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Senate

HOMELAND SECURITY ACT OF 2002—Continued

THE SAFETY ACT

Mr. CHAFEE. Madam President, I would like to thank the Republican Leader for his willingness to address concerns raised by me and our colleagues from Maine regarding certain provisions in H.R. 5005, the Homeland Security Act of 2002.

In the interests of clarity, I wanted to discuss one aspect of the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act of 2002, which is included in H.R. 5005. The SAFETY Act provides that the ''government contractor defense'' will be available to certain sellers of anti-terrorism technology. In *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 108 S. Ct. 2510 (1988), the U.S. Supreme Court recognized that the government contractor defense offers relief to certain defendants from liability for design defects. It is my understanding that the drafters of the SAFETY Act were aware of the Boyle decision and intended for the government contractor defense to apply solely to design defect claims, rather than offering blanket relief to any and all causes of action.

Mr. LOTT. I concur with the Senator from Rhode Island. It is clear that the government contractor defense contained in the SAFETY Act could be raised only in response to design defect claims.

Mr. CHAFEE. I thank the Republican Leader, and look forward to the opportunity to correct three other provisions of the Homeland Security Act when the 108th Congress convenes in January.

FIRST RESPONDERS

Mr. DAYTON. Madam President, I would like to speak about a very important first responder matter which, I hope, the Senate will include in the Homeland Security Act of 2002.

By definition, emergency management usually occurs in crisis. The incident managers must assess the emergency, organize the staff, and direct their responses under very difficult conditions. Currently, however, many first responders are not fully prepared for attacks like September 11, 2001.

NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman.*

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The Homeland Security Act of 2002 includes provisions to improve the preparedness of emergency response providers. It is also designed to improve the Federal Government's response to terrorist attacks and other major disasters.

To date, however, most of the homeland security training and consulting contracts have been awarded to Fortune 500 companies. Postsecondary educational institutions have been left out of the process. It is essential that our country's colleges and universities also collaborate on the design of homeland defense-integrated emergency management and training systems. Demonstration programs should train first responders to use new technologies that would reduce the devastations from terrorist attacks. They can integrate these technologies into management procedures that will improve accountability, command, and control. The results of those demonstration programs could then be disseminated nationwide.

Am I correct to assume that funding for colleges and universities to develop homeland defense-integrated emergency management and training systems could be provided through provisions in the Homeland Security Act of 2002?

Mr. LIEBERMAN. I will request that the new Secretary of the Homeland Security Department give attention to the concerns about emergency management raised by the Senator from Minnesota, and I hope that homeland defense-integrated emergency management and training systems will be given due consideration for funding through grants from the extramural programs.

Mr. DAYTON. I thank the Senator for his consideration and support.

BACKGROUND CHECKS FOR TRUCK DRIVERS

Mr. McCAIN. Madam President, last November, Congress included a provision in section 1012 of the USA Patriot Act, P.L. 107–56, which requires all commercial truck drivers who haul hazardous materials to undergo a background records check before receiving or renewing their Commercial Driver's License, CDL, endorsement to haul hazmat. Unfortunately, over a year has passed and regulations to promulgate this requirement have not been issued.

Mr. HOLLINGS. I want to associate myself with the concerns raised by my colleague. This is a very important issue to both of us. In fact, we worked together in a bipartisan fashion on S. 1750, the Hazmat Endorsements Requirements Act, which would clarify existing law and guide the process for administering the checks. The Senate Commerce Committee approved S. 1750 in April without objection. However, the Senate has not taken up this legislation, nor has the Department of Transportation issued a rulemaking to implement Section 1012.

Last week, we took an important step forward in addressing Port and Maritime Security when we passed S. 1214. That important measure includes requirements for background records checks for many port workers, and clarifies that if a driver holds a valid CDL with a hazardous materials endorsement obtained after a background records check, the driver would not need to have a duplicative check to access secure port areas. Unfortunately these checks are not being performed and it is unlikely that will change until the DOT issues a rule or the Congress approves legislation to address concerns regarding the hazmat endorsement background records check requirements enacted last year.

Mr. McCAIN. That is correct. We have not fully addressed the issue of background checks for commercial drivers and more work remains.

Mr. HOLLINGS. I hope we can continue our bipartisan work on this important issue early next year to ensure the requirements in the USA Patriot Act will be carried out and that truck drivers are afforded a right to a formal appeals process.

