such food, is required to register with the
8 Secretary under section 415 of the Federal
9 Food, Drug, and Cosmetic Act (21 U.S.C.
10 350d) with respect to the manufacturing, proc-
11 essing, packing, or holding of the applicable
12 food, the Secretary shall require such person to
13 maintain records that identify the immediate
14 previous source of such food and the immediate
15 subsequent recipient of such food.

16 (G) GROCERY STORES.—With respect to a
17 sale of a food described in subparagraph (H) to
18 a grocery store, the Secretary shall not require
19 such grocery store to maintain records under
20 this subsection other than records documenting
21 the farm that was the source of such food. The
22 Secretary shall not require that such records be
23 kept for more than 180 days.

24 (H) FARM SALES TO CONSUMERS.—The
25 Secretary shall not require a farm to maintain

1 any distribution records under this subsection
2 with respect to a sale of a food described in
3 subparagraph (I) (including a sale of a food
4 that is produced and packaged on such farm),
5 if such sale is made by the farm directly to a
6 consumer.

7 (I) SALE OF A FOOD.—A sale of a food de-
8 scribed in this subparagraph is a sale of a food
9 in which—

10 (i) the food is produced on a farm;

11 and

12 (ii) the sale is made by the owner, op-
13 erator, or agent in charge of such farm di-
14 rectly to a consumer or grocery store.

15 (7) NO IMPACT ON NON-HIGH-RISK FOODS.—

16 The recordkeeping requirements established under
17 paragraph (1) shall have no effect on foods that are
18 not designated by the Secretary under paragraph (2)
19 as high-risk foods. Foods described in the preceding
20 sentence shall be subject solely to the recordkeeping
21 requirements under section 414 of the Federal Food,
22 Drug, and Cosmetic Act (21 U.S.C. 350c) and sub-
23 part J of part 1 of title 21, Code of Federal Regula-
24 tions (or any successor regulations).

25 (e) EVALUATION AND RECOMMENDATIONS.—

1 (1) REPORT.—Not later than 1 year after the
2 effective date of the final rule promulgated under
3 subsection (d)(1), the Comptroller General of the
4 United States shall submit to Congress a report,
5 taking into consideration the costs of compliance
6 and other regulatory burdens on small businesses
7 and Federal, State, and local food safety practices
8 and requirements, that evaluates the public health
9 benefits and risks, if any, of limiting—

10 (A) the product tracing requirements
11 under subsection (d) to foods identified under
12 paragraph (2) of such subsection, including
13 whether such requirements provide adequate as-
14 surance of traceability in the event of inten-
15 tional adulteration, including by acts of ter-
16 rorism; and

17 (B) the participation of restaurants in the
18 recordkeeping requirements.

19 (2) DETERMINATION AND RECOMMENDA-
20 TIONS.—In conducting the evaluation and report
21 under paragraph (1), if the Comptroller General of
22 the United States determines that the limitations de-
23 scribed in such paragraph do not adequately protect
24 the public health, the Comptroller General shall sub-
25 mit to Congress recommendations, if appropriate, re-

1 garding recordkeeping requirements for restaurants
2 and additional foods, in order to protect the public
3 health.

4 (f) FARMS.—

5 (1) REQUEST FOR INFORMATION.—Notwith-
6 standing subsection (d), during an active investiga-
7 tion of a foodborne illness outbreak, or if the Sec-
8 retary determines it is necessary to protect the pub-
9 lic health and prevent or mitigate a foodborne illness
10 outbreak, the Secretary, in consultation and coordi-
11 nation with State and local agencies responsible for
12 food safety, as appropriate, may request that the
13 owner, operator, or agent of a farm identify poten-
14 tial immediate recipients, other than consumers, of
15 an article of the food that is the subject of such in-
16 vestigation if the Secretary reasonably believes such
17 article of food—

18 (A) is adulterated under section 402 of the
19 Federal Food, Drug, and Cosmetic Act;

20 (B) presents a threat of serious adverse
21 health consequences or death to humans or ani-
22 mals; and

23 (C) was adulterated as described in sub-
24 paragraph (A) on a particular farm (as defined

1 in section 1.227 of chapter 21, Code of Federal
2 Regulations (or any successor regulation)).

3 (2) MANNER OF REQUEST.—In making a re-
4 quest under paragraph (1), the Secretary, in con-
5 sultation and coordination with State and local agen-
6 cies responsible for food safety, as appropriate, shall
7 issue a written notice to the owner, operator, or
8 agent of the farm to which the article of food has
9 been traced. The individual providing such notice
10 shall present to such owner, operator, or agent ap-
11 propriate credentials and shall deliver such notice at
12 reasonable times and within reasonable limits and in
13 a reasonable manner.

14 (3) DELIVERY OF INFORMATION REQUESTED.—
15 The owner, operator, or agent of a farm shall deliver
16 the information requested under paragraph (1) in a
17 prompt and reasonable manner. Such information
18 may consist of records kept in the normal course of
19 business, and may be in electronic or nonelectronic
20 format.

21 (4) LIMITATION.—A request made under para-
22 graph (1) shall not include a request for information
23 relating to the finances, pricing of commodities pro-
24 duced, personnel, research, sales (other than infor-
25 mation relating to shipping), or other disclosures

1 that may reveal trade secrets or confidential infor-
2 mation from the farm to which the article of food
3 has been traced, other than information necessary to
4 identify potential immediate recipients of such food.
5 Section 301(j) of the Federal Food, Drug, and Cos-
6 metic Act and the Freedom of Information Act shall
7 apply with respect to any confidential commercial in-
8 formation that is disclosed to the Food and Drug
9 Administration in the course of responding to a re-
10 quest under paragraph (1).

11 (5) RECORDS.—Except with respect to identi-
12 fying potential immediate recipients in response to a
13 request under this subsection, nothing in this sub-
14 section shall require the establishment or mainte-
15 nance by farms of new records.

16 (g) NO LIMITATION ON COMMINGLING OF FOOD.—
17 Nothing in this section shall be construed to authorize the
18 Secretary to impose any limitation on the commingling of
19 food.

20 (h) SMALL ENTITY COMPLIANCE GUIDE.—Not later
21 than 180 days after promulgation of a final rule under
22 subsection (d), the Secretary shall issue a small entity
23 compliance guide setting forth in plain language the re-
24 quirements of the regulations under such subsection in
25 order to assist small entities, including farms and small

1 businesses, in complying with the recordkeeping require-
2 ments under such subsection.

3 (i) FLEXIBILITY FOR SMALL BUSINESSES.—Notwith-
4 standing any other provision of law, the regulations pro-
5 mulgated under subsection (d) shall apply—

6 (1) to small businesses (as defined by the Sec-
7 retary in section 6103, not later than 90 days after
8 the date of enactment of this Act) beginning on the
9 date that is 1 year after the effective date of the
10 final regulations promulgated under subsection (d);
11 and

12 (2) to very small businesses (as defined by the
13 Secretary in section 6103, not later than 90 days
14 after the date of enactment of this Act) beginning
15 on the date that is 2 years after the effective date
16 of the final regulations promulgated under sub-
17 section (d).

18 (j) ENFORCEMENT.—

19 (1) PROHIBITED ACTS.—Section 301(e) (21
20 U.S.C. 331(e)) is amended by inserting “; or the vio-
21 lation of any recordkeeping requirement under sec-
22 tion 6204 of the FDA Food Safety Modernization
23 Act (except when such violation is committed by a
24 farm)” before the period at the end.

1 (2) IMPORTS.—Section 801(a) (21 U.S.C.
2 381(a)) is amended by inserting “or (4) the record-
3 keeping requirements under section 6204 of the
4 FDA Food Safety Modernization Act (other than
5 the requirements under subsection (f) of such sec-
6 tion) have not been complied with regarding such ar-
7 ticle,” in the third sentence before “then such article
8 shall be refused admission”.

9 **SEC. 6205. SURVEILLANCE.**

10 (a) DEFINITION OF FOODBORNE ILLNESS OUT-
11 BREAK.—In this Act, the term “foodborne illness out-
12 break” means the occurrence of 2 or more cases of a simi-
13 lar illness resulting from the ingestion of a certain food.

14 (b) FOODBORNE ILLNESS SURVEILLANCE SYS-
15 TEMS.—

16 (1) IN GENERAL.—The Secretary, acting
17 through the Director of the Centers for Disease
18 Control and Prevention, shall enhance foodborne ill-
19 ness surveillance systems to improve the collection,
20 analysis, reporting, and usefulness of data on
21 foodborne illnesses by—

22 (A) coordinating Federal, State, and local
23 foodborne illness surveillance systems, including
24 complaint systems, and increasing participation

1 in national networks of public health and food
2 regulatory agencies and laboratories;

3 (B) facilitating sharing of surveillance in-
4 formation on a more timely basis among gov-
5 ernmental agencies, including the Food and
6 Drug Administration, the Department of Agri-
7 culture, the Department of Homeland Security,
8 and State and local agencies, and with the pub-
9 lic;

10 (C) developing improved epidemiological
11 tools for obtaining quality exposure data and
12 microbiological methods for classifying cases;

13 (D) augmenting such systems to improve
14 attribution of a foodborne illness outbreak to a
15 specific food;

16 (E) expanding capacity of such systems,
17 including working toward automatic electronic
18 searches, for implementation of identification
19 practices, including fingerprinting strategies,
20 for foodborne infectious agents, in order to
21 identify new or rarely documented causes of
22 foodborne illness and submit standardized infor-
23 mation to a centralized database;

24 (F) allowing timely public access to aggre-
25 gated, de-identified surveillance data;

1 (G) at least annually, publishing current
2 reports on findings from such systems;

3 (H) establishing a flexible mechanism for
4 rapidly initiating scientific research by academic
5 institutions;

6 (I) integrating foodborne illness surveil-
7 lance systems and data with other biosurveil-
8 lance and public health situational awareness
9 capabilities at the Federal, State, and local lev-
10 els, including by sharing foodborne illness sur-
11 veillance data with the National Biosurveillance
12 Integration Center; and

13 (J) other activities as determined appro-
14 priate by the Secretary.

15 (2) WORKING GROUP.—The Secretary shall
16 support and maintain a diverse working group of ex-
17 perts and stakeholders from Federal, State, and
18 local food safety and health agencies, the food and
19 food testing industries, consumer organizations, and
20 academia. Such working group shall provide the Sec-
21 retary, through at least annual meetings of the
22 working group and an annual public report, advice
23 and recommendations on an ongoing and regular
24 basis regarding the improvement of foodborne illness

1 surveillance and implementation of this section, in-
2 cluding advice and recommendations on—

3 (A) the priority needs of regulatory agen-
4 cies, the food industry, and consumers for infor-
5 mation and analysis on foodborne illness and its
6 causes;

7 (B) opportunities to improve the effective-
8 ness of initiatives at the Federal, State, and
9 local levels, including coordination and integra-
10 tion of activities among Federal agencies, and
11 among the Federal, State, and local levels of
12 government;

13 (C) improvement in the timeliness and
14 depth of access by regulatory and health agen-
15 cies, the food industry, academic researchers,
16 and consumers to foodborne illness aggregated,
17 de-identified surveillance data collected by gov-
18 ernment agencies at all levels, including data
19 compiled by the Centers for Disease Control
20 and Prevention;

21 (D) key barriers at Federal, State, and
22 local levels to improving foodborne illness sur-
23 veillance and the utility of such surveillance for
24 preventing foodborne illness;

1 (E) the capabilities needed for establishing
2 automatic electronic searches of surveillance
3 data; and

4 (F) specific actions to reduce barriers to
5 improvement, implement the working group's
6 recommendations, and achieve the purposes of
7 this section, with measurable objectives and
8 timelines, and identification of resource and
9 staffing needs.

10 (3) AUTHORIZATION OF APPROPRIATIONS.—To
11 carry out the activities described in paragraph (1),
12 there is authorized to be appropriated \$24,000,000
13 for each fiscal years 2011 through 2015.

14 (c) IMPROVING FOOD SAFETY AND DEFENSE CAPAC-
15 ITY AT THE STATE AND LOCAL LEVEL.—

16 (1) IN GENERAL.—The Secretary shall develop
17 and implement strategies to leverage and enhance
18 the food safety and defense capacities of State and
19 local agencies in order to achieve the following goals:

20 (A) Improve foodborne illness outbreak re-
21 sponse and containment.

22 (B) Accelerate foodborne illness surveil-
23 lance and outbreak investigation, including
24 rapid shipment of clinical isolates from clinical
25 laboratories to appropriate State laboratories,

1 and conducting more standardized illness out-
2 break interviews.

3 (C) Strengthen the capacity of State and
4 local agencies to carry out inspections and en-
5 force safety standards.

6 (D) Improve the effectiveness of Federal,
7 State, and local partnerships to coordinate food
8 safety and defense resources and reduce the in-
9 cidence of foodborne illness.

10 (E) Share information on a timely basis
11 among public health and food regulatory agen-
12 cies, with the food industry, with health care
13 providers, and with the public.

14 (F) Strengthen the capacity of State and
15 local agencies to achieve the goals described in
16 section 6108.

17 (2) REVIEW.—In developing of the strategies
18 required by paragraph (1), the Secretary shall, not
19 later than 1 year after the date of enactment of the
20 FDA Food Safety Modernization Act, complete a re-
21 view of State and local capacities, and needs for en-
22 hancement, which may include a survey with respect
23 to—

24 (A) staffing levels and expertise available
25 to perform food safety and defense functions;

1 (B) laboratory capacity to support surveil-
2 lance, outbreak response, inspection, and en-
3 forcement activities;

4 (C) information systems to support data
5 management and sharing of food safety and de-
6 fense information among State and local agen-
7 cies and with counterparts at the Federal level;
8 and

9 (D) other State and local activities and
10 needs as determined appropriate by the Sec-
11 retary.

