To protect the health and safety of individuals receiving smallpox vaccinations and to provide compensation and assured access to care for individuals injured by the vaccine, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Smallpox Vaccine Compensation and Safety Act of 2003”.
SEC. 2. SMALLPOX VACCINATIONS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

“TITLE XXIX—ADDITIONAL VACCINE PROVISIONS

“SEC. 2901. COVERED COUNTERMEASURE.

“For purposes of this title, the terms “covered countermeasure” and “covered countermeasure against smallpox” have the meanings given to those terms in section 224(p)(7)(A).

“SEC. 2902. GRANTS TO ASSIST STATE AND LOCAL GOVERNMENTS IN MEETING THE COSTS OF SMALLPOX INOCULATION PROGRAMS.

“(a) IN GENERAL.—

“(1) GRANTS.—For the purposes described in paragraph (2), the Secretary shall make an allotment each fiscal year for each State in an amount determined in accordance with subsection (e). The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(2) PURPOSES.—A funding agreement for a grant under this section is that the State involved
will expend the grant only for the following purposes:

“(A) Providing for the administration of covered countermeasures against smallpox.

“(B) Monitoring the health of individuals receiving covered countermeasures against smallpox or individuals in close contact with individuals receiving such countermeasures.

“(C) Providing for the conduct of epidemiological studies related to the administration of covered countermeasures against smallpox.

“(b) SUPPLEMENT NOT SUPPLANT.—A funding agreement for a grant under this section is that the State involved will use the grant to supplement and not supplant funds received from other sources for the purposes described in subsection (a).

“(c) LOCAL INVOLVEMENT.—A funding agreement for a grant under this section is that the State involved will ensure that a suitable portion of the amount received under the grant is expended at the local level.

“(d) REQUIREMENTS.—

“(1) IN GENERAL.—A funding agreement for a grant under this section is that the State involved will comply with the requirements of this subsection.

“(2) EDUCATION PROGRAM.—
“(A) Establishment.—Each State that receives a grant under this section shall establish an education program to provide to each individual to whom a covered countermeasure against smallpox is proposed to be administered an explanation of—

“(i) the screening and medical surveillance and evaluation programs available under paragraphs (3) and (4);

“(ii) the risks and benefits from administration of such countermeasure for such individuals and those individuals with whom they have close contact;

“(iii) the availability of the compensation program under section 224(q);

“(iv) the eligibility of the individual to receive health care as described in this Act;

“(v) the right of the individual to refuse the administration of any covered countermeasure against smallpox;

“(vi) the right of an individual who exercises the option described in clause (v) to be protected from disciplinary action under section 2903; and
“(vii) the general functions and duties that such individual may be expected to carry out if there is a smallpox outbreak.

“(B) EXPLANATIONS.—Explanations provided under subparagraph (A)—

“(i) shall be made available in a form that is easily read and understood;

“(ii) shall be provided, as appropriate, in languages other than English;

“(iii) shall be made available to those individuals who reside with individuals to whom such covered countermeasure is proposed to be administered and, as appropriate, to patients treated by individuals who have received a covered countermeasure; and

“(iv) shall be made available without charge or loss of wages or benefits to an individual to whom a covered countermeasure against smallpox is proposed to be administered and to the individuals described in clause (iii).

“(3) SCREENING PROGRAM.—

“(A) IN GENERAL.—Each State that receives a grant under this section shall, for each
individual to whom a covered countermeasure against smallpox is proposed to be administered—

“(i) provide without charge counseling services that describe conditions which may exacerbate the risks of receiving such countermeasure; and

“(ii) offer on a voluntary basis, screening and testing that can identify health conditions that can reasonably be expected to significantly increase risks to the health of such individual, including screening and testing for human immunodeficiency virus, eczema or other significant chronic skin irritation, pregnancy, and such other conditions as determined appropriate by the Secretary.