Mr. McCAIN. I agree that the issue must be addressed. In the absence of any regulatory action by DOT, I will certainly want to continue our joint efforts to provide the appropriate guidance to DOT and the states on this important security matter.

Mr. HOLLINGS. I thank my colleague and look forward to working with him on this issue during the next Congress.

AGRICULTURAL PROVISIONS

Mr. HARKIN. Madam President, as Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I want to enter into a colloquy with the ranking minority member of the Committee, Senator LUGAR, regarding the agricultural provisions in the compromise homeland security legislation.

Mr. LUGAR. I am pleased to join with my colleague to discuss some of the agricultural provisions in this legislation. A provision in Section 421 dealing with the transfer of certain agricultural inspections from the U.S. Department of Agriculture—USDA—to the new Department of Homeland Security—DHS—needs clarification. This section requires that USDA and DHS enter into a transfer agreement and stipulates that the agreement shall address USDA supervision of training of employees who will be carrying out agricultural inspection functions at the new DHS and the transfer of funds from USDA to the new DHS. We want to make clear that we expect that the transfer agreement shall include these components and that USDA will be responsible for agricultural inspection training and that appropriate funds would be transferred from USDA to the new DHS.

Mr. HARKIN. I agree with your interpretation of that provision. I also want to provide additional explanation about a section that originated from our mutual concern about the safety of food that enters our country. Like you, I have been concerned that agencies that inspect foods and food products that come through our borders do not have the ability to share information in order to jointly track shipment and other crucial information. As a result, we crafted a provision, now included in this legislation, to ensure that information systems—i.e., computers—will be coordinated across agencies with border security responsibilities. This includes agencies that will be housed in the new DHS as well as those like the Food and Drug Administration and the Food Safety Inspection Service—that will not, but have a homeland security function.

Mr. LUGAR. That is an important provision in this legislation. I also want to clarify a provision related to the transfer of the Plum Island Animal Disease Center from USDA to the new DHS. Due to a technical error, there appears to be a contradiction between Section 303(3) and Section 310 of the House passed bill. The intent of this bill is to transfer the assets and liabilities of this center, which is now part of USDA, but not the USDA personnel or functions. While I am fairly confident this technical error will yet be rectified, in implementing this new law, I would expect that the language in Section 310 would govern.

Mr. HARKIN. Thank you for that clarification. Finally, we are aware that the Chairman and ranking minority member of the House Agriculture Committee, during consideration of this legislation in the House, entered into the RECORD their understanding of how these agricultural provisions would be implemented. While I question whether or not it is necessary to transfer Plum Island to the new DHS at this time, I concur with the House's interpretation of the provisions that are included.

Mr. LUGAR. I also concur with their interpretation which follows and would expect that these agricultural provisions be carried out consistent with this description. I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture. Transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security and requires the Secretary of Agriculture and the Secretary of Homeland Security, upon completion of the transfer, to enter into an agreement providing for continued access by USDA for research, diagnostic and other programs.

The Committee recognizes the critical importance of the Plum Island Animal Disease Center to the safety and security of animal agriculture in the United States. The Committee expects that the transfer of this foreign animal disease facility to the new DHS shall be completed in a manner that minimizes any disruption of agricultural research, diagnostic or other USDA activities. Likewise, the Committee expects that funds that have and continue to be appropriated for the maintenance, upgrade, or replacement of agricultural research, diagnostic and

training facilities at the Plum Island Animal Disease Center shall continue to be expended for those purposes.

The Committee shares the goal of expanding the capabilities of the Plum Island Animal Disease Center. Likewise, the Committee supports the accompanying goal of building agro-terrorism prevention capabilities within the new DHS. With this in mind, the Committee fully expects that in the absence of alternative facilities for current USDA activities, the Secretary of Homeland Security shall make every possible effort to expand and enhance agricultural activities related to foreign animal diseases at the Plum Island Animal Disease Center.

Sec. 421. Transfer of Certain Agricultural Inspection Functions of the Department of Agriculture.

(a) Transfers to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities.