12 (d) **FOOD SAFETY CAPACITY BUILDING GRANTS.**—
13 Section 317R(b) of the Public Health Service Act (42
14 U.S.C. 247b–20(b)) is amended—

15 (1) by striking “2002” and inserting “2010”;
16 and

17 (2) by striking “2003 through 2006” and in-
18 serting “2011 through 2015”.

19 **SEC. 6206. MANDATORY RECALL AUTHORITY.**

20 (a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et
21 seq.), as amended by section 6202, is amended by adding
22 at the end the following:

23 **“SEC. 423. MANDATORY RECALL AUTHORITY.**

24 “(a) **VOLUNTARY PROCEDURES.**—If the Secretary
25 determines, based on information gathered through the re-

1 portable food registry under section 417 or through any
2 other means, that there is a reasonable probability that
3 an article of food (other than infant formula) is adulter-
4 ated under section 402 or misbranded under section
5 403(w) and the use of or exposure to such article will
6 cause serious adverse health consequences or death to hu-
7 mans or animals, the Secretary shall provide the respon-
8 sible party (as defined in section 417) with an opportunity
9 to cease distribution and recall such article.

10 “(b) PREHEARING ORDER TO CEASE DISTRIBUTION
11 AND GIVE NOTICE.—

12 “(1) IN GENERAL.—If the responsible party re-
13 fuses to or does not voluntarily cease distribution or
14 recall such article within the time and in the manner
15 prescribed by the Secretary (if so prescribed), the
16 Secretary may, by order require, as the Secretary
17 deems necessary, such person to—

18 “(A) immediately cease distribution of
19 such article; and

20 “(B) as applicable, immediately notify all
21 persons—

22 “(i) manufacturing, processing, pack-
23 ing, transporting, distributing, receiving,
24 holding, or importing and selling such arti-
25 cle; and

1 “(ii) to which such article has been
2 distributed, transported, or sold, to imme-
3 diately cease distribution of such article.

4 “(2) REQUIRED ADDITIONAL INFORMATION.—

5 “(A) IN GENERAL.—If an article of food
6 covered by a recall order issued under para-
7 graph (1)(B) has been distributed to a ware-
8 house-based third-party logistics provider with-
9 out providing such provider sufficient informa-
10 tion to know or reasonably determine the pre-
11 cise identity of the article of food covered by a
12 recall order that is in its possession, the notice
13 provided by the responsible party subject to the
14 order issued under paragraph (1)(B) shall in-
15 clude such information as is necessary for the
16 warehouse-based third-party logistics provider
17 to identify the food.

18 “(B) RULES OF CONSTRUCTION.—Nothing
19 in this paragraph shall be construed—

20 “(i) to exempt a warehouse-based
21 third-party logistics provider from the re-
22 quirements of this Act, including the re-
23 quirements in this section and section 414;
24 or

1 “(ii) to exempt a warehouse-based
2 third party logistics provider from being
3 the subject of a mandatory recall order.

4 “(3) DETERMINATION TO LIMIT AREAS AF-
5 FECTED.—If the Secretary requires a responsible
6 party to cease distribution under paragraph (1)(A)
7 of an article of food identified in subsection (a), the
8 Secretary may limit the size of the geographic area
9 and the markets affected by such cessation if such
10 limitation would not compromise the public health.

11 “(c) HEARING ON ORDER.—The Secretary shall pro-
12 vide the responsible party subject to an order under sub-
13 section (b) with an opportunity for an informal hearing,
14 to be held as soon as possible, but not later than 2 days
15 after the issuance of the order, on the actions required
16 by the order and on why the article that is the subject
17 of the order should not be recalled.

18 “(d) POST-HEARING RECALL ORDER AND MODIFICA-
19 TION OF ORDER.—

20 “(1) AMENDMENT OF ORDER.—If, after pro-
21 viding opportunity for an informal hearing under
22 subsection (c), the Secretary determines that re-
23 moval of the article from commerce is necessary, the
24 Secretary shall, as appropriate—

1 “(A) amend the order to require recall of
2 such article or other appropriate action;

3 “(B) specify a timetable in which the recall
4 shall occur;

5 “(C) require periodic reports to the Sec-
6 retary describing the progress of the recall; and

7 “(D) provide notice to consumers to whom
8 such article was, or may have been, distributed.

9 “(2) VACATING OF ORDER.—If, after such hear-
10 ing, the Secretary determines that adequate grounds
11 do not exist to continue the actions required by the
12 order, or that such actions should be modified, the
13 Secretary shall vacate the order or modify the order.

14 “(e) RULE REGARDING ALCOHOLIC BEVERAGES.—
15 The Secretary shall not initiate a mandatory recall or take
16 any other action under this section with respect to any
17 alcohol beverage until the Secretary has provided the Alco-
18 hol and Tobacco Tax and Trade Bureau with a reasonable
19 opportunity to cease distribution and recall such article
20 under the Alcohol and Tobacco Tax and Trade Bureau
21 authority.

22 “(f) COOPERATION AND CONSULTATION.—The Sec-
23 retary shall work with State and local public health offi-
24 cials in carrying out this section, as appropriate.

1 “(g) PUBLIC NOTIFICATION.—In conducting a recall
2 under this section, the Secretary shall—

3 “(1) ensure that a press release is published re-
4 garding the recall, as well as alerts and public no-
5 tices, as appropriate, in order to provide notifica-
6 tion—

7 “(A) of the recall to consumers and retail-
8 ers to whom such article was, or may have
9 been, distributed; and

10 “(B) that includes, at a minimum—

11 “(i) the name of the article of food
12 subject to the recall;

13 “(ii) a description of the risk associ-
14 ated with such article; and

15 “(iii) to the extent practicable, infor-
16 mation for consumers about similar arti-
17 cles of food that are not affected by the re-
18 call;

19 “(2) consult the policies of the Department of
20 Agriculture regarding providing to the public a list
21 of retail consignees receiving products involved in a
22 Class I recall and shall consider providing such a list
23 to the public, as determined appropriate by the Sec-
24 retary; and

1 “(3) if available, publish on the Internet Web
2 site of the Food and Drug Administration an image
3 of the article that is the subject of the press release
4 described in paragraph (1).

5 “(h) NO DELEGATION.—The authority conferred by
6 this section to order a recall or vacate a recall order shall
7 not be delegated to any officer or employee other than the
8 Commissioner.

9 “(i) EFFECT.—Nothing in this section shall affect the
10 authority of the Secretary to request or participate in a
11 voluntary recall, or to issue an order to cease distribution
12 or to recall under any other provision of this Act or under
13 the Public Health Service Act.

14 “(j) COORDINATED COMMUNICATION.—

15 “(1) IN GENERAL.—To assist in carrying out
16 the requirements of this subsection, the Secretary
17 shall establish an incident command operation or a
18 similar operation within the Department of Health
19 and Human Services that will operate not later than
20 24 hours after the initiation of a mandatory recall
21 or the recall of an article of food for which the use
22 of, or exposure to, such article will cause serious ad-
23 verse health consequences or death to humans or
24 animals.

1 “(2) REQUIREMENTS.—To reduce the potential
2 for miscommunication during recalls or regarding in-
3 vestigations of a foodborne illness outbreak associ-
4 ated with a food that is subject to a recall, each inci-
5 dent command operation or similar operation under
6 paragraph (1) shall use regular staff and resources
7 of the Department of Health and Human Services
8 to—

9 “(A) ensure timely and coordinated com-
10 munication within the Department, including
11 enhanced communication and coordination be-
12 tween different agencies and organizations with-
13 in the Department;

14 “(B) ensure timely and coordinated com-
15 munication from the Department, including
16 public statements, throughout the duration of
17 the investigation and related foodborne illness
18 outbreak;

19 “(C) identify a single point of contact
20 within the Department for public inquiries re-
21 garding any actions by the Secretary related to
22 a recall;

23 “(D) coordinate with Federal, State, local,
24 and tribal authorities, as appropriate, that have
25 responsibilities related to the recall of a food or

1 a foodborne illness outbreak associated with a
2 food that is subject to the recall, including noti-
3 fication of the Secretary of Agriculture and the
4 Secretary of Education in the event such re-
5 called food is a commodity intended for use in
6 a child nutrition program (as identified in sec-
7 tion 25(b) of the Richard B. Russell National
8 School Lunch Act (42 U.S.C. 1769f(b)); and

9 “(E) conclude operations at such time as
10 the Secretary determines appropriate.

11 “(3) MULTIPLE RECALLS.—The Secretary may
12 establish multiple or concurrent incident command
13 operations or similar operations in the event of mul-
14 tiple recalls or foodborne illness outbreaks necessi-
15 tating such action by the Department of Health and
16 Human Services.”.

17 (b) SEARCH ENGINE.—Not later than 90 days after
18 the date of enactment of this Act, the Secretary shall mod-
19 ify the Internet Web site of the Food and Drug Adminis-
20 tration to include a search engine that—

21 (1) is consumer-friendly, as determined by the
22 Secretary; and

23 (2) provides a means by which an individual
24 may locate relevant information regarding each arti-
25 cle of food subject to a recall under section 423 of

1 the Federal Food, Drug, and Cosmetic Act and the
2 status of such recall (such as whether a recall is on-
3 going or has been completed).

4 (c) CIVIL PENALTY.—Section 303(f)(2)(A) (21
5 U.S.C. 333(f)(2)(A)) is amended by inserting “or any per-
6 son who does not comply with a recall order under section
7 423” after “section 402(a)(2)(B)”.

8 (d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331
9 et seq.), as amended by section 6106, is amended by add-
10 ing at the end the following:

11 “(xx) The refusal or failure to follow an order under
12 section 423.”.

13 (e) GAO REVIEW.—

14 (1) IN GENERAL.—Not later than 90 days after
15 the date of enactment of this Act, the Comptroller
16 General of the United States shall submit to Con-
17 gress a report that—

18 (A) identifies State and local agencies with
19 the authority to require the mandatory recall of
20 food, and evaluates use of such authority with
21 regard to frequency, effectiveness, and appro-
22 priateness, including consideration of any new
23 or existing mechanisms available to compensate
24 persons for general and specific recall-related

1 costs when a recall is subsequently determined
2 by the relevant authority to have been an error;

3 (B) identifies Federal agencies, other than
4 the Department of Health and Human Services,
5 with mandatory recall authority and examines
6 use of that authority with regard to frequency,
7 effectiveness, and appropriateness, including
8 any new or existing mechanisms available to
9 compensate persons for general and specific re-
10 call-related costs when a recall is subsequently
11 determined by the relevant agency to have been
12 an error;

13 (C) considers models for farmer restitution
14 implemented in other nations in cases of erro-
15 neous recalls; and

16 (D) makes recommendations to the Sec-
17 retary regarding use of the authority under sec-
18 tion 423 of the Federal Food, Drug, and Cos-
19 metic Act (as added by this section) to protect
20 the public health while seeking to minimize un-
21 necessary economic costs.

22 (2) EFFECT OF REVIEW.—If the Comptroller
23 General of the United States finds, after the review
24 conducted under paragraph (1), that the mecha-
25 nisms described in such paragraph do not exist or

1 are inadequate, then, not later than 90 days after
2 the conclusion of such review, the Secretary of Agri-
3 culture shall conduct a study of the feasibility of im-
4 plementing a farmer indemnification program to
5 provide restitution to agricultural producers for
6 losses sustained as a result of a mandatory recall of
7 an agricultural commodity by a Federal or State
8 regulatory agency that is subsequently determined to
9 be in error. The Secretary of Agriculture shall sub-
10 mit to the Committee on Agriculture of the House
11 of Representatives and the Committee on Agri-
12 culture, Nutrition, and Forestry of the Senate a re-
13 port that describes the results of the study, includ-
14 ing any recommendations.

15 (f) ANNUAL REPORT TO CONGRESS.—

16 (1) IN GENERAL.—Not later than 2 years after
17 the date of enactment of this Act and annually
18 thereafter, the Secretary of Health and Human
19 Services (referred to in this subsection as the “Sec-
20 retary”) shall submit a report to the Committee on
21 Health, Education, Labor, and Pensions of the Sen-
22 ate and the Committee on Energy and Commerce of
23 the House of Representatives on the use of recall au-
24 thority under section 423 of the Federal Food,
25 Drug, and Cosmetic Act (as added by subsection

1 (a)) and any public health advisories issued by the
2 Secretary that advise against the consumption of an
3 article of food on the ground that the article of food
4 is adulterated and poses an imminent danger to
5 health.

6 (2) CONTENT.—The report under paragraph
7 (1) shall include, with respect to the report year—

8 (A) the identity of each article of food that
9 was the subject of a public health advisory de-
10 scribed in paragraph (1), an opportunity to
11 cease distribution and recall under subsection
12 (a) of section 423 of the Federal Food, Drug,
13 and Cosmetic Act, or a mandatory recall order
14 under subsection (b) of such section;

15 (B) the number of responsible parties, as
16 defined in section 417 of the Federal Food,
17 Drug, and Cosmetic Act, formally given the op-
18 portunity to cease distribution of an article of
19 food and recall such article, as described in sec-
20 tion 423(a) of such Act;

21 (C) the number of responsible parties de-
22 scribed in subparagraph (B) who did not cease
23 distribution of or recall an article of food after
24 given the opportunity to cease distribution or

1 recall under section 423(a) of the Federal
2 Food, Drug, and Cosmetic Act;

3 (D) the number of recall orders issued
4 under section 423(b) of the Federal Food,
5 Drug, and Cosmetic Act; and

6 (E) a description of any instances in which
7 there was no testing that confirmed adultera-
8 tion of an article of food that was the subject
9 of a recall under section 423(b) of the Federal
10 Food, Drug, and Cosmetic Act or a public
11 health advisory described in paragraph (1).