“(B) RESULTS.—The results or other information (including information concerning an individual’s refusal to be screened or tested) generated or obtained from the screening and testing described in subparagraph (A)—

“(i) shall be deemed protected health information under the meaning of the term in the regulations promulgated pursuant to
the authority of section 264(c) of the Health Insurance Portability and Accountability Act of 1996;

“(ii) shall not be made available to an employer; and

“(iii) shall be provided without charge to the individual receiving such screening and testing.

“(4) Medical surveillance and evaluation program.—If the Secretary declares vaccinia vaccine or any other measure to be a covered countermeasure under section 224(p), each State that receives a grant under this section shall ensure that an ongoing active medical surveillance and evaluation program is provided to all individuals to whom such countermeasure is administered and to the close contacts of such individuals. Such program shall—

“(A) be provided from the date that vaccinia vaccine or another covered countermeasure is administered to a date that is not less than 60 days from the date of administration;

“(B) include evaluation of any adverse health effect that may reasonably appear to be due to vaccinia vaccine or another covered
countermeasure and shall provide prompt med-
ical treatment or referral of any individual re-
quiring health care as a result of such adverse
health effect; and

“(C) be provided without charge to any in-
dividual to whom vaccinia vaccine or another
covered countermeasure is administered and to
the close contacts of such individuals.

“(5) NEEDLES.—If the Secretary declares
vaccinia vaccine to be a covered countermeasure
under section 224(p), each State that receives a
grant under this section shall ensure that for any
administration of such vaccine, the individual admin-
istering such vaccine shall use a sheathed bifurcated
needle—

“(A) to the extent that such needle is ap-
proved under the Federal Food, Drug, and Cos-
metic Act; and

“(B) to the extent that such sheathed bi-
furcated needle is available in such State.

“(e) FUNDING.—

“(1) AUTHORIZATION OF APPROPRIATIONS.—
For carrying out this section, there are authorized
to be appropriated $850,000,000 for fiscal year
2003 and such sums as may be necessary for each
subsequent fiscal year.

“(2) ALLOCATION.—From the amounts appro-
priated and available for allotment under this sub-
section for any fiscal year, the Secretary shall allot
to each State that submits an application in accord-
ance with subsection (a)(1) an amount that is the
greater of—

“(A) the base amount as determined under
paragraph (3); or

“(B) the minimum amount as determined
under paragraph (4).

“(3) BASE AMOUNT.—For each State receiving
an award under this section, the Secretary shall de-
determine the base amount, which shall be equal to the
product of—

“(A) the amount appropriated under this
subsection for the fiscal year, less an amount
equal to the sum of all minimum amounts de-
termined for the States under paragraph (4); and

“(B) the percentage constituted by the
ratio of an amount equal to the population of
the State over an amount equal to the total
population of the States (as indicated by the
most recent data collected by the Bureau of the Census).

“(4) MINIMUM AMOUNT.—For each State receiving an award under this subsection, the minimum amount is—

“(A) in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, an amount equal to the lesser of—

“(i) $5,000,000; or

“(ii) if the amount appropriated under this subsection is less than $667,000,000, an amount equal to 0.75 percent of the amount appropriated under this subsection; or

“(B) in the case of each of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands, an amount determined by the Secretary to be appropriate, except that such amount may not exceed the amount determined under subparagraph (A).

“SEC. 2903. PROTECTION FROM DISCIPLINARY ACTION.

“(a) FINDING.—The Congress finds that unlawful employment practices described in subsection (b) are det-
imental to the general public health and an interference
with the interstate control of infectious disease.

“(b) In General.—It shall be an unlawful employ-
ment practice for an employer—

“(1) to fail or refuse to hire or to discharge any
individual, or otherwise to discriminate against any
individual with respect to the compensation, terms,
conditions, or privileges of employment of the indi-
vidual, because of a refusal or inability to receive the
administration of a covered countermeasure against
smallpox or because of an adverse reaction or reac-
tions to such countermeasure; or

“(2) subject to subsection (c), to limit, seg-
regate, or classify the employees of the employer in
any way that would deprive or tend to deprive any
individual of employment opportunities or otherwise
adversely affect the status of the individual as an
employee, because of a refusal or inability to receive
a covered countermeasure against smallpox or be-
cause of an adverse reaction or reactions to such
countermeasure.