The Committee is aware that the Agricultural Quarantine and Inspection Program of the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) conducts numerous activities with respect to both domestic and international commerce in order to protect the health of agriculturally important animals and plants within the United States. Within the new DHS will be created a mission area of Border and Transportation Security. In order that the new streamlined border security program operates efficiently, the Committee has transferred to the new DHS the responsibility for certain agricultural import and entry inspection activities of the USDA conducted at points of entry. This transfer will include the inspection of arriving passengers, luggage, cargo and means of conveyance into the United States to the Under Secretary for Border and Transportation Security. In addition to inspection at points of entry into the United States, responsibility for inspections of passengers, luggage and their means of conveyance, at points of departure outside the United States, where agreements exist for such purposes, shall be the responsibility of the Secretary of Homeland Security. The provision allows the Secretary of Homeland Security to exercise authorities related to import and entry inspection functions transferred including conducting warrantless inspections at the border, collecting samples, holding and seizing articles that are imported into the United States in violation of applicable laws and regulations, and assessing and collecting civil penalties at the border. The Committee intends that USDA will retain the responsibility for all other activities of the Agricultural Quarantine and Inspection Program regarding imports including pre-clearance of commodities, trade protocol verification activities, fumigation activities, quarantine, diagnosis, eradication and indemnification, as well as other sanitary and phytosanitary measures. All functions regarding exports, interstate and intrastate activities will remain at USDA.

(b) Delineates the laws governing agricultural import and entry inspection activities that are covered by the transfer of authorities.

The Committee is aware that the authority to inspect passengers, cargo, and their means of conveyance coming into the United States is derived from numerous statutes that date back, in some cases, more than 100 years. The Committee does not intend that the reference to these statutes should be construed to provide any authority to the Secretary of Homeland Security beyond the responsibility to carry out inspections (including pre-clearance inspections of passengers, luggage and their means of conveyance in such countries where agreements exist for such purposes) and enforce the regulations of USDA at points of entry into the United States.

(c) Excludes quarantine activities from the term ''functions'' as defined by this Act for the purposes of this section.

While agricultural inspection functions, as well as those related administrative and enforcement functions, shall be transferred and become the responsibility of the Secretary of Homeland Security, the legislation retains all functions related to quarantine activities and quarantine facilities within USDA. Although the Committee has excluded quarantine activities from those functions transferred to the new DHS, the Committee does not intend to preclude the Secretary of Homeland Security from taking actions related to inspection functions, such as seizure or holding of plant or animal materials entering the United States. These authorities fall within the purview of inspection related enforcement functions that shall be transferred to the Secretary of Homeland Security.

(d) Requires that the authority transferred to the Secretary of Homeland Security shall be exercised in accordance with the regulations, policies and procedures issued by the Secretary of Agriculture; requires the Secretary of Agriculture to coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the covered laws related to the functions transferred under subsection (a); provides that the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue guidelines and directives to ensure the effective use of personnel of the Department of Homeland Security to carry out the transferred functions.

One intention of this legislation is to create a streamlined Border and Transportation Security program at points of entry into the United States. With regard to the protection of animal and plant health, the Committee does not intend or expect the new DHS to make the determination of what animals, plants, animal or plant products, soils, or other biological materials present an unacceptable risk to the agriculture of the United States. Policies and procedures regarding actions necessary to detect and prevent such unacceptable risks shall remain the responsibility of the Secretary of Agriculture. Likewise, policies and regulations defining restrictions on movement into the United States of substances that would pose a threat to agriculture shall continue to be the responsibility of the Secretary of Agriculture.

The Committee has provided authority for the Secretary of Homeland Security to issue directives and guidelines in consultation with the Secretary of Agriculture in order to efficiently manage inspection resources. When exercising this authority, the Committee expects that the agricultural inspection function at points of entry into the United States shall not be diminished, and as a result, the Committee expects that Secretary of Homeland Security shall ensure that necessary resources are dedicated to carrying out the agricultural inspection functions transferred from the Department of Agriculture.

(e) Requires the Secretary of Agriculture and the Secretary of Homeland Security to enter into an agreement to effectuate the transfer of functions. The agreement must address the training of employees and the transfer of funds. In addition, the agreement may include authority for the Secretary of Homeland Security to perform functions delegated to APHIS for the protection of domestic livestock and plants, as well as authority for the Secretary of Agriculture to use employees of the new DHS to carry out APHIS functions.