12 **SEC. 6207. ADMINISTRATIVE DETENTION OF FOOD.**

13 (a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C.
14 334(h)(1)(A)) is amended by—

15 (1) striking “credible evidence or information
16 indicating” and inserting “reason to believe”; and

17 (2) striking “presents a threat of serious ad-
18 verse health consequences or death to humans or
19 animals” and inserting “is adulterated or mis-
20 branded”.

21 (b) REGULATIONS.—Not later than 120 days after
22 the date of enactment of this Act, the Secretary shall issue
23 an interim final rule amending subpart K of part 1 of title
24 21, Code of Federal Regulations, to implement the amend-
25 ment made by this section.

1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect 180 days after the date of
3 enactment of this Act.

4 **SEC. 6208. DECONTAMINATION AND DISPOSAL STANDARDS**
5 **AND PLANS.**

6 (a) IN GENERAL.—The Administrator of the Envi-
7 ronmental Protection Agency (referred to in this section
8 as the “Administrator”), in coordination with the Sec-
9 retary of Health and Human Services, Secretary of Home-
10 land Security, and Secretary of Agriculture, shall provide
11 support for, and technical assistance to, State, local, and
12 tribal governments in preparing for, assessing, decontami-
13 nating, and recovering from an agriculture or food emer-
14 gency.

15 (b) DEVELOPMENT OF STANDARDS.—In carrying out
16 subsection (a), the Administrator, in coordination with the
17 Secretary of Health and Human Services, Secretary of
18 Homeland Security, Secretary of Agriculture, and State,
19 local, and tribal governments, shall develop and dissemi-
20 nate specific standards and protocols to undertake clean-
21 up, clearance, and recovery activities following the decon-
22 tamination and disposal of specific threat agents and for-
23 eign animal diseases.

24 (c) DEVELOPMENT OF MODEL PLANS.—In carrying
25 out subsection (a), the Administrator, the Secretary of

1 Health and Human Services, and the Secretary of Agri-
2 culture shall jointly develop and disseminate model plans
3 for—

4 (1) the decontamination of individuals, equip-
5 ment, and facilities following an intentional contami-
6 nation of agriculture or food; and

7 (2) the disposal of large quantities of animals,
8 plants, or food products that have been infected or
9 contaminated by specific threat agents and foreign
10 animal diseases.

11 (d) EXERCISES.—In carrying out subsection (a), the
12 Administrator, in coordination with the entities described
13 under subsection (b), shall conduct exercises at least annu-
14 ally to evaluate and identify weaknesses in the decon-
15 tamination and disposal model plans described in sub-
16 section (c). Such exercises shall be carried out, to the max-
17 imum extent practicable, as part of the national exercise
18 program under section 648(b)(1) of the Post-Katrina
19 Emergency Management Reform Act of 2006 (6 U.S.C.
20 748(b)(1)).

21 (e) MODIFICATIONS.—Based on the exercises de-
22 scribed in subsection (d), the Administrator, in coordina-
23 tion with the entities described in subsection (b), shall re-
24 view and modify as necessary the plans described in sub-
25 section (c) not less frequently than biennially.

1 (f) PRIORITIZATION.—The Administrator, in coordi-
2 nation with the entities described in subsection (b), shall
3 develop standards and plans under subsections (b) and (c)
4 in an identified order of priority that takes into account—

5 (1) highest risk biological, chemical, and radio-
6 logical threat agents;

7 (2) agents that could cause the greatest eco-
8 nomic devastation to the agriculture and food sys-
9 tem; and

10 (3) agents that are most difficult to clean or re-
11 mediate.

12 **SEC. 6209. IMPROVING THE TRAINING OF STATE, LOCAL,**
13 **TERRITORIAL, AND TRIBAL FOOD SAFETY OF-**
14 **FICIALS.**

15 (a) IMPROVING TRAINING.—Chapter X (21 U.S.C.
16 391 et seq.) is amended by adding at the end the fol-
17 lowing:

18 **“SEC. 1012. IMPROVING THE TRAINING OF STATE, LOCAL,**
19 **TERRITORIAL, AND TRIBAL FOOD SAFETY OF-**
20 **FICIALS.**

21 “(a) TRAINING.—The Secretary shall set standards
22 and administer training and education programs for the
23 employees of State, local, territorial, and tribal food safety
24 officials relating to the regulatory responsibilities and poli-
25 cies established by this Act, including programs for—

1 “(1) scientific training;

2 “(2) training to improve the skill of officers and
3 employees authorized to conduct inspections under
4 sections 702 and 704;

5 “(3) training to achieve advanced product or
6 process specialization in such inspections;

7 “(4) training that addresses best practices;

8 “(5) training in administrative process and pro-
9 cedure and integrity issues;

10 “(6) training in appropriate sampling and lab-
11 oratory analysis methodology; and

12 “(7) training in building enforcement actions
13 following inspections, examinations, testing, and in-
14 vestigations.

15 “(b) PARTNERSHIPS WITH STATE AND LOCAL OFFI-
16 CIALS.—

17 “(1) IN GENERAL.—The Secretary, pursuant to
18 a contract or memorandum of understanding be-
19 tween the Secretary and the head of a State, local,
20 territorial, or tribal department or agency, is author-
21 ized and encouraged to conduct examinations, test-
22 ing, and investigations for the purposes of deter-
23 mining compliance with the food safety provisions of
24 this Act through the officers and employees of such

1 State, local, territorial, or tribal department or agen-
2 cy.

3 “(2) CONTENT.—A contract or memorandum
4 described under paragraph (1) shall include provi-
5 sions to ensure adequate training of such officers
6 and employees to conduct such examinations, test-
7 ing, and investigations. The contract or memo-
8 randum shall contain provisions regarding reim-
9 bursement. Such provisions may, at the sole discre-
10 tion of the head of the other department or agency,
11 require reimbursement, in whole or in part, from the
12 Secretary for the examinations, testing, or investiga-
13 tions performed pursuant to this section by the offi-
14 cers or employees of the State, territorial, or tribal
15 department or agency.

16 “(3) EFFECT.—Nothing in this subsection shall
17 be construed to limit the authority of the Secretary
18 under section 702.

19 “(c) EXTENSION SERVICE.—The Secretary shall en-
20 sure coordination with the extension activities of the Na-
21 tional Institute of Food and Agriculture of the Depart-
22 ment of Agriculture in advising producers and small proc-
23 essors transitioning into new practices required as a result
24 of the enactment of the FDA Food Safety Modernization

1 Act and assisting regulated industry with compliance with
2 such Act.

3 “(d) NATIONAL FOOD SAFETY TRAINING, EDU-
4 CATION, EXTENSION, OUTREACH, AND TECHNICAL AS-
5 SISTANCE PROGRAM.—

6 “(1) IN GENERAL.—In order to improve food
7 safety and reduce the incidence of foodborne illness,
8 the Secretary shall, not later than 180 days after
9 the date of enactment of the FDA Food Safety Mod-
10 ernization Act, enter into one or more memoranda of
11 understanding, or enter into other cooperative agree-
12 ments, with the Secretary of Agriculture to establish
13 a competitive grant program within the National In-
14 stitute for Food and Agriculture to provide food
15 safety training, education, extension, outreach, and
16 technical assistance to—

17 “(A) owners and operators of farms;

18 “(B) small food processors; and

19 “(C) small fruit and vegetable merchant
20 wholesalers.

21 “(2) IMPLEMENTATION.—The competitive grant
22 program established under paragraph (1) shall be
23 carried out in accordance with section 405 of the
24 Agricultural Research, Extension, and Education
25 Reform Act of 1998.

1 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section for fiscal years 2011
4 through 2015.”.

5 (b) NATIONAL FOOD SAFETY TRAINING, EDU-
6 CATION, EXTENSION, OUTREACH, AND TECHNICAL AS-
7 SISTANCE PROGRAM.—Title IV of the Agricultural Re-
8 search, Extension, and Education Reform Act of 1998 is
9 amended by inserting after section 404 (7 U.S.C. 7624)
10 the following:

11 **“SEC. 405. NATIONAL FOOD SAFETY TRAINING, EDUCATION,**
12 **EXTENSION, OUTREACH, AND TECHNICAL AS-**
13 **SISTANCE PROGRAM.**

14 “(a) IN GENERAL.—The Secretary shall award
15 grants under this section to carry out the competitive
16 grant program established under section 1012(d) of the
17 Federal Food, Drug, and Cosmetic Act, pursuant to any
18 memoranda of understanding entered into under such sec-
19 tion.

20 “(b) INTEGRATED APPROACH.—The grant program
21 described under subsection (a) shall be carried out under
22 this section in a manner that facilitates the integration
23 of food safety standards and guidance with the variety of
24 agricultural production systems, encompassing conven-

1 tional, sustainable, organic, conservation, and environ-
2 mental practices.

3 “(c) PRIORITY.—In awarding grants under this sec-
4 tion, the Secretary shall give priority to projects that tar-
5 get small- and medium-sized farms, beginning farmers, so-
6 cially disadvantaged farmers, small processors, or small
7 fresh fruit and vegetable merchant wholesalers.

8 “(d) PROGRAM COORDINATION.—

9 “(1) IN GENERAL.—The Secretary shall coordi-
10 nate implementation of the grant program under
11 this section with the National Integrated Food Safe-
12 ty Initiative.

13 “(2) INTERACTION.—The Secretary shall—

14 “(A) in carrying out the grant program
15 under this section, take into consideration ap-
16 plied research, education, and extension results
17 obtained from the National Integrated Food
18 Safety Initiative; and

19 “(B) in determining the applied research
20 agenda for the National Integrated Food Safety
21 Initiative, take into consideration the needs ar-
22 ticulated by participants in projects funded by
23 the program under this section.

24 “(e) GRANTS.—

1 “(1) IN GENERAL.—In carrying out this sec-
2 tion, the Secretary shall make competitive grants to
3 support training, education, extension, outreach, and
4 technical assistance projects that will help improve
5 public health by increasing the understanding and
6 adoption of established food safety standards, guid-
7 ance, and protocols.

8 “(2) ENCOURAGED FEATURES.—The Secretary
9 shall encourage projects carried out using grant
10 funds under this section to include co-management
11 of food safety, conservation systems, and ecological
12 health.

13 “(3) MAXIMUM TERM AND SIZE OF GRANT.—

14 “(A) IN GENERAL.—A grant under this
15 section shall have a term that is not more than
16 3 years.

17 “(B) LIMITATION ON GRANT FUNDING.—

18 The Secretary may not provide grant funding to
19 an entity under this section after such entity
20 has received 3 years of grant funding under
21 this section.

22 “(f) GRANT ELIGIBILITY.—

23 “(1) IN GENERAL.—To be eligible for a grant
24 under this section, an entity shall be—

25 “(A) a State cooperative extension service;

1 “(B) a Federal, State, local, or tribal agen-
2 cy, a nonprofit community-based or nongovern-
3 mental organization, or an organization rep-
4 resenting owners and operators of farms, small
5 food processors, or small fruit and vegetable
6 merchant wholesalers that has a commitment to
7 public health and expertise in administering
8 programs that contribute to food safety;

9 “(C) an institution of higher education (as
10 defined in section 101(a) of the Higher Edu-
11 cation Act of 1965 (20 U.S.C. 1001(a))) or a
12 foundation maintained by an institution of
13 higher education;

14 “(D) a collaboration of 2 or more eligible
15 entities described in this subsection; or

16 “(E) such other appropriate entity, as de-
17 termined by the Secretary.

18 “(2) MULTISTATE PARTNERSHIPS.—Grants
19 under this section may be made for projects involv-
20 ing more than 1 State.

21 “(g) REGIONAL BALANCE.—In making grants under
22 this section, the Secretary shall, to the maximum extent
23 practicable, ensure—

24 “(1) geographic diversity; and

1 “(2) diversity of types of agricultural produc-
2 tion.

3 “(h) TECHNICAL ASSISTANCE.—The Secretary may
4 use funds made available under this section to provide
5 technical assistance to grant recipients to further the pur-
6 poses of this section.

7 “(i) BEST PRACTICES AND MODEL PROGRAMS.—
8 Based on evaluations of, and responses arising from,
9 projects funded under this section, the Secretary may
10 issue a set of recommended best practices and models for
11 food safety training programs for agricultural producers,
12 small food processors, and small fresh fruit and vegetable
13 merchant wholesalers.

14 “(j) AUTHORIZATION OF APPROPRIATIONS.—For the
15 purposes of making grants under this section, there are
16 authorized to be appropriated such sums as may be nec-
17 essary for fiscal years 2011 through 2015.”.