“(c) Exception.—

“(1) In General.—This section does not pro-
hibit an employer from limiting, segregating, or
classifying for a period of 30 days or less an em-
ployee to whom a covered countermeasure against smallpox has been administered for the purpose of protecting the close contacts (including patients) of such employee.

“(2) Regular wages and benefits required.—Nothing in paragraph (1) shall be construed to permit an employer to reduce the wages or benefits of an employee because a covered countermeasure against smallpox has been administered to such employee.

“(d) Definitions of Employee and Employer.—The terms ‘employee’ and ‘employer’ have the meanings given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e), except that the terms ‘employee’ and ‘employer’ shall also include the meanings given such terms in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16).

“(e) Filing Complaints and Procedures.—

“(1) Complaint.—

“(A) In general.—Not later than 180 days after an alleged violation of subsection (b) has occurred, the employee alleging such violation or another individual at the employee’s request, may file a complaint with the Secretary.
“(B) NOTICE.—Not later than 15 days after receipt of a complaint described in subparagraph (A), the Secretary shall notify the employer alleged in the complaint to have committed a violation of subsection (b) of the filing of such complaint.

“(2) FINDINGS AND PRELIMINARY ORDER.—

“(A) IN GENERAL.—Not later than 60 days after receiving a complaint described in paragraph (1), the Secretary shall—

“(i) conduct an investigation of the matters alleged in the complaint;

“(ii) determine whether it is reasonable to believe that the complaint has merit; and

“(iii) notify the complainant and the employer alleged to have committed the violation of subsection (b) of the determination.

“(B) REASONABLE BELIEF THAT A VIOLATION HAS OCCURRED.—If the Secretary determines pursuant to subparagraph (A) that it is reasonable to believe that a violation of subsection (b) has occurred, the Secretary shall include with the notice under such subparagraph
findings and a preliminary order for the relief provided under paragraph (3).

“(C) OBJECTIONS.—

“(i) IN GENERAL.—Not later than 30 days after receipt of the notice under subparagraph (A), the complainant and the employer alleged to have committed the violation of subsection (b) may file objections to the findings or the preliminary order and request a hearing on the record.

“(ii) REINSTATEMENT.—The filing of objections under clause (i) does not stay a reinstatement ordered in the preliminary order.

“(iii) FAILURE TO OBJECT.—If a hearing is not requested pursuant to the requirements of clause (i), the preliminary order is final and not subject to judicial review.

“(D) HEARINGS AND FINAL ORDER.—

“(i) HEARINGS.—A hearing under this subsection shall be conducted expeditiously.

“(ii) FINAL ORDER.—Not later that 120 days after the end of a hearing under
this subsection, the Secretary shall issue a final order.

“(iii) SETTLEMENT.—At any time prior to the issuance of a final order, any further action under this subsection may be ended by a settlement agreement made by the complainant and the employer alleged to have committed the violation of subsection (b), and approved by the Secretary.

“(3) RELIEF.—

“(A) IN GENERAL.—If the Secretary determines on the basis of a complaint, that an employer violated subsection (b) of this section, the Secretary shall order such employer to provide relief including—

“(i) taking affirmative action to abate the violation;

“(ii) reinstating the complainant to the former position with the same pay and terms and privileges of employment; and

“(iii) paying compensatory damages, including back pay.

“(B) COSTS INCURRED IN BRINGING A COMPLAINT.—If the Secretary issues an order
under subparagraph (A), and the complainant
so requests, the Secretary may order that the
employer who violated subsection (b) pay the
costs (including attorney’s fees) reasonably in-
curred by the complainant in bringing the com-
plaint, as determined by the Secretary.

“(f) JUDICIAL REVIEW AND VENUE.—

“(1) IN GENERAL.—Not later than 60 days
after an order has been issued under subsection (e),
a party adversely affected by such order may file a
petition for review in the United States circuit court
for the circuit in which the violation occurred or in
which the party resided on the date of the violation.