The Committee is aware of the unique nature and the specialized training necessary for effective and efficient border inspection activities carried out by the Agricultural Quarantine and Inspection Program. The Committee expects that the training of personnel and detector dogs for this highly specialized function will continue to be supervised by the Department of Agriculture. While a large proportion of the personnel employed by the Agricultural Quarantine and Inspection Program is permanently stationed at one of 186 points of entry into the United States, the Committee is aware that the Secretary of Agriculture commonly redeploys up to 20% of the border inspection force in order to manage agricultural pests and diseases throughout the United States. In completing the transfer of Agricultural Quarantine and Inspection Program border inspectors to the DHS, the Committee expects that the Secretary of Agriculture and the Secretary of Homeland Security will enter into an agreement whereby inspection resources, where possible, would continue to be made available to the Secretary of Agriculture in response to domestic agricultural needs.

(f) Provides that the Secretary of Agriculture shall transfer funds collected by fee authorities to the Department of Homeland Security so long as the funds do not exceed the proportion of the costs incurred by the Secretary of Homeland Security in carrying out activities funded by such fees.

Beginning in fiscal year 2003, the unobligated balance of the Agricultural Quarantine and Inspection Fund will be transferred to other accounts within USDA and will be used to carry out import and domestic inspection activities, as well as animal and plant health quarantine activities, without additional appropriations. Fees for inspection services shall continue to be collected and deposited into these accounts in the manner prescribed by regulations issued by the Secretary of Agriculture. In effectuating the transfer of agricultural import inspection activities at points of entry into the United States, the Committee intends that funds from these accounts shall be transferred to the DHS in order to reimburse the DHS for the actual inspections carried out by the Department. The Committee expects that the Secretary of Agriculture shall continue to manage these accounts in a manner that ensures the availability of funds necessary to carry out domestic inspection and quarantine programs.

(g) Provides that during the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security up to 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Makes conforming amendments to Title V of the Agriculture Risk Protection Act of 2000 related to the protection of inspection animals.

FEDERAL ALCOHOL AND TOBACCO STATUTES

Mr. GRASSLEY. Madam President, it is clear that the Secretary of the Treasury presently possesses the authority to administer the Federal alcohol and tobacco statutes referenced in the bill before us. These authorities currently are delegated to the Bureau of Alcohol, Tobacco and Firearms and now will be delegated to the new Tax and Trade Bureau. I appreciate this colloquy to confirm that the language in section 1111(c) (1) concerning the transfer to the Department of Justice not only excludes the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms

that will be retained within the Department of the Treasury as set forth in paragraph (2) of this section, but also excludes the functions of the Secretary of the Treasury that relate to these retained authorities, functions, personnel, and assets.

Mr. BAUCUS. The Senator is correct.

Mr. GRASSLEY. I also wanted to confirm that section 1111(b) as it relates to alcohol and tobacco only invests the Bureau of Alcohol Tobacco, Firearms and Explosives at the Department of Justice with the responsibility to investigate with respect to the Title 18 laws pertaining to the smuggling of alcohol and tobacco. All other investigatory responsibilities pertaining to alcohol and tobacco remain at the Department of the Treasury under the new Tax and Trade Bureau, or as otherwise delegated under existing law.

Mr. BAUCUS. The Senator is correct and his reading is consistent with the provisions of this legislation.

Mr. GRASSLEY. Finally, I wish to confirm that Treasury retained the authority to audit or investigate violations such as false or inaccurate records of production, false or inaccurate tax returns, failure to respond to delinquency notices, unlawful transfers in bond, and the unlawful production, labeling, advertising and marketing of alcoholic beverages.

Mr. BAUCUS. That is correct, and I appreciate my good friend from Iowa for clarifying these points.

PRESERVING COAST GUARD MISSION PERFORMANCE

Mrs. MURRAY. Madam President, I would like to thank the chairman of Governmental Affairs Committee, the Senator from Connecticut, for his tireless efforts and leadership concerning the creation of the Department of Homeland Security. Our country is facing a range of threats that we must address—from port and airport security to cyber terrorism. We need funding for a new organizational structure to reduce these risks.

I also would like to engage in a colloquy with the ranking member of the Committee on Appropriations, the Senior Senator from Alaska, regarding the Coast Guard. The men and women of our Coast Guard make significant contributions to our nation each and every day, and they deserve our support and admiration.

Last week, our colleague from Alaska addressed an important section in this legislation, Section 888, which governs the Coast Guard's role in the new Department of Homeland Security. His statement clearly established that it is the intent of this provision that the Coast Guard's non-homeland security missions and capabilities must be maintained without significant reduction when the Service transfers to the new Department.