18 **SEC. 6210. ENHANCING FOOD SAFETY.**

19 (a) GRANTS TO ENHANCE FOOD SAFETY.—Section
20 1009 of the Federal Food, Drug, and Cosmetic Act (21
21 U.S.C. 399) is amended to read as follows:

22 **“SEC. 1009. GRANTS TO ENHANCE FOOD SAFETY.**

23 “(a) IN GENERAL.—The Secretary is authorized to
24 make grants to eligible entities to—

1 “(1) undertake examinations, inspections, inves-
2 tigations, and related food safety activities under
3 section 702;

4 “(2) train to the standards of the Secretary for
5 the examination, inspection, and investigation of
6 food manufacturing, processing, packing, holding,
7 distribution, and importation, including as such ex-
8 amination, inspection, and investigation relate to re-
9 tail food establishments;

10 “(3) build the food safety capacity of the lab-
11 oratories of such eligible entity, including the detec-
12 tion of zoonotic diseases;

13 “(4) build the infrastructure and capacity of
14 the food safety programs of such eligible entity to
15 meet the standards as outlined in the grant applica-
16 tion; and

17 “(5) take appropriate action to protect the pub-
18 lic health in response to—

19 “(A) a notification under section 1008, in-
20 cluding planning and otherwise preparing to
21 take such action; or

22 “(B) a recall of food under this Act.

23 “(b) ELIGIBLE ENTITIES; APPLICATION.—

24 “(1) IN GENERAL.—In this section, the term
25 ‘eligible entity’ means an entity—

1 “(A) that is—
2 “(i) a State;
3 “(ii) a locality;
4 “(iii) a territory;
5 “(iv) an Indian tribe (as defined in
6 section 4(e) of the Indian Self-Determina-
7 tion and Education Assistance Act); or
8 “(v) a nonprofit food safety training
9 entity that collaborates with 1 or more in-
10 stitutions of higher education; and
11 “(B) that submits an application to the
12 Secretary at such time, in such manner, and in-
13 cluding such information as the Secretary may
14 reasonably require.
15 “(2) CONTENTS.—Each application submitted
16 under paragraph (1) shall include—
17 “(A) an assurance that the eligible entity
18 has developed plans to engage in the types of
19 activities described in subsection (a);
20 “(B) a description of the types of activities
21 to be funded by the grant;
22 “(C) an itemization of how grant funds re-
23 ceived under this section will be expended;
24 “(D) a description of how grant activities
25 will be monitored; and

1 “(E) an agreement by the eligible entity to
2 report information required by the Secretary to
3 conduct evaluations under this section.

4 “(c) LIMITATIONS.—The funds provided under sub-
5 section (a) shall be available to an eligible entity that re-
6 ceives a grant under this section only to the extent such
7 entity funds the food safety programs of such entity inde-
8 pendently of any grant under this section in each year of
9 the grant at a level equal to the level of such funding in
10 the previous year, increased by the Consumer Price Index.
11 Such non-Federal matching funds may be provided di-
12 rectly or through donations from public or private entities
13 and may be in cash or in-kind, fairly evaluated, including
14 plant, equipment, or services.

15 “(d) ADDITIONAL AUTHORITY.—The Secretary
16 may—

17 “(1) award a grant under this section in each
18 subsequent fiscal year without reapplication for a pe-
19 riod of not more than 3 years, provided the require-
20 ments of subsection (c) are met for the previous fis-
21 cal year; and

22 “(2) award a grant under this section in a fis-
23 cal year for which the requirement of subsection (c)
24 has not been met only if such requirement was not
25 met because such funding was diverted for response

1 to 1 or more natural disasters or in other extenu-
2 ating circumstances that the Secretary may deter-
3 mine appropriate.

4 “(e) DURATION OF AWARDS.—The Secretary may
5 award grants to an individual grant recipient under this
6 section for periods of not more than 3 years. In the event
7 the Secretary conducts a program evaluation, funding in
8 the second year or third year of the grant, where applica-
9 ble, shall be contingent on a successful program evaluation
10 by the Secretary after the first year.

11 “(f) PROGRESS AND EVALUATION.—

12 “(1) IN GENERAL.—The Secretary shall meas-
13 ure the status and success of each grant program
14 authorized under the FDA Food Safety Moderniza-
15 tion Act (and any amendment made by such Act),
16 including the grant program under this section. A
17 recipient of a grant described in the preceding sen-
18 tence shall, at the end of each grant year, provide
19 the Secretary with information on how grant funds
20 were spent and the status of the efforts by such re-
21 cipient to enhance food safety. To the extent prac-
22 ticable, the Secretary shall take the performance of
23 such a grant recipient into account when deter-
24 mining whether to continue funding for such recipi-
25 ent.

1 shall designate 5 Integrated Food Safety Centers of Excel-
2 lence (referred to in this section as the ‘Centers of Excel-
3 lence’) to serve as resources for Federal, State, and local
4 public health professionals to respond to foodborne illness
5 outbreaks. The Centers of Excellence shall be
6 headquartered at selected State health departments.

7 “(b) SELECTION OF CENTERS OF EXCELLENCE.—

8 “(1) ELIGIBLE ENTITIES.—To be eligible to be
9 designated as a Center of Excellence under sub-
10 section (a), an entity shall—

11 “(A) be a State health department;

12 “(B) partner with 1 or more institutions of
13 higher education that have demonstrated knowl-
14 edge, expertise, and meaningful experience with
15 regional or national food production, processing,
16 and distribution, as well as leadership in the
17 laboratory, epidemiological, and environmental
18 detection and investigation of foodborne illness;
19 and

20 “(C) provide to the Secretary such infor-
21 mation, at such time, and in such manner, as
22 the Secretary may require.

23 “(2) WORKING GROUP.—Not later than 180
24 days after the date of enactment of the FDA Food
25 Safety Modernization Act, the Secretary shall estab-

1 lish a diverse working group of experts and stake-
2 holders from Federal, State, and local food safety
3 and health agencies, the food industry, including
4 food retailers and food manufacturers, consumer or-
5 ganizations, and academia to make recommendations
6 to the Secretary regarding designations of the Cen-
7 ters of Excellence.

8 “(3) ADDITIONAL CENTERS OF EXCELLENCE.—
9 The Secretary may designate eligible entities to be
10 regional Food Safety Centers of Excellence, in addi-
11 tion to the 5 Centers designated under subsection
12 (a).

13 “(c) ACTIVITIES.—Under the leadership of the Direc-
14 tor of the Centers for Disease Control and Prevention,
15 each Center of Excellence shall be based out of a selected
16 State health department, which shall provide assistance to
17 other regional, State, and local departments of health
18 through activities that include—

19 “(1) providing resources, including timely infor-
20 mation concerning symptoms and tests, for frontline
21 health professionals interviewing individuals as part
22 of routine surveillance and outbreak investigations;

23 “(2) providing analysis of the timeliness and ef-
24 fectiveness of foodborne disease surveillance and out-
25 break response activities;

1 “(3) providing training for epidemiological and
2 environmental investigation of foodborne illness, in-
3 cluding suggestions for streamlining and standard-
4 izing the investigation process;

5 “(4) establishing fellowships, stipends, and
6 scholarships to train future epidemiological and
7 food-safety leaders and to address critical workforce
8 shortages;

9 “(5) training and coordinating State and local
10 personnel;

11 “(6) strengthening capacity to participate in ex-
12 isting or new foodborne illness surveillance and envi-
13 ronmental assessment information systems; and

14 “(7) conducting research and outreach activities
15 focused on increasing prevention, communication,
16 and education regarding food safety.

17 “(d) REPORT TO CONGRESS.—Not later than 2 years
18 after the date of enactment of the FDA Food Safety Mod-
19 ernization Act, the Secretary shall submit to Congress a
20 report that—

21 “(1) describes the effectiveness of the Centers
22 of Excellence; and

23 “(2) provides legislative recommendations or
24 describes additional resources required by the Cen-
25 ters of Excellence.

1 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated such sums as may be nec-
3 essary to carry out this section.

4 “(f) NO DUPLICATION OF EFFORT.—In carrying out
5 activities of the Centers of Excellence or other programs
6 under this section, the Secretary shall not duplicate other
7 Federal foodborne illness response efforts.”.

8 **SEC. 6211. IMPROVING THE REPORTABLE FOOD REGISTRY.**

9 (a) IN GENERAL.—Section 417 (21 U.S.C. 350f) is
10 amended—

11 (1) by redesignating subsections (f) through (k)
12 as subsections (i) through (n), respectively; and

13 (2) by inserting after subsection (e) the fol-
14 lowing:

15 “(f) CRITICAL INFORMATION.—Except with respect
16 to fruits and vegetables that are raw agricultural commod-
17 ities, not more than 18 months after the date of enactment
18 of the FDA Food Safety Modernization Act, the Secretary
19 may require a responsible party to submit to the Secretary
20 consumer-oriented information regarding a reportable
21 food, which shall include—

22 “(1) a description of the article of food as pro-
23 vided in subsection (e)(3);

24 “(2) as provided in subsection (e)(7), affected
25 product identification codes, such as UPC, SKU, or

1 lot or batch numbers sufficient for the consumer to
2 identify the article of food;

3 “(3) contact information for the responsible
4 party as provided in subsection (e)(8); and

5 “(4) any other information the Secretary deter-
6 mines is necessary to enable a consumer to accu-
7 rately identify whether such consumer is in posses-
8 sion of the reportable food.

9 “(g) GROCERY STORE NOTIFICATION.—

10 “(1) ACTION BY SECRETARY.—The Secretary
11 shall—

12 “(A) prepare the critical information de-
13 scribed under subsection (f) for a reportable
14 food as a standardized one-page summary;

15 “(B) publish such one-page summary on
16 the Internet website of the Food and Drug Ad-
17 ministration in a format that can be easily
18 printed by a grocery store for purposes of con-
19 sumer notification.

20 “(2) ACTION BY GROCERY STORE.—A notifica-
21 tion described under paragraph (1)(B) shall include
22 the date and time such summary was posted on the
23 Internet website of the Food and Drug Administra-
24 tion.

25 “(h) CONSUMER NOTIFICATION.—

1 “(1) IN GENERAL.—If a grocery store sold a re-
2 portable food that is the subject of the posting and
3 such establishment is part of chain of establishments
4 with 15 or more physical locations, then such estab-
5 lishment shall, not later than 24 hours after a one
6 page summary described in subsection (g) is pub-
7 lished, prominently display such summary or the in-
8 formation from such summary via at least one of the
9 methods identified under paragraph (2) and main-
10 tain the display for 14 days.

11 “(2) LIST OF CONSPICUOUS LOCATIONS.—Not
12 more than 1 year after the date of enactment of the
13 FDA Food Safety Modernization Act, the Secretary
14 shall develop and publish a list of acceptable con-
15 spicuous locations and manners, from which grocery
16 stores shall select at least one, for providing the no-
17 tification required in paragraph (1). Such list shall
18 include—

19 “(A) posting the notification at or near the
20 register;

21 “(B) providing the location of the report-
22 able food;

23 “(C) providing targeted recall information
24 given to customers upon purchase of a food;
25 and

1 “(D) other such prominent and con-
2 spicuous locations and manners utilized by gro-
3 cery stores as of the date of the enactment of
4 the FDA Food Safety Modernization Act to
5 provide notice of such recalls to consumers as
6 considered appropriate by the Secretary.”.

7 (b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331),
8 as amended by section 6206, is amended by adding at the
9 end the following:

10 “(yy) The knowing and willful failure to comply with
11 the notification requirement under section 417(h).”.

12 (c) CONFORMING AMENDMENT.—Section 301(e) (21
13 U.S.C. 331(e)) is amended by striking “417(g)” and in-
14 serting “417(j)”.

15 **TITLE III—IMPROVING THE**
16 **SAFETY OF IMPORTED FOOD**

17 **SEC. 6301. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

18 (a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et
19 seq.) is amended by adding at the end the following:

20 **“SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

21 “(a) IN GENERAL.—

22 “(1) VERIFICATION REQUIREMENT.—Except as
23 provided under subsections (e) and (f), each im-
24 porter shall perform risk-based foreign supplier
25 verification activities for the purpose of verifying

1 that the food imported by the importer or agent of
2 an importer is—

3 “(A) produced in compliance with the re-
4 quirements of section 418 or section 419, as ap-
5 propriate; and

6 “(B) is not adulterated under section 402
7 or misbranded under section 403(w).

8 “(2) IMPORTER DEFINED.—For purposes of
9 this section, the term ‘importer’ means, with respect
10 to an article of food—

11 “(A) the United States owner or consignee
12 of the article of food at the time of entry of
13 such article into the United States; or

14 “(B) in the case when there is no United
15 States owner or consignee as described in sub-
16 paragraph (A), the United States agent or rep-
17 resentative of a foreign owner or consignee of
18 the article of food at the time of entry of such
19 article into the United States.

20 “(b) GUIDANCE.—Not later than 1 year after the
21 date of enactment of the FDA Food Safety Modernization
22 Act, the Secretary shall issue guidance to assist importers
23 in developing foreign supplier verification programs.

24 “(c) REGULATIONS.—

1 “(1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of the FDA Food Safety Mod-
3 ernization Act, the Secretary shall promulgate regu-
4 lations to provide for the content of the foreign sup-
5 plier verification program established under sub-
6 section (a).

7 “(2) REQUIREMENTS.—The regulations promul-
8 gated under paragraph (1)—

9 “(A) shall require that the foreign supplier
10 verification program of each importer be ade-
11 quate to provide assurances that each foreign
12 supplier to the importer produces the imported
13 food in compliance with—

14 “(i) processes and procedures, includ-
15 ing reasonably appropriate risk-based pre-
16 ventive controls, that provide the same
17 level of public health protection as those
18 required under section 418 or section 419
19 (taking into consideration variances grant-
20 ed under section 419), as appropriate; and

21 “(ii) section 402 and section 403(w).