“(2) REVIEW.—A review conducted pursuant to
this subsection shall be heard and decided expedi-
tiously.

“(3) REVIEW IN OTHER PROCEEDINGS.—An
order of the Secretary subject to review under this
subsection is not subject to judicial review in a
criminal or other civil proceeding.

“(g) CIVIL ACTIONS TO ENFORCE.—If an employer
fails to comply with an order issued under subsection (e),
the Secretary shall bring a civil action to enforce such
order in the United States district court for the district
in which the violation occurred.
SEC. 2904. MEDICAL LEAVE FOR CERTAIN VACCINE RECEPIENTS.

(a) IN GENERAL.—In accordance with regulations promulgated by the Secretary, an employee (as defined in section 3 of the Fair Labor Standards Act of 1938) shall be entitled to a total of not more than 4 workdays of paid leave because of a health condition that makes the employee unable to perform the functions of the position of such employee that arose as a result of the employee having received or come into close contact with an individual who received a covered countermeasure against smallpox.

(b) APPLICATION OF CERTAIN PROVISIONS.—Leave shall be provided under subsection (a) in accordance with the provisions of the Family and Medical Leave Act of 1993 except that—

(1) such leave shall be provided for a condition described in subsection (a) regardless of whether such condition requires inpatient care or continuing treatment;

(2) such leave shall be fully paid; and

(3) this section shall apply to all employers regardless of size.

(c) REIMBURSEMENT FROM THE PROGRAM.—

(1) NON-FEDERAL EMPLOYEES.—Any employer, other than a Federal agency, that provides paid leave to an employee for the reasons described
in subsection (a) may seek reimbursement for such leave from the compensation program under section 224(q).

“(2) FEDERAL EMPLOYEES.—A Federal agency that provides leave under this section shall treat such leave as paid administrative leave.

“SEC. 2905. RESPONSIBILITIES OF THE SECRETARY.

“(a) SUPPLIES OF VACCINIA IMMUNE GLOBULIN.—If the Secretary declares vaccinia vaccine to be a covered countermeasure under section 224(p), the Secretary shall ensure that adequate supplies of vaccinia immune globulin are made available to any individual to whom vaccinia vaccine is administered during the period of such declaration.

“(b) UNIFORM SYSTEM OF REPORTING.—

“(1) IN GENERAL.—The Secretary shall establish a uniform system for reporting adverse responses to any covered countermeasure against smallpox to the Secretary.

“(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act and every year in which covered countermeasures against smallpox are administered, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representa-
tives, a report that describes for the preceding year—

“(A) the number of individuals to whom a covered countermeasure against smallpox was administered; and

“(B) the number and kind of adverse reactions caused by the administration of a covered countermeasure against smallpox.

SEC. 2906. PROVISION OF NEEDLES.

“The Director of the Centers for Disease Control and Prevention shall provide needles to States that receive a grant under section 2902 for the purpose of administering vaccinia vaccine in accordance with section 2902(d)(5).”.

SEC. 3. HEALTH CARE FOR HEALTH CARE WORKERS AND FIRST RESPONDERS SUFFERING ADVERSE REACTIONS OR COMPLICATIONS FROM SMALLPOX VACCINE; CONTINUED INSURANCE COVERAGE.

(a) Payments for Provision of Medical Assistance.—Title XXIX of the Public Health Service Act (as added by section 2) is amended by adding at the end the following:
“SEC. 2907. HEALTH CARE FOR INDIVIDUALS SUFFERING
ADVERSE REACTIONS OR COMPLICATIONS
FROM SMALLPOX VACCINE.

“(a) PAYMENT.—

“(1) IN GENERAL.—The Secretary shall pay to
each State with an agreement described in sub-
section (b) an amount equal to the costs incurred by
that State to provide medical assistance described in
subsection (b)(1), subject to paragraph (2).