As the chairman of the Transportation Appropriations Subcommittee and as a Senator from a coastal state, I emphatically agree with my Alaska colleague's remarks about the intent and effect of Section 888. I also would like to ask him some questions about the Coast Guard and its role in the Homeland Security Department.

Does my colleague from Alaska agree that the United States Coast Guard is integral to the security of this country, and that the Coast Guard provides a wide range of services to our nation? Does he also recognize that some of these services are related to homeland security while others are not? For instance, the Coast Guard provides vital services in the areas of marine safety, search and rescue, aids to navigation, fisheries enforcement, marine environmental protection, and ice operations. While these traditional missions do not directly contribute to national security, they do ensure the safety of our citizens and our environment.

Mr. STEVENS. I firmly agree with my colleague from Washington about both the Coast Guard's role in securing our nation and the importance of its non-homeland security missions and capabilities.

Mrs. MURRAY. Madam President, does the Senator from Alaska believe that it is imperative that these essential non-homeland security missions be maintained, and that the language in the bill clearly identifies the need to protect these critical services?

Mr. STEVENS. I strongly agree with this imperative and with my colleague's interpretation of Section 888. Indeed, Section 888 mandates this protection.

Mrs. MURRAY. Madam President, as the Senator from Alaska has previously indicated, the essential non-homeland security missions are to be protected pursuant to Section 888. It is also my understanding that the Coast Guard organizational structure shall be maintained. To ensure that we achieve our objectives, the Inspector General of the Department shall conduct an annual review to assess the Coast Guard performance of all its missions, with a particular emphasis on examining the non-homeland security missions. Is this the understanding of the Senator from Alaska?

Mr. STEVENS. I share my colleague's understandings on these matters.

Mrs. MURRAY. Madam President, does the Senator from Alaska agree that any significant changes to the authorities, functions, missions and capabilities of the Coast Guard can be implemented only if they are specified in subsequent legislation? And to that end, does he believe the language contained in the bill will serve to protect the non-homeland security missions of the Coast Guard while moving the organization into an important homeland security role?

Mr. STEVENS. I do agree. Section 888 is a clear statement that Congress will play a major role in deciding whether there would be any significant changes to the Coast Guard in these areas. The language also preserves the Service's non-homeland security missions while permitting it to perform important homeland security missions.

Mrs. MURRAY. As the ranking member of the Appropriations Committee, the Senator from Alaska is aware that, as part of the fiscal year Transportation Appropriations bill reported unanimously in July, the Committee mandated that the Coast Guard submit quarterly mission hour reports detailing precisely how the Coast Guard has allocated its human and capital resources by mission for the preceding quarter.

The Committee also granted the Commandant unprecedented budget flexibility with the dramatically increased funds provided above the fiscal year 2002 level to address simultaneously his homeland security needs while ensuring that his other critical missions return to their pre-September 11, 2001 levels.

Finally, the Committee required the Commandant to submit a detailed plan as part of his fiscal year 2004 budget request to show us precisely how he would maintain such mission balance. I am sure that the Senator from Alaska agrees with me that, notwithstanding the fact that the fiscal year 2003 Transportation Appropriations bill has been entangled in the larger delay in the Appropriations process, the bipartisan leadership of the Appropriations Committee expects the Commandant to move forward with the submission of these reports.

Mr. STEVENS. Yes, I concur with the Senator that the Committee should begin receiving these reports without delay so that we can monitor the Coast Guard's progress in complying with not only the Appropriations Committee's directives but with the requirements articulated under Section 888 of the Homeland Security Act.

Mrs. MURRAY. It is with great disappointment that I have to tell the Senator from Alaska that I am greatly concerned by some preliminary indications from the Department of Transportation Inspector General, IG, that the Coast Guard may not have fulfilled its statutory obligations to fully fund mandated improvements to its Search and Rescue Program in fiscal year 2002.

As part of the Department of Transportation and Related Agencies Appropriations Act, 2002, the Committee mandated that not less than $14,541,000 be used solely to address the many deficiencies that the IG found with the Coast Guard's readiness in the area of Search and Rescue. We also mandated that the Inspector General monitor the Coast Guard's compliance with this directive.

While the Inspector General's office has not yet finalized its report, I am greatly concerned by preliminary indications that the Coast Guard did not, I repeat "not fulfill the requirement in the law. This is precisely the kind of concern that makes it essential that we continue to monitor the Coast Guard's compliance with Appropriations Committee directives as well as

with Section 888 of the Homeland Security Act. Again, I commend your leadership in this area and look forward to working with you and Admiral Collins, the Commandant, on these issues in the future.