22 “(B) shall include such other requirements
23 as the Secretary deems necessary and appro-
24 priate to verify that food imported into the

1 United States is as safe as food produced and
2 sold within the United States.

3 “(3) CONSIDERATIONS.—In promulgating regu-
4 lations under this subsection, the Secretary shall, as
5 appropriate, take into account differences among im-
6 porters and types of imported foods, including based
7 on the level of risk posed by the imported food.

8 “(4) ACTIVITIES.—Verification activities under
9 a foreign supplier verification program under this
10 section may include monitoring records for ship-
11 ments, lot-by-lot certification of compliance, annual
12 on-site inspections, checking the hazard analysis and
13 risk-based preventive control plan of the foreign sup-
14 plier, and periodically testing and sampling ship-
15 ments.

16 “(d) RECORD MAINTENANCE AND ACCESS.—Records
17 of an importer related to a foreign supplier verification
18 program shall be maintained for a period of not less than
19 2 years and shall be made available promptly to a duly
20 authorized representative of the Secretary upon request.

21 “(e) EXEMPTION OF SEAFOOD, JUICE, AND LOW-
22 ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH
23 HACCP.—This section shall not apply to a facility if the
24 owner, operator, or agent in charge of such facility is re-
25 quired to comply with, and is in compliance with, 1 of the

1 following standards and regulations with respect to such
2 facility:

3 “(1) The Seafood Hazard Analysis Critical
4 Control Points Program of the Food and Drug Ad-
5 ministration.

6 “(2) The Juice Hazard Analysis Critical Con-
7 trol Points Program of the Food and Drug Adminis-
8 tration.

9 “(3) The Thermally Processed Low-Acid Foods
10 Packaged in Hermetically Sealed Containers stand-
11 ards of the Food and Drug Administration (or any
12 successor standards).

13 The exemption under paragraph (3) shall apply only with
14 respect to microbiological hazards that are regulated
15 under the standards for Thermally Processed Low-Acid
16 Foods Packaged in Hermetically Sealed Containers under
17 part 113 of chapter 21, Code of Federal Regulations (or
18 any successor regulations).

19 “(f) ADDITIONAL EXEMPTIONS.—The Secretary, by
20 notice published in the Federal Register, shall establish
21 an exemption from the requirements of this section for ar-
22 ticles of food imported in small quantities for research and
23 evaluation purposes or for personal consumption, provided
24 that such foods are not intended for retail sale and are
25 not sold or distributed to the public.

1 “(g) PUBLICATION OF LIST OF PARTICIPANTS.—The
2 Secretary shall publish and maintain on the Internet Web
3 site of the Food and Drug Administration a current list
4 that includes the name of, location of, and other informa-
5 tion deemed necessary by the Secretary about, importers
6 participating under this section.”.

7 (b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331),
8 as amended by section 6211, is amended by adding at the
9 end the following:

10 “(zz) The importation or offering for importation of
11 a food if the importer (as defined in section 805) does
12 not have in place a foreign supplier verification program
13 in compliance with such section 805.”.

14 (c) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is
15 amended by adding “or the importer (as defined in section
16 805) is in violation of such section 805” after “or in viola-
17 tion of section 505”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 2 years after the date of en-
20 actment of this Act.

21 **SEC. 6302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

22 Chapter VIII (21 U.S.C. 381 et seq.), as amended
23 by section 6301, is amended by adding at the end the fol-
24 lowing:

1 **“SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

2 “(a) IN GENERAL.—Beginning not later than 18
3 months after the date of enactment of the FDA Food
4 Safety Modernization Act, the Secretary shall—

5 “(1) establish a program, in consultation with
6 the Secretary of Homeland Security—

7 “(A) to provide for the expedited review
8 and importation of food offered for importation
9 by importers who have voluntarily agreed to
10 participate in such program; and

11 “(B) consistent with section 808, establish
12 a process for the issuance of a facility certifi-
13 cation to accompany food offered for importa-
14 tion by importers who have voluntarily agreed
15 to participate in such program; and

16 “(2) issue a guidance document related to par-
17 ticipation in, revocation of such participation in, re-
18 instatement in, and compliance with, such program.

19 “(b) VOLUNTARY PARTICIPATION.—An importer may
20 request the Secretary to provide for the expedited review
21 and importation of designated foods in accordance with
22 the program established by the Secretary under subsection
23 (a).

24 “(c) NOTICE OF INTENT TO PARTICIPATE.—An im-
25 porter that intends to participate in the program under
26 this section in a fiscal year shall submit a notice and appli-

1 cation to the Secretary of such intent at the time and in
2 a manner established by the Secretary.

3 “(d) ELIGIBILITY.—Eligibility shall be limited to an
4 importer offering food for importation from a facility that
5 has a certification described in subsection (a). In reviewing
6 the applications and making determinations on such appli-
7 cations, the Secretary shall consider the risk of the food
8 to be imported based on factors, such as the following:

9 “(1) The known safety risks of the food to be
10 imported.

11 “(2) The compliance history of foreign suppliers
12 used by the importer, as appropriate.

13 “(3) The capability of the regulatory system of
14 the country of export to ensure compliance with
15 United States food safety standards for a designated
16 food.

17 “(4) The compliance of the importer with the
18 requirements of section 805.

19 “(5) The recordkeeping, testing, inspections
20 and audits of facilities, traceability of articles of
21 food, temperature controls, and sourcing practices of
22 the importer.

23 “(6) The potential risk for intentional adultera-
24 tion of the food.

1 (b) ADDITION OF CERTIFICATION REQUIREMENT.—
2 Section 801 (21 U.S.C. 381) is amended by adding at the
3 end the following new subsection:

4 “(q) CERTIFICATIONS CONCERNING IMPORTED
5 FOODS.—

6 “(1) IN GENERAL.—The Secretary may require,
7 as a condition of granting admission to an article of
8 food imported or offered for import into the United
9 States, that an entity described in paragraph (3)
10 provide a certification, or such other assurances as
11 the Secretary determines appropriate, that the arti-
12 cle of food complies with applicable requirements of
13 this Act. Such certification or assurances may be
14 provided in the form of shipment-specific certifi-
15 cates, a listing of certified facilities that manufac-
16 ture, process, pack, or hold such food, or in such
17 other form as the Secretary may specify.

18 “(2) FACTORS TO BE CONSIDERED IN REQUIR-
19 ING CERTIFICATION.—The Secretary shall base the
20 determination that an article of food is required to
21 have a certification described in paragraph (1) on
22 the risk of the food, including—

23 “(A) known safety risks associated with
24 the food;

1 “(B) known food safety risks associated
2 with the country, territory, or region of origin
3 of the food;

4 “(C) a finding by the Secretary, supported
5 by scientific, risk-based evidence, that—

6 “(i) the food safety programs, sys-
7 tems, and standards in the country, terri-
8 tory, or region of origin of the food are in-
9 adequate to ensure that the article of food
10 is as safe as a similar article of food that
11 is manufactured, processed, packed, or
12 held in the United States in accordance
13 with the requirements of this Act; and

14 “(ii) the certification would assist the
15 Secretary in determining whether to refuse
16 or admit the article of food under sub-
17 section (a); and

18 “(D) information submitted to the Sec-
19 retary in accordance with the process estab-
20 lished in paragraph (7).

21 “(3) CERTIFYING ENTITIES.—For purposes of
22 paragraph (1), entities that shall provide the certifi-
23 cation or assurances described in such paragraph
24 are—

1 “(A) an agency or a representative of the
2 government of the country from which the arti-
3 cle of food at issue originated, as designated by
4 the Secretary; or

5 “(B) such other persons or entities accred-
6 ited pursuant to section 808 to provide such
7 certification or assurance.

8 “(4) RENEWAL AND REFUSAL OF CERTIFI-
9 CATIONS.—The Secretary may—

10 “(A) require that any certification or other
11 assurance provided by an entity specified in
12 paragraph (2) be renewed by such entity at
13 such times as the Secretary determines appro-
14 priate; and

15 “(B) refuse to accept any certification or
16 assurance if the Secretary determines that such
17 certification or assurance is not valid or reli-
18 able.

19 “(5) ELECTRONIC SUBMISSION.—The Secretary
20 shall provide for the electronic submission of certifi-
21 cations under this subsection.

22 “(6) FALSE STATEMENTS.—Any statement or
23 representation made by an entity described in para-
24 graph (2) to the Secretary shall be subject to section
25 1001 of title 18, United States Code.

1 “(7) ASSESSMENT OF FOOD SAFETY PROGRAMS,
2 SYSTEMS, AND STANDARDS.—If the Secretary deter-
3 mines that the food safety programs, systems, and
4 standards in a foreign region, country, or territory
5 are inadequate to ensure that an article of food is
6 as safe as a similar article of food that is manufac-
7 tured, processed, packed, or held in the United
8 States in accordance with the requirements of this
9 Act, the Secretary shall, to the extent practicable,
10 identify such inadequacies and establish a process by
11 which the foreign region, country, or territory may
12 inform the Secretary of improvements made to such
13 food safety program, system, or standard and dem-
14 onstrate that those controls are adequate to ensure
15 that an article of food is as safe as a similar article
16 of food that is manufactured, processed, packed, or
17 held in the United States in accordance with the re-
18 quirements of this Act.”.

19 (c) CONFORMING TECHNICAL AMENDMENT.—Sec-
20 tion 801(b) (21 U.S.C. 381(b)) is amended in the second
21 sentence by striking “with respect to an article included
22 within the provision of the fourth sentence of subsection
23 (a)” and inserting “with respect to an article described
24 in subsection (a) relating to the requirements of sections
25 760 or 761,”.

1 (d) NO LIMIT ON AUTHORITY.—Nothing in the
2 amendments made by this section shall limit the authority
3 of the Secretary to conduct inspections of imported food
4 or to take such other steps as the Secretary deems appro-
5 priate to determine the admissibility of imported food.

6 **SEC. 6304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.**

7 (a) IN GENERAL.—Section 801(m)(1) (21 U.S.C.
8 381(m)(1)) is amended by inserting “any country to which
9 the article has been refused entry;” after “the country
10 from which the article is shipped;”.

11 (b) REGULATIONS.—Not later than 120 days after
12 the date of enactment of this Act, the Secretary shall issue
13 an interim final rule amending subpart I of part 1 of title
14 21, Code of Federal Regulations, to implement the amend-
15 ment made by this section.

16 (c) EFFECTIVE DATE.—The amendment made by
17 this section shall take effect 180 days after the date of
18 enactment of this Act.

19 **SEC. 6305. BUILDING CAPACITY OF FOREIGN GOVERN-**
20 **MENTS WITH RESPECT TO FOOD SAFETY.**

21 (a) IN GENERAL.—The Secretary shall, not later
22 than 2 years of the date of enactment of this Act, develop
23 a comprehensive plan to expand the technical, scientific,
24 and regulatory food safety capacity of foreign govern-

1 ments, and their respective food industries, from which
2 foods are exported to the United States.

3 (b) CONSULTATION.—In developing the plan under
4 subsection (a), the Secretary shall consult with the Sec-
5 retary of Agriculture, Secretary of State, Secretary of the
6 Treasury, the Secretary of Homeland Security, the United
7 States Trade Representative, and the Secretary of Com-
8 merce, representatives of the food industry, appropriate
9 foreign government officials, nongovernmental organiza-
10 tions that represent the interests of consumers, and other
11 stakeholders.

12 (c) PLAN.—The plan developed under subsection (a)
13 shall include, as appropriate, the following:

14 (1) Recommendations for bilateral and multilat-
15 eral arrangements and agreements, including provi-
16 sions to provide for responsibility of exporting coun-
17 tries to ensure the safety of food.

18 (2) Provisions for secure electronic data shar-
19 ing.

20 (3) Provisions for mutual recognition of inspec-
21 tion reports.

22 (4) Training of foreign governments and food
23 producers on United States requirements for safe
24 food.

1 (5) Recommendations on whether and how to
2 harmonize requirements under the Codex
3 Alimentarius.

4 (6) Provisions for the multilateral acceptance of
5 laboratory methods and testing and detection tech-
6 niques.

7 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
8 tion shall be construed to affect the regulation of dietary
9 supplements under the Dietary Supplement Health and
10 Education Act of 1994 (Public Law 103–417).

11 **SEC. 6306. INSPECTION OF FOREIGN FOOD FACILITIES.**

12 (a) **IN GENERAL.**—Chapter VIII (21 U.S.C. 381 et
13 seq.), as amended by section 6302, is amended by insert-
14 ing at the end the following:

15 **“SEC. 807. INSPECTION OF FOREIGN FOOD FACILITIES.**

16 “(a) **INSPECTION.**—The Secretary—

17 “(1) may enter into arrangements and agree-
18 ments with foreign governments to facilitate the in-
19 spection of foreign facilities registered under section
20 415; and

21 “(2) shall direct resources to inspections of for-
22 eign facilities, suppliers, and food types, especially
23 such facilities, suppliers, and food types that present
24 a high risk (as identified by the Secretary), to help

1 ensure the safety and security of the food supply of
2 the United States.