“(2) LIMITATION ON PAYMENT.—The Secretary
shall not make any payment under paragraph (1)
for costs for medical assistance insofar as such costs
may reasonably be reimbursed from a third party
under the terms of the agreement described in sub-
section (b)(2). Any payment under this section to a
State with respect to medical assistance shall be con-
ditioned on reimbursement to the Secretary when
notice or other information is received that payment
for such medical assistance has been or could be
made by a third party under subsection (b)(2).

“(b) AGREEMENT.—An agreement described in this
subsection is an agreement between a State and the Sec-
retary in which the State—

“(1) agrees to provide such medical assistance
as may be medically necessary to—
“(A) any health care worker or first responder who—

“(i) has suffered any adverse reaction or complication as a result of a covered countermeasure against smallpox or exposure to vaccinia virus or any other substance administered for the prevention or treatment of smallpox; and

“(ii) has not received compensation under the National Smallpox Vaccine Injury Compensation Program established under section 224; and

“(B) any individual who—

“(i) has suffered any adverse reaction or complication as a result of contact with another person who received a covered countermeasure; and

“(ii) has not received compensation under the National Smallpox Vaccine Injury Compensation Program established under section 224; and

“(2) agrees to take all reasonable measures to obtain reimbursement for the costs of providing such assistance from any third party (including health in-
surers and group health plans (as defined in section 2791) with responsibility for such costs.

“(c) State Entitlement.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided under this section.

“(d) Rule of Construction.—

“(1) Insurance Coverage.—Nothing in this section shall be construed to invalidate or otherwise abridge any provision of law or any contractual obligation that otherwise obligates a health insurance issuer to provide reimbursement or otherwise defray the cost to an individual of health care needed to treat the health consequences of the administration of or exposure to a covered countermeasure against smallpox or exposure to vaccinia virus.

“(2) Health Care Facilities.—Nothing in this section shall be construed to invalidate or otherwise abridge any provision of law or any contractual obligation that otherwise obligates a health care facility to provide health care or other health services to an individual that are needed to treat the health consequences of the administration of a covered
countermeasure against smallpox or exposure to vaccinia virus.

“(3) EMPLOYERS.—Nothing in this section shall be construed to invalidate or otherwise abridge any provision of law or any contractual obligation that otherwise obligates an employer to provide leave, wages, vacation time, or any other benefit to an individual.

“(4) STATE OR LOCAL GOVERNMENTS.—Nothing in this section shall be construed to invalidate or otherwise abridge any provision of law or any contractual obligation that otherwise obligates a State or local government to provide health care, workers’ compensation, or any other benefit to an individual.

“(e) AUTHORIZING UTILIZATION OF MEDICAID IN PROVIDING MEDICAL ASSISTANCE.—Nothing in this section shall be construed to prevent a State from utilizing its medicaid program under title XIX of the Social Security Act in order to provide medical assistance under this section. The Secretary shall waive such provisions of such Act as are necessary to permit a State to so utilize such program under this subsection.”.

(b) CONTINUED COVERAGE OF BENEFITS FOR SMALLPOX VACCINE SIDE EFFECTS.—
(1) **State maintained plans.**—Section 2907 of the Public Health Service Act (as added by subsection (a)) is amended by adding at the end the following:

“(f) **Continued coverage of benefits for smallpox vaccine side effects.**—

“(1) **In general.**—In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this Act, by any political subdivision of such State, or by any agency or instrumentality of such State or political subdivision, shall provide coverage of benefits for side effects resulting from covered countermeasures against smallpox at the level of such coverage it provided as of September 10, 2001.

“(2) **Enforcement.**—For purposes of section 2207, the requirement of paragraph (1) is deemed a requirement of title XXII.”.

(2) **Private plans.**—

(A) **Amendment to tax code.**—

(i) **In general.**—Paragraph (1) of section 4980B(f) of the Internal Revenue Code of 1986 is amended by inserting before the period at the end the following: “,
and (C) only if the coverage of the side effects from covered countermeasures against smallpox (as such term is defined in section 224(p) of the Public Health Service Act) is not less than the level of coverage provided by the plan as of September 10, 2001”.