I also want to thank the Chairman of the Governmental Affairs Committee again for his foresight and leadership in the efforts to create the Department of Homeland Security.

Mr. SHELBY. Madam President, as the Ranking Member of the Transportation Appropriations Subcommittee, I strongly agree with the remarks made by my distinguished colleague from Alaska last week regarding the Coast Guard and its treatment in the Homeland Security legislation. I commend his leadership to preserve the traditional role of the Coast Guard as it becomes an agency of the Department of Homeland Security.

The unique strength of the Coast Guard in its multi-mission operational capability—the ability to perform a variety of missions for the nation. It is one of several agencies to be subsumed into the new Department that has both on-homeland security and homeland security missions. It is critical to maintain all of the Coast Guard's missions and capabilities instead of allowing one mission area to eclipse any other. Section 888 takes a significant step forward in preventing that from happening by preventing assets, personnel, and budget resources from being diverted away from the Coast Guard's traditional missions, including rescuing mariners in distress.

Madam President, I share the concerns expressed by the Senator from Alaska about the utmost importance of maintaining the Coast Guard's non-homeland security missions and capabilities. When I became Chairman of the Subcommittee in the next Congress, I shall look forward to working closely with him as the Full Appropriations Committee Chairman to ensure that Section 888 is implemented as Congress intends.

Ms. COLLINS. I would like to thank the Senior Senator from Alaska for the leadership he has shown in helping to preserve the traditional functions of the Coast Guard after it becomes part of the new Department of Homeland Security. Maine and Alaska share a common interest in preserving the Coast Guard's traditional functions, including its search and rescue mission, which are so critical to our fishing communities.

The Senior Senator from Alaska and I teamed up in the Governmental Affairs Committee to ensure that, when we transfer the Coast Guard to the Department of Homeland Security, we do not leave its traditional missions behind. Our language ensured that the authorities, functions, assets, and personal of the Department would be maintained intact and without reduction after its transfer to the new Department except as specified in subsequent Acts.

I am pleased that the fundamental elements and purposes of our Coast Guard amendment are included in the final compromise homeland security bill. Section 888 of the final compromise measure is intended to preserve the traditional functions of the Coast Guard such as marine safety, search and rescue, aids to navigation, living marine resources, and ice operations. The Coast Guard will also be a separate and distinct entity in the new Department, and the Commandant of the Coast Guard will report directly to the Secretary of Homeland Security, thus preventing a demotion from the Commandant's current status in the Department of Transportation.

There is, however, a question that I would like to address to my friend from Alaska. It is my understanding that Section 888 of the final compromise bill is intended to prohibit changes in the Coast Guard's personnel, assets, or authorities that would adversely impact the Service's capability to perform its non-homeland security functions. Is that also the Senator's understanding of this provision?

Mr. STEVENS. Yes, that is my understanding also.

Ms. SNOWE. I would like to enter into a colloquy with several of my colleagues from coastal States regarding Section 888 of the final version of the Homeland Security Act of 2002. The provisions of Section 888 were drafted to preserve the traditional roles and missions of the Coast Guard and ensure they are not altered or diminished.

Since September 11, 2001, the Coast Guard has taken on additional homeland security responsibilities resulting in its largest peacetime port security operation since World War II. While our new reality requires the Coast Guard to maintain a robust homeland security posture, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection.

As a Senator from a coastal State, and as the ranking member on the Oceans, Atmosphere, and Fisheries Subcommittee of the Senate Commerce Committee, I can attest that all these missions are critically important and that the American people rely on the Coast Guard to perform them each and every day.

The language in Section 888, which I developed with Senators STEVENS and COLLINS, strikes the proper balance and ensures the Coast Guard's non-homeland security missions will not be compromised or decreased in any substantial or significant way by the transfer to the new Department of Homeland Security.

First and foremost, it ensures that the Coast Guard will remain in distinct entity and continue in its role as one of the five Armed Services. The Coast Guard plays a unique role in our government, in which it serves as both an armed service as well as a law enforcement agency, and this must not be changed or altered.

This language in Section 888 maintains the primacy of the Coast Guard's diverse missions by establishing the Coast Guard as a distinct agency under the Secretary of Homeland Security and mandates that the Coast Guard Commandant will report directly to the Secretary, rather than to or through a Deputy Secretary.

Additionally