3 “(b) EFFECT OF INABILITY TO INSPECT.—Notwith-
4 standing any other provision of law, food shall be refused
5 admission into the United States if it is from a foreign
6 factory, warehouse, or other establishment of which the
7 owner, operator, or agent in charge, or the government
8 of the foreign country, refuses to permit entry of United
9 States inspectors or other individuals duly designated by
10 the Secretary, upon request, to inspect such factory, ware-
11 house, or other establishment. For purposes of this sub-
12 section, such an owner, operator, or agent in charge shall
13 be considered to have refused an inspection if such owner,
14 operator, or agent in charge does not permit an inspection
15 of a factory, warehouse, or other establishment during the
16 24-hour period after such request is submitted, or after
17 such other time period, as agreed upon by the Secretary
18 and the foreign factory, warehouse, or other establish-
19 ment.”.

20 (b) INSPECTION BY THE SECRETARY OF COM-
21 MERCE.—

22 (1) IN GENERAL.—The Secretary of Commerce,
23 in coordination with the Secretary of Health and
24 Human Services, may send 1 or more inspectors to
25 a country or facility of an exporter from which sea-

1 food imported into the United States originates. The
2 inspectors shall assess practices and processes used
3 in connection with the farming, cultivation, har-
4 vesting, preparation for market, or transportation of
5 such seafood and may provide technical assistance
6 related to such activities.

7 (2) INSPECTION REPORT.—

8 (A) IN GENERAL.—The Secretary of
9 Health and Human Services, in coordination
10 with the Secretary of Commerce, shall—

11 (i) prepare an inspection report for
12 each inspection conducted under paragraph
13 (1);

14 (ii) provide the report to the country
15 or exporter that is the subject of the re-
16 port; and

17 (iii) provide a 30-day period during
18 which the country or exporter may provide
19 a rebuttal or other comments on the find-
20 ings of the report to the Secretary of
21 Health and Human Services.

22 (B) DISTRIBUTION AND USE OF RE-
23 PORT.—The Secretary of Health and Human
24 Services shall consider the inspection reports
25 described in subparagraph (A) in distributing

1 inspection resources under section 421 of the
2 Federal Food, Drug, and Cosmetic Act, as
3 added by section 6201.

4 **SEC. 6307. ACCREDITATION OF THIRD-PARTY AUDITORS.**

5 Chapter VIII (21 U.S.C. 381 et seq.), as amended
6 by section 6306, is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 808. ACCREDITATION OF THIRD-PARTY AUDITORS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) AUDIT AGENT.—The term ‘audit agent’
11 means an individual who is an employee or agent of
12 an accredited third-party auditor and, although not
13 individually accredited, is qualified to conduct food
14 safety audits on behalf of an accredited third-party
15 auditor.

16 “(2) ACCREDITATION BODY.—The term ‘ac-
17 creditation body’ means an authority that performs
18 accreditation of third-party auditors.

19 “(3) THIRD-PARTY AUDITOR.—The term ‘third-
20 party auditor’ means a foreign government, agency
21 of a foreign government, foreign cooperative, or any
22 other thirdparty, as the Secretary determines appro-
23 priate in accordance with the model standards de-
24 scribed in subsection (b)(2), that is eligible to be
25 considered for accreditation to conduct food safety

1 audits to certify that eligible entities meet the appli-
2 cable requirements of this section. A third-party
3 auditor may be a single individual. A third-party
4 auditor may employ or use audit agents to help con-
5 duct consultative and regulatory audits.

6 “(4) ACCREDITED THIRD-PARTY AUDITOR.—
7 The term ‘accredited third-party auditor’ means a
8 third-party auditor accredited by an accreditation
9 body to conduct audits of eligible entities to certify
10 that such eligible entities meet the applicable re-
11 quirements of this section. An accredited third-party
12 auditor may be an individual who conducts food
13 safety audits to certify that eligible entities meet the
14 applicable requirements of this section.

15 “(5) CONSULTATIVE AUDIT.—The term ‘con-
16 sultative audit’ means an audit of an eligible enti-
17 ty—

18 “(A) to determine whether such entity is in
19 compliance with the provisions of this Act and
20 with applicable industry standards and prac-
21 tices; and

22 “(B) the results of which are for internal
23 purposes only.

24 “(6) ELIGIBLE ENTITY.—The term ‘eligible en-
25 tity’ means a foreign entity, including a foreign fa-

1 cility registered under section 415, in the food im-
2 port supply chain that chooses to be audited by an
3 accredited third-party auditor or the audit agent of
4 such accredited third-party auditor.

5 “(7) REGULATORY AUDIT.—The term ‘regu-
6 latory audit’ means an audit of an eligible entity—

7 “(A) to determine whether such entity is in
8 compliance with the provisions of this Act; and

9 “(B) the results of which determine—

10 “(i) whether an article of food manu-
11 factured, processed, packed, or held by
12 such entity is eligible to receive a food cer-
13 tification under section 801(q); or

14 “(ii) whether a facility is eligible to
15 receive a facility certification under section
16 806(a) for purposes of participating in the
17 program under section 806.

18 “(b) ACCREDITATION SYSTEM.—

19 “(1) ACCREDITATION BODIES.—

20 “(A) RECOGNITION OF ACCREDITATION
21 BODIES.—

22 “(i) IN GENERAL.—Not later than 2
23 years after the date of enactment of the
24 FDA Food Safety Modernization Act, the
25 Secretary shall establish a system for the

1 recognition of accreditation bodies that ac-
2 credit third-party auditors to certify that
3 eligible entities meet the applicable require-
4 ments of this section.

5 “(ii) DIRECT ACCREDITATION.—If, by
6 the date that is 2 years after the date of
7 establishment of the system described in
8 clause (i), the Secretary has not identified
9 and recognized an accreditation body to
10 meet the requirements of this section, the
11 Secretary may directly accredit third-party
12 auditors.

13 “(B) NOTIFICATION.—Each accreditation
14 body recognized by the Secretary shall submit
15 to the Secretary a list of all accredited third-
16 party auditors accredited by such body and the
17 audit agents of such auditors.

18 “(C) REVOCATION OF RECOGNITION AS AN
19 ACCREDITATION BODY.—The Secretary shall
20 promptly revoke the recognition of any accredi-
21 tation body found not to be in compliance with
22 the requirements of this section.

23 “(D) REINSTATEMENT.—The Secretary
24 shall establish procedures to reinstate recogni-
25 tion of an accreditation body if the Secretary

1 determines, based on evidence presented by
2 such accreditation body, that revocation was in-
3 appropriate or that the body meets the require-
4 ments for recognition under this section.

5 “(2) MODEL ACCREDITATION STANDARDS.—

6 Not later than 18 months after the date of enact-
7 ment of the FDA Food Safety Modernization Act,
8 the Secretary shall develop model standards, includ-
9 ing requirements for regulatory audit reports, and
10 each recognized accreditation body shall ensure that
11 third-party auditors and audit agents of such audi-
12 tors meet such standards in order to qualify such
13 third-party auditors as accredited third-party audi-
14 tors under this section. In developing the model
15 standards, the Secretary shall look to standards in
16 place on the date of the enactment of this section for
17 guidance, to avoid unnecessary duplication of efforts
18 and costs.

19 “(c) THIRD-PARTY AUDITORS.—

20 “(1) REQUIREMENTS FOR ACCREDITATION AS A
21 THIRD-PARTY AUDITOR.—

22 “(A) FOREIGN GOVERNMENTS.—Prior to
23 accrediting a foreign government or an agency
24 of a foreign government as an accredited third-
25 party auditor, the accreditation body (or, in the

1 case of direct accreditation under subsection
2 (b)(1)(A)(ii), the Secretary) shall perform such
3 reviews and audits of food safety programs, sys-
4 tems, and standards of the government or agen-
5 cy of the government as the Secretary deems
6 necessary, including requirements under the
7 model standards developed under subsection
8 (b)(2), to determine that the foreign govern-
9 ment or agency of the foreign government is ca-
10 pable of adequately ensuring that eligible enti-
11 ties or foods certified by such government or
12 agency meet the requirements of this Act with
13 respect to food manufactured, processed,
14 packed, or held for import into the United
15 States.

16 “(B) FOREIGN COOPERATIVES AND OTHER
17 THIRD PARTIES.—Prior to accrediting a foreign
18 cooperative that aggregates the products of
19 growers or processors, or any other third party
20 to be an accredited third-party auditor, the ac-
21 creditation body (or, in the case of direct ac-
22 creditation under subsection (b)(1)(A)(ii), the
23 Secretary) shall perform such reviews and au-
24 dits of the training and qualifications of audit
25 agents used by that cooperative or party and

1 conduct such reviews of internal systems and
2 such other investigation of the cooperative or
3 party as the Secretary deems necessary, includ-
4 ing requirements under the model standards de-
5 veloped under subsection (b)(2), to determine
6 that each eligible entity certified by the cooper-
7 ative or party has systems and standards in use
8 to ensure that such entity or food meets the re-
9 quirements of this Act.

10 “(2) REQUIREMENT TO ISSUE CERTIFICATION
11 OF ELIGIBLE ENTITIES OR FOODS.—

12 “(A) IN GENERAL.—An accreditation body
13 (or, in the case of direct accreditation under
14 subsection (b)(1)(A)(ii), the Secretary) may not
15 accredit a third-party auditor unless such third-
16 party auditor agrees to issue a written and, as
17 appropriate, electronic food certification, de-
18 scribed in section 801(q), or facility certifi-
19 cation under section 806(a), as appropriate, to
20 accompany each food shipment for import into
21 the United States from an eligible entity, sub-
22 ject to requirements set forth by the Secretary.
23 Such written or electronic certification may be
24 included with other documentation regarding
25 such food shipment. The Secretary shall con-

1 sider certifications under section 801(q) and
2 participation in the voluntary qualified importer
3 program described in section 806 when tar-
4 geting inspection resources under section 421.

5 “(B) PURPOSE OF CERTIFICATION.—The
6 Secretary shall use certification provided by ac-
7 credited third-party auditors to—

8 “(i) determine, in conjunction with
9 any other assurances the Secretary may re-
10 quire under section 801(q), whether a food
11 satisfies the requirements of such section;
12 and

13 “(ii) determine whether a facility is el-
14 igible to be a facility from which food may
15 be offered for import under the voluntary
16 qualified importer program under section
17 806.

18 “(C) REQUIREMENTS FOR ISSUING CER-
19 TIFICATION.—

20 “(i) IN GENERAL.—An accredited
21 third-party auditor shall issue a food cer-
22 tification under section 801(q) or a facility
23 certification described under subparagraph
24 (B) only after conducting a regulatory
25 audit and such other activities that may be

1 necessary to establish compliance with the
2 requirements of such sections.

3 “(ii) PROVISION OF CERTIFICATION.—

4 Only an accredited third-party auditor or
5 the Secretary may provide a facility certifi-
6 cation under section 806(a). Only those
7 parties described in 801(q)(3) or the Sec-
8 retary may provide a food certification
9 under 301(g).

10 “(3) AUDIT REPORT SUBMISSION REQUIRE-
11 MENTS.—

12 “(A) REQUIREMENTS IN GENERAL.—As a
13 condition of accreditation, not later than 45
14 days after conducting an audit, an accredited
15 third-party auditor or audit agent of such audi-
16 tor shall prepare, and, in the case of a regu-
17 latory audit, submit, the audit report for each
18 audit conducted, in a form and manner des-
19 ignated by the Secretary, which shall include—

20 “(i) the identity of the persons at the
21 audited eligible entity responsible for com-
22 pliance with food safety requirements;

23 “(ii) the dates of the audit;

24 “(iii) the scope of the audit; and

1 “(iv) any other information required
2 by the Secretary that relates to or may in-
3 fluence an assessment of compliance with
4 this Act.

5 “(B) RECORDS.—Following any accredita-
6 tion of a third-party auditor, the Secretary
7 may, at any time, require the accredited third-
8 party auditor to submit to the Secretary an on-
9 site audit report and such other reports or doc-
10 uments required as part of the audit process,
11 for any eligible entity certified by the third-
12 party auditor or audit agent of such auditor.
13 Such report may include documentation that
14 the eligible entity is in compliance with any ap-
15 plicable registration requirements.

16 “(C) LIMITATION.—The requirement
17 under subparagraph (B) shall not include any
18 report or other documents resulting from a con-
19 sultative audit by the accredited third-party
20 auditor, except that the Secretary may access
21 the results of a consultative audit in accordance
22 with section 414.

23 “(4) REQUIREMENTS OF ACCREDITED THIRD-
24 PARTY AUDITORS AND AUDIT AGENTS OF SUCH
25 AUDITORS.—

1 “(A) RISKS TO PUBLIC HEALTH.—If, at
2 any time during an audit, an accredited third-
3 party auditor or audit agent of such auditor
4 discovers a condition that could cause or con-
5 tribute to a serious risk to the public health,
6 such auditor shall immediately notify the Sec-
7 retary of—

8 “(i) the identification of the eligible
9 entity subject to the audit; and

10 “(ii) such condition.

11 “(B) TYPES OF AUDITS.—An accredited
12 third-party auditor or audit agent of such audi-
13 tor may perform consultative and regulatory
14 audits of eligible entities.

15 “(C) LIMITATIONS.—

16 “(i) IN GENERAL.—An accredited
17 third-party auditor may not perform a reg-
18 ulatory audit of an eligible entity if such
19 agent has performed a consultative audit
20 or a regulatory audit of such eligible entity
21 during the previous 13-month period.

22 “(ii) WAIVER.—The Secretary may
23 waive the application of clause (i) if the
24 Secretary determines that there is insuffi-

1 cient access to accredited third-party audi-
2 tors in a country or region.