(ii) **Conforming Amendments.**—Section 4980B(f)(1) of such Code is amended—

(I) by inserting “(A)” before “only if” the first place it appears, and

(II) by striking “and only if” and inserting “, (B) only if”.

(iii) **Effective Date.**—The amendments made by this section shall apply to covered countermeasures against smallpox taken after the date of the enactment of this Act.

(B) **Amendment to ERISA.**—Section 609 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169) is amended—
(i) by redesignating subsection (c) as
subsection (f); and
(ii) by inserting after subsection (d)
the following:
“(e) CONTINUED COVERAGE OF BENEFITS FOR
SMALLPOX VACCINE SIDE EFFECTS.—A group health
plan shall provide coverage of the side effects from covered
countermeasures against smallpox (as such term is defined
in section 224(p) of the Public Health Service Act) at the
level of coverage provided by the plan as of September 10,
2001.”.

SEC. 4. NATIONAL SMALLPOX VACCINE INJURY COMPENSA-
TION PROGRAM.

(a) ESTABLISHMENT.—Section 224 of the Public
Health Service Act (42 U.S.C. 233), as amended by sec-
tion 304(e) of Public Law 107–296 (116 Stat. 2135), is
amended by adding at the end the following:
“(q) NATIONAL SMALLPOX VACCINE INJURY COM-
pensation Program.—
“(1) ESTABLISHMENT.—The Secretary shall es-


ministration of any covered countermeasure against smallpox.

“(2) PROCEDURES AND STANDARDS.—The Secretary shall by regulation establish procedures and standards applicable to the Smallpox Program that follow the procedures and standards applicable under the National Vaccine Injury Compensation Program established under section 2110, except for the following:

“(A) A person may not file a civil action under subsection (p) unless the person has first filed a petition for compensation under the Smallpox Program under section 2111.

“(B) After filing a petition under section 2111, a person may elect to instead bring a civil action under subsection (p) if the person would be authorized under clause (i) or (ii) of section 2111(a)(2)(A) and under section 2121 to elect to bring a civil action.

“(C) Notwithstanding section 2111(c)(1)(A), a person who did not receive a covered countermeasure against smallpox or any other substance administered for the prevention or treatment of smallpox (including vaccinia virus) may receive compensation under
the Smallpox Program if the person was injured as a result of contact with another person who received such a countermeasure or substance.

“(D) Section 2111(c)(1)(D) (requiring petitioner to demonstrate death, residual effects for more than 6 months, or inpatient hospitalization and surgical intervention) shall not apply.

“(E) Notwithstanding section 2115(a)(2), in the event of a death related to the administration of vaccinia virus or other substance or medication administered for the purpose of preventing or treating smallpox (including any covered countermeasure against smallpox), compensation under the Smallpox Program shall include an award for the estate of the deceased of $850,000, in addition to any other compensation to which the petitioner is entitled under this section.

“(3) VACCINE INJURY TABLE.—

“(A) INCLUSION.—For purposes of receiving compensation under the Smallpox Program, the Vaccine Injury Table under section 2114 is deemed to include the following table of injuries, disabilities, illnesses, conditions, and
deaths resulting from the administration of the smallpox vaccine, and the time period in which the first symptom or manifestation of onset or of significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after administration of vaccinia virus or other substance or medication administered for the purpose of preventing or treating smallpox (including a covered countermeasure against smallpox):

"Adverse event:

A. Anaphylaxis or anaphylactic shock ........ any
B. Eczema vaccinatum (including in a contact case) ....................... 0–4 hours
C. Accidental inoculation (including in a contact case) ..................... any
D. Progressive vaccinia .................... any
E. Encephalopathy (or encephalitis) .. 0–21 days
F. Stevens-Johnson syndrome .......... 3–21 days
G. Generalized vaccinia ................... 0–60 days
H. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed .. Not applicable

"(B) RULE OF CONSTRUCTION.—Section 13632 (a)(3) of Public Law 103–66 (107 Stat. 646) (making revisions by Secretary to the Vaccine Injury Table effective on the effective date of a corresponding tax) shall not be construed to apply to the revision to the Vaccine Injury Table made by this paragraph.
“(4) Prohibition.—The Secretary may not provide any compensation under the Smallpox Program for any minor scarring or minor local reaction.