3 “(5) CONFLICTS OF INTEREST.—

4 “(A) THIRD-PARTY AUDITORS.—An ac-
5 credited third-party auditor shall—

6 “(i) not be owned, managed, or con-
7 trolled by any person that owns or operates
8 an eligible entity to be certified by such
9 auditor;

10 “(ii) in carrying out audits of eligible
11 entities under this section, have procedures
12 to ensure against the use of any officer or
13 employee of such auditor that has a finan-
14 cial conflict of interest regarding an eligi-
15 ble entity to be certified by such auditor;
16 and

17 “(iii) annually make available to the
18 Secretary disclosures of the extent to
19 which such auditor and the officers and
20 employees of such auditor have maintained
21 compliance with clauses (i) and (ii) relat-
22 ing to financial conflicts of interest.

23 “(B) AUDIT AGENTS.—An audit agent
24 shall—

1 “(i) not own or operate an eligible en-
2 tity to be audited by such agent;

3 “(ii) in carrying out audits of eligible
4 entities under this section, have procedures
5 to ensure that such agent does not have a
6 financial conflict of interest regarding an
7 eligible entity to be audited by such agent;
8 and

9 “(iii) annually make available to the
10 Secretary disclosures of the extent to
11 which such agent has maintained compli-
12 ance with clauses (i) and (ii) relating to fi-
13 nancial conflicts of interest.

14 “(C) REGULATIONS.—The Secretary shall
15 promulgate regulations not later than 18
16 months after the date of enactment of the FDA
17 Food Safety Modernization Act to implement
18 this section and to ensure that there are protec-
19 tions against conflicts of interest between an
20 accredited third-party auditor and the eligible
21 entity to be certified by such auditor or audited
22 by such audit agent. Such regulations shall in-
23 clude—

24 “(i) requiring that audits performed
25 under this section be unannounced;

1 “(ii) a structure to decrease the po-
2 tential for conflicts of interest, including
3 timing and public disclosure, for fees paid
4 by eligible entities to accredited third-party
5 auditors; and

6 “(iii) appropriate limits on financial
7 affiliations between an accredited third-
8 party auditor or audit agents of such audi-
9 tor and any person that owns or operates
10 an eligible entity to be certified by such
11 auditor, as described in subparagraphs (A)
12 and (B).

13 “(6) WITHDRAWAL OF ACCREDITATION.—

14 “(A) IN GENERAL.—The Secretary shall
15 withdraw accreditation from an accredited
16 third-party auditor—

17 “(i) if food certified under section
18 801(q) or from a facility certified under
19 paragraph (2)(B) by such third-party audi-
20 tor is linked to an outbreak of foodborne
21 illness that has a reasonable probability of
22 causing serious adverse health con-
23 sequences or death in humans or animals;

24 “(ii) following an evaluation and find-
25 ing by the Secretary that the third-party

1 auditor no longer meets the requirements
2 for accreditation; or

3 “(iii) following a refusal to allow
4 United States officials to conduct such au-
5 dits and investigations as may be necessary
6 to ensure continued compliance with the
7 requirements set forth in this section.

8 “(B) ADDITIONAL BASIS FOR WITH-
9 DRAWAL OF ACCREDITATION.—The Secretary
10 may withdraw accreditation from an accredited
11 third-party auditor in the case that such third-
12 party auditor is accredited by an accreditation
13 body for which recognition as an accreditation
14 body under subsection (b)(1)(C) is revoked, if
15 the Secretary determines that there is good
16 cause for the withdrawal.

17 “(C) EXCEPTION.—The Secretary may
18 waive the application of subparagraph (A)(i) if
19 the Secretary—

20 “(i) conducts an investigation of the
21 material facts related to the outbreak of
22 human or animal illness; and

23 “(ii) reviews the steps or actions
24 taken by the third-party auditor to justify
25 the certification and determines that the

1 accredited third-party auditor satisfied the
2 requirements under section 801(q) of certi-
3 fying the food, or the requirements under
4 paragraph (2)(B) of certifying the entity.

5 “(7) REACCREDITATION.—The Secretary shall
6 establish procedures to reinstate the accreditation of
7 a third-party auditor for which accreditation has
8 been withdrawn under paragraph (6)—

9 “(A) if the Secretary determines, based on
10 evidence presented, that the third-party auditor
11 satisfies the requirements of this section and
12 adequate grounds for revocation no longer exist;
13 and

14 “(B) in the case of a third-party auditor
15 accredited by an accreditation body for which
16 recognition as an accreditation body under sub-
17 section (b)(1)(C) is revoked—

18 “(i) if the third-party auditor becomes
19 accredited not later than 1 year after rev-
20 ocation of accreditation under paragraph
21 (6)(A), through direct accreditation under
22 subsection (b)(1)(A)(ii) or by an accredita-
23 tion body in good standing; or

1 “(ii) under such conditions as the Sec-
2 retary may require for a third-party audi-
3 tor under paragraph (6)(B).

4 “(8) NEUTRALIZING COSTS.—The Secretary
5 shall establish by regulation a reimbursement (user
6 fee) program, similar to the method described in sec-
7 tion 203(h) of the Agriculture Marketing Act of
8 1946, by which the Secretary assesses fees and re-
9 quires accredited third-party auditors and audit
10 agents to reimburse the Food and Drug Administra-
11 tion for the work performed to establish and admin-
12 ister the accreditation system under this section.
13 The Secretary shall make operating this program
14 revenue-neutral and shall not generate surplus rev-
15 enue from such a reimbursement mechanism. Fees
16 authorized under this paragraph shall be collected
17 and available for obligation only to the extent and in
18 the amount provided in advance in appropriation
19 Acts. Such fees are authorized to remain available
20 until expended.

21 “(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—An
22 eligible entity shall apply for annual recertification by an
23 accredited third-party auditor if such entity—

24 “(1) intends to participate in voluntary quali-
25 fied importer program under section 806; or

1 “(2) is required to provide to the Secretary a
2 certification under section 801(q) for any food from
3 such entity.

4 “(e) FALSE STATEMENTS.—Any statement or rep-
5 resentation made—

6 “(1) by an employee or agent of an eligible enti-
7 ty to an accredited third-party auditor or audit
8 agent; or

9 “(2) by an accredited third-party auditor to the
10 Secretary,

11 shall be subject to section 1001 of title 18, United States
12 Code.

13 “(f) MONITORING.—To ensure compliance with the
14 requirements of this section, the Secretary shall—

15 “(1) periodically, or at least once every 4 years,
16 reevaluate the accreditation bodies described in sub-
17 section (b)(1);

18 “(2) periodically, or at least once every 4 years,
19 evaluate the performance of each accredited third-
20 party auditor, through the review of regulatory audit
21 reports by such auditors, the compliance history as
22 available of eligible entities certified by such audi-
23 tors, and any other measures deemed necessary by
24 the Secretary;

1 “(3) at any time, conduct an onsite audit of
2 any eligible entity certified by an accredited third-
3 party auditor, with or without the auditor present;
4 and

5 “(4) take any other measures deemed necessary
6 by the Secretary.

7 “(g) PUBLICLY AVAILABLE REGISTRY.—The Sec-
8 retary shall establish a publicly available registry of ac-
9 creditation bodies and of accredited third-party auditors,
10 including the name of, contact information for, and other
11 information deemed necessary by the Secretary about such
12 bodies and auditors.

13 “(h) LIMITATIONS.—

14 “(1) NO EFFECT ON SECTION 704 INSPEC-
15 TIONS.—The audits performed under this section
16 shall not be considered inspections under section
17 704.

18 “(2) NO EFFECT ON INSPECTION AUTHOR-
19 ITY.—Nothing in this section affects the authority of
20 the Secretary to inspect any eligible entity pursuant
21 to this Act.”.

22 **SEC. 6308. FOREIGN OFFICES OF THE FOOD AND DRUG AD-**
23 **MINISTRATION.**

24 “(a) IN GENERAL.—The Secretary shall establish of-
25 fices of the Food and Drug Administration in foreign

1 countries selected by the Secretary, to provide assistance
2 to the appropriate governmental entities of such countries
3 with respect to measures to provide for the safety of arti-
4 cles of food and other products regulated by the Food and
5 Drug Administration exported by such country to the
6 United States, including by directly conducting risk-based
7 inspections of such articles and supporting such inspec-
8 tions by such governmental entity.

9 (b) CONSULTATION.—In establishing the foreign of-
10 fices described in subsection (a), the Secretary shall con-
11 sult with the Secretary of State, the Secretary of Home-
12 land Security, and the United States Trade Representa-
13 tive.

14 (c) REPORT.—Not later than October 1, 2011, the
15 Secretary shall submit to Congress a report on the basis
16 for the selection by the Secretary of the foreign countries
17 in which the Secretary established offices, the progress
18 which such offices have made with respect to assisting the
19 governments of such countries in providing for the safety
20 of articles of food and other products regulated by the
21 Food and Drug Administration exported to the United
22 States, and the plans of the Secretary for establishing ad-
23 ditional foreign offices of the Food and Drug Administra-
24 tion, as appropriate.

1 **SEC. 6309. SMUGGLED FOOD.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 enactment of this Act, the Secretary shall, in coordination
4 with the Secretary of Homeland Security, develop and im-
5 plement a strategy to better identify smuggled food and
6 prevent entry of such food into the United States.

7 (b) NOTIFICATION TO HOMELAND SECURITY.—Not
8 later than 10 days after the Secretary identifies a smug-
9 gled food that the Secretary believes would cause serious
10 adverse health consequences or death to humans or ani-
11 mals, the Secretary shall provide to the Secretary of
12 Homeland Security a notification under section 417(n) of
13 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
14 350f(k)) describing the smuggled food and, if available,
15 the names of the individuals or entities that attempted to
16 import such food into the United States.

17 (c) PUBLIC NOTIFICATION.—If the Secretary—

18 (1) identifies a smuggled food;

19 (2) reasonably believes exposure to the food
20 would cause serious adverse health consequences or
21 death to humans or animals; and

22 (3) reasonably believes that the food has en-
23 tered domestic commerce and is likely to be con-
24 sumed,

25 the Secretary shall promptly issue a press release describ-
26 ing that food and shall use other emergency communica-

1 tion or recall networks, as appropriate, to warn consumers
2 and vendors about the potential threat.

3 (d) EFFECT OF SECTION.—Nothing in this section
4 shall affect the authority of the Secretary to issue public
5 notifications under other circumstances.

6 (e) DEFINITION.—In this subsection, the term
7 “smuggled food” means any food that a person introduces
8 into the United States through fraudulent means or with
9 the intent to defraud or mislead.

10 **TITLE IV—MISCELLANEOUS** 11 **PROVISIONS**

12 **SEC. 6401. FUNDING FOR FOOD SAFETY.**

13 (a) IN GENERAL.—There are authorized to be appro-
14 priated to carry out the activities of the Center for Food
15 Safety and Applied Nutrition, the Center for Veterinary
16 Medicine, and related field activities in the Office of Regu-
17 latory Affairs of the Food and Drug Administration such
18 sums as may be necessary for fiscal years 2011 through
19 2015.

20 (b) INCREASED NUMBER OF FIELD STAFF.—

21 (1) IN GENERAL.—To carry out the activities of
22 the Center for Food Safety and Applied Nutrition,
23 the Center for Veterinary Medicine, and related field
24 activities of the Office of Regulatory Affairs of the
25 Food and Drug Administration, the Secretary of

1 Health and Human Services shall increase the field
2 staff of such Centers and Office with a goal of not
3 fewer than—

4 (A) 4,000 staff members in fiscal year
5 2011;

6 (B) 4,200 staff members in fiscal year
7 2012;

8 (C) 4,600 staff members in fiscal year
9 2013; and

10 (D) 5,000 staff members in fiscal year
11 2014.

12 (2) FIELD STAFF FOR FOOD DEFENSE.—The
13 goal under paragraph (1) shall include an increase
14 of 150 employees by fiscal year 2011 to—

15 (A) provide additional detection of and re-
16 sponse to food defense threats; and

17 (B) detect, track, and remove smuggled
18 food (as defined in section 6309) from com-
19 merce.

20 **SEC. 6402. EMPLOYEE PROTECTIONS.**

21 Chapter X of the Federal Food, Drug, and Cosmetic
22 Act (21 U.S.C. 391 et seq.), as amended by section 6209,
23 is further amended by adding at the end the following:

1 **“SEC. 1013. EMPLOYEE PROTECTIONS.**

2 “(a) IN GENERAL.—No entity engaged in the manu-
3 facture, processing, packing, transporting, distribution, re-
4 ception, holding, or importation of food may discharge an
5 employee or otherwise discriminate against an employee
6 with respect to compensation, terms, conditions, or privi-
7 leges of employment because the employee, whether at the
8 employee’s initiative or in the ordinary course of the em-
9 ployee’s duties (or any person acting pursuant to a request
10 of the employee)—

11 “(1) provided, caused to be provided, or is
12 about to provide or cause to be provided to the em-
13 ployer, the Federal Government, or the attorney
14 general of a State information relating to any viola-
15 tion of, or any act or omission the employee reason-
16 ably believes to be a violation of any provision of this
17 Act or any order, rule, regulation, standard, or ban
18 under this Act, or any order, rule, regulation, stand-
19 ard, or ban under this Act;

20 “(2) testified or is about to testify in a pro-
21 ceeding concerning such violation;

22 “(3) assisted or participated or is about to as-
23 sist or participate in such a proceeding; or

24 “(4) objected to, or refused to participate in,
25 any activity, policy, practice, or assigned task that
26 the employee (or other such person) reasonably be-

1 lieved to be in violation of any provision of this Act,
2 or any order, rule, regulation, standard, or ban
3 under this Act.

4 “(b) PROCESS.—

5 “(1) IN GENERAL.—A person who believes that
6 he or she has been discharged or otherwise discrimi-
7 nated against by any person in violation of sub-
8 section (a) may, not later than 180 days after the
9 date on which such violation occurs, file (or have any
10 person file on his or her behalf) a complaint with the
11 Secretary of Labor (referred to in this section as the
12 ‘Secretary’) alleging such discharge or discrimina-
13 tion and identifying the person responsible for such
14 act. Upon receipt of such a complaint, the Secretary
15 shall notify, in writing, the person named in the
16 complaint of the filing of the complaint, of the alle-
17 gations contained in the complaint, of the substance
18 of evidence supporting the complaint, and of the op-
19 portunities that will be afforded to such person
20 under paragraph (2).

21 “(2) INVESTIGATION.—

22 “(A) IN GENERAL.—Not later than 60
23 days after the date of receipt of a complaint
24 filed under paragraph (1) and after affording
25 the complainant and the person named in the

1 complaint an opportunity to submit to the Sec-
2 retary a written response to the complaint and
3 an opportunity to meet with a representative of
4 the Secretary to present statements from wit-
5 nesses, the Secretary shall initiate an investiga-
6 tion and determine whether there is reasonable
7 cause to believe that the complaint has merit
8 and notify, in writing, the complainant and the
9 person alleged to have committed a violation of
10 subsection (a) of the Secretary's findings.

11 “(B) REASONABLE CAUSE FOUND; PRE-
12 LIMINARY ORDER.—If the Secretary concludes
13 that there is reasonable cause to believe that a
14 violation of subsection (a) has occurred, the
15 Secretary shall accompany the Secretary's find-
16 ings with a preliminary order providing the re-
17 lief prescribed by paragraph (3)(B). Not later
18 than 30 days after the date of notification of
19 findings under this paragraph, the person al-
20 leged to have committed the violation or the
21 complainant may file objections to the findings
22 or preliminary order, or both, and request a
23 hearing on the record. The filing of such objec-
24 tions shall not operate to stay any reinstatement
25 remedy contained in the preliminary

1 order. Any such hearing shall be conducted ex-
2 peditiously. If a hearing is not requested in
3 such 30-day period, the preliminary order shall
4 be deemed a final order that is not subject to
5 judicial review.

6 “(C) DISMISSAL OF COMPLAINT.—

7 “(i) STANDARD FOR COMPLAINANT.—

8 The Secretary shall dismiss a complaint
9 filed under this subsection and shall not
10 conduct an investigation otherwise required
11 under subparagraph (A) unless the com-
12 plainant makes a prima facie showing that
13 any behavior described in paragraphs (1)
14 through (4) of subsection (a) was a con-
15 tributing factor in the unfavorable per-
16 sonnel action alleged in the complaint.

17 “(ii) STANDARD FOR EMPLOYER.—

18 Notwithstanding a finding by the Secretary
19 that the complainant has made the show-
20 ing required under clause (i), no investiga-
21 tion otherwise required under subpara-
22 graph (A) shall be conducted if the em-
23 ployer demonstrates, by clear and con-
24 vincing evidence, that the employer would

1 have taken the same unfavorable personnel
2 action in the absence of that behavior.

3 “(iii) VIOLATION STANDARD.—The
4 Secretary may determine that a violation
5 of subsection (a) has occurred only if the
6 complainant demonstrates that any behav-
7 ior described in paragraphs (1) through
8 (4) of subsection (a) was a contributing
9 factor in the unfavorable personnel action
10 alleged in the complaint.

11 “(iv) RELIEF STANDARD.—Relief may
12 not be ordered under subparagraph (A) if
13 the employer demonstrates by clear and
14 convincing evidence that the employer
15 would have taken the same unfavorable
16 personnel action in the absence of that be-
17 havior.

18 “(3) FINAL ORDER.—

19 “(A) IN GENERAL.—Not later than 120
20 days after the date of conclusion of any hearing
21 under paragraph (2), the Secretary shall issue
22 a final order providing the relief prescribed by
23 this paragraph or denying the complaint. At
24 any time before issuance of a final order, a pro-
25 ceeding under this subsection may be termi-

1 nated on the basis of a settlement agreement
2 entered into by the Secretary, the complainant,
3 and the person alleged to have committed the
4 violation.

5 “(B) CONTENT OF ORDER.—If, in re-
6 sponse to a complaint filed under paragraph
7 (1), the Secretary determines that a violation of
8 subsection (a) has occurred, the Secretary shall
9 order the person who committed such viola-
10 tion—

11 “(i) to take affirmative action to
12 abate the violation;

13 “(ii) to reinstate the complainant to
14 his or her former position together with
15 compensation (including back pay) and re-
16 store the terms, conditions, and privileges
17 associated with his or her employment; and

18 “(iii) to provide compensatory dam-
19 ages to the complainant.

20 “(C) PENALTY.—If such an order is issued
21 under this paragraph, the Secretary, at the re-
22 quest of the complainant, shall assess against
23 the person against whom the order is issued a
24 sum equal to the aggregate amount of all costs
25 and expenses (including attorneys’ and expert

1 witness fees) reasonably incurred, as deter-
2 mined by the Secretary, by the complainant for,
3 or in connection with, the bringing of the com-
4 plaint upon which the order was issued.

5 “(D) BAD FAITH CLAIM.—If the Secretary
6 finds that a complaint under paragraph (1) is
7 frivolous or has been brought in bad faith, the
8 Secretary may award to the prevailing employer
9 a reasonable attorneys’ fee, not exceeding
10 \$1,000, to be paid by the complainant.

11 “(4) ACTION IN COURT.—

12 “(A) IN GENERAL.—If the Secretary has
13 not issued a final decision within 210 days after
14 the filing of the complaint, or within 90 days
15 after receiving a written determination, the
16 complainant may bring an action at law or eq-
17 uity for de novo review in the appropriate dis-
18 trict court of the United States with jurisdic-
19 tion, which shall have jurisdiction over such an
20 action without regard to the amount in con-
21 troversy, and which action shall, at the request
22 of either party to such action, be tried by the
23 court with a jury. The proceedings shall be gov-
24 erned by the same legal burdens of proof speci-
25 fied in paragraph (2)(C).

1 “(B) RELIEF.—The court shall have juris-
2 diction to grant all relief necessary to make the
3 employee whole, including injunctive relief and
4 compensatory damages, including—

5 “(i) reinstatement with the same se-
6 niority status that the employee would
7 have had, but for the discharge or dis-
8 crimination;

9 “(ii) the amount of back pay, with in-
10 terest; and

11 “(iii) compensation for any special
12 damages sustained as a result of the dis-
13 charge or discrimination, including litiga-
14 tion costs, expert witness fees, and reason-
15 able attorney’s fees.

16 “(5) REVIEW.—

17 “(A) IN GENERAL.—Unless the complain-
18 ant brings an action under paragraph (4), any
19 person adversely affected or aggrieved by a final
20 order issued under paragraph (3) may obtain
21 review of the order in the United States Court
22 of Appeals for the circuit in which the violation,
23 with respect to which the order was issued, al-
24 legedly occurred or the circuit in which the
25 complainant resided on the date of such viola-

1 tion. The petition for review must be filed not
2 later than 60 days after the date of the
3 issuance of the final order of the Secretary. Re-
4 view shall conform to chapter 7 of title 5,
5 United States Code. The commencement of pro-
6 ceedings under this subparagraph shall not, un-
7 less ordered by the court, operate as a stay of
8 the order.

9 “(B) NO JUDICIAL REVIEW.—An order of
10 the Secretary with respect to which review could
11 have been obtained under subparagraph (A)
12 shall not be subject to judicial review in any
13 criminal or other civil proceeding.

14 “(6) FAILURE TO COMPLY WITH ORDER.—
15 Whenever any person has failed to comply with an
16 order issued under paragraph (3), the Secretary may
17 file a civil action in the United States district court
18 for the district in which the violation was found to
19 occur, or in the United States district court for the
20 District of Columbia, to enforce such order. In ac-
21 tions brought under this paragraph, the district
22 courts shall have jurisdiction to grant all appropriate
23 relief including, but not limited to, injunctive relief
24 and compensatory damages.

1 “(7) CIVIL ACTION TO REQUIRE COMPLI-
2 ANCE.—

3 “(A) IN GENERAL.—A person on whose be-
4 half an order was issued under paragraph (3)
5 may commence a civil action against the person
6 to whom such order was issued to require com-
7 pliance with such order. The appropriate
8 United States district court shall have jurisdic-
9 tion, without regard to the amount in con-
10 troversy or the citizenship of the parties, to en-
11 force such order.

12 “(B) AWARD.—The court, in issuing any
13 final order under this paragraph, may award
14 costs of litigation (including reasonable attor-
15 neys’ and expert witness fees) to any party
16 whenever the court determines such award is
17 appropriate.

18 “(c) EFFECT OF SECTION.—

19 “(1) OTHER LAWS.—Nothing in this section
20 preempts or diminishes any other safeguards against
21 discrimination, demotion, discharge, suspension,
22 threats, harassment, reprimand, retaliation, or any
23 other manner of discrimination provided by Federal
24 or State law.

1 “(2) RIGHTS OF EMPLOYEES.—Nothing in this
2 section shall be construed to diminish the rights,
3 privileges, or remedies of any employee under any
4 Federal or State law or under any collective bar-
5 gaining agreement. The rights and remedies in this
6 section may not be waived by any agreement, policy,
7 form, or condition of employment.

8 “(d) ENFORCEMENT.—Any nondiscretionary duty
9 imposed by this section shall be enforceable in a man-
10 damus proceeding brought under section 1361 of title 28,
11 United States Code.

12 “(e) LIMITATION.—Subsection (a) shall not apply
13 with respect to an employee of an entity engaged in the
14 manufacture, processing, packing, transporting, distribu-
15 tion, reception, holding, or importation of food who, acting
16 without direction from such entity (or such entity’s agent),
17 deliberately causes a violation of any requirement relating
18 to any violation or alleged violation of any order, rule, reg-
19 ulation, standard, or ban under this Act.”.

20 **SEC. 6403. JURISDICTION; AUTHORITIES.**

21 Nothing in this Act, or an amendment made by this
22 Act, shall be construed to—

23 (1) alter the jurisdiction between the Secretary
24 of Agriculture and the Secretary of Health and
25 Human Services, under applicable statutes, regula-

1 tions, or agreements regarding voluntary inspection
2 of non-amenable species under the Agricultural Mar-
3 keting Act of 1946 (7 U.S.C. 1621 et seq.);

4 (2) alter the jurisdiction between the Alcohol
5 and Tobacco Tax and Trade Bureau and the Sec-
6 retary of Health and Human Services, under appli-
7 cable statutes and regulations;

8 (3) limit the authority of the Secretary of
9 Health and Human Services under—

10 (A) the Federal Food, Drug, and Cosmetic
11 Act (21 U.S.C. 301 et seq.) as in effect on the
12 day before the date of enactment of this Act; or

13 (B) the Public Health Service Act (42
14 U.S.C. 301 et seq.) as in effect on the day be-
15 fore the date of enactment of this Act;

16 (4) alter or limit the authority of the Secretary
17 of Agriculture under the laws administered by such
18 Secretary, including—

19 (A) the Federal Meat Inspection Act (21
20 U.S.C. 601 et seq.);

21 (B) the Poultry Products Inspection Act
22 (21 U.S.C. 451 et seq.);

23 (C) the Egg Products Inspection Act (21
24 U.S.C. 1031 et seq.);

1 (D) the United States Grain Standards
2 Act (7 U.S.C. 71 et seq.);

3 (E) the Packers and Stockyards Act, 1921
4 (7 U.S.C. 181 et seq.);

5 (F) the United States Warehouse Act (7
6 U.S.C. 241 et seq.);

7 (G) the Agricultural Marketing Act of
8 1946 (7 U.S.C. 1621 et seq.); and

9 (H) the Agricultural Adjustment Act (7
10 U.S.C. 601 et seq.), reenacted with the amend-
11 ments made by the Agricultural Marketing
12 Agreement Act of 1937; or

13 (5) alter, impede, or affect the authority of the
14 Secretary of Homeland Security under the Home-
15 land Security Act of 2002 (6 U.S.C. 101 et seq.) or
16 any other statute, including any authority related to
17 securing the borders of the United States, managing
18 ports of entry, or agricultural import and entry in-
19 spection activities.

20 **SEC. 6404. COMPLIANCE WITH INTERNATIONAL AGREE-**
21 **MENTS.**

22 Nothing in this Act (or an amendment made by this
23 Act) shall be construed in a manner inconsistent with the
24 agreement establishing the World Trade Organization or

1 any other treaty or international agreement to which the
2 United States is a party.

3 **SEC. 6405. DETERMINATION OF BUDGETARY EFFECTS.**

4 The budgetary effects of this Act, for the purpose of
5 complying with the Statutory Pay-As-You-Go-Act of 2010,
6 shall be determined by reference to the latest statement
7 titled “Budgetary Effects of PAYGO Legislation” for this
8 Act, jointly submitted for printing in the Congressional
9 Record by the Chairmen of the House and Senate Budget
10 Committees, provided that such statement has been sub-
11 mitted prior to the vote on passage in the House acting
12 first on this conference report or amendment between the
13 Houses.