“(5) Application.—The Smallpox Program applies to any injury or death associated with the administration of any covered countermeasure on or after November 25, 2002.

“(6) Reimbursement.—Notwithstanding paragraph (4), the Secretary may reimburse under this section an employer who seeks reimbursement pursuant to section 2904.

“(7) Special masters.—

“(A) Hiring.—In accordance with section 2112, the judges of the United States Claims Court shall appoint a sufficient number of special masters to address claims for compensation under this subsection.

“(B) Budget authority.—There are appropriated to carry out this paragraph such sums as may be necessary for fiscal year 2003 and each fiscal year thereafter. This subparagraph constitutes budget authority in advance of appropriations and represents the obligation of the Federal Government.
“(8) COVERED COUNTERMEASURE.—For purposes of this subsection, the terms ‘covered countermeasure’ and ‘covered countermeasure against smallpox’ have the meanings given to those terms in subsection (p)(7)(A).

“(9) FUNDING.—Compensation made under the Smallpox Program shall be made from the same source of funds as payments made under subsection (p).”.

(b) RELATION TO FEDERAL TORT CLAIMS ACT.— Paragraph (3) of section 224(p) of the Public Health Service Act (42 U.S.C. 233(p)) is amended to read as follows:

“(3) EXHAUSTION; EXCLUSIVITY.—

“(A) NATIONAL SMALLPOX VACCINE INJURY COMPENSATION PROGRAM.—A person may not bring a claim under this subsection unless the person has first filed a petition for compensation under the program established under subsection (q) and made a proper election under sections 2111(a)(2)(A) and 2121.

“(B) EXCLUSIVITY.—Except for filing a petition for compensation under the program established under subsection (q), the remedy provided by subsection (a) shall be exclusive of
any other civil action or proceeding for any claim or suit this subsection encompasses, during the effective period of a declaration by the Secretary under paragraph (2)(A).”.

(c) Persons Susceptible to Vaccine-Related Injury.—Subsection (b) of section 2114 of the Public Health Service Act (42 U.S.C. 300aa–14) is amended by adding at the end the following:

“(5) A petitioner shall be considered to have suffered an injury related to the administration of a covered countermeasure even if the petitioner might not have suffered the injury absent an infection, disease, or other condition that made him or her more susceptible to the injury.”.

SEC. 5. TECHNICAL MODIFICATION.

(a) Circumstances in Which Presumption in Cases of Accidental Vaccinia Inoculation Applies.—Section 224(p)(2)(C)(ii)(II) of the Public Health Service Act (42 U.S.C. 233(p)(2)(C)(ii)(II)) is amended by striking “resides or has resided with” and inserting “has had close contact with”.

(b) Covered Countermeasure.—Subparagraph (A) of section 224(p)(7) of the Public Health Service Act (42 U.S.C. 233(p)(7)(A)) is amended to read as follows:
“(A) COVERED COUNTERMEASURE.—The term ‘covered countermeasure’, or ‘covered countermeasure against smallpox’, means a substance specified in a declaration under paragraph (2) that is—

“(i) a substance used to prevent or treat smallpox (including vaccinia or another vaccine); or

“(ii) a substance (including vaccinia immune globulin and cidofovir) used to control or treat the adverse effects of vaccinia inoculation or administration of any other countermeasure against smallpox.”.

(c) COVERED PERSON.—Section 224(p)(7)(B)(ii) of the Public Health Service Act (42 U.S.C. 233(p)(7)(B)(ii)) is amended to read as follows:

“(ii) a health care entity, a State, or a political subdivision of a State under whose auspices such countermeasure was administered;’’.

(d) EFFECTIVE DATE.—This section shall take effect as of November 25, 2002 (the date of enactment of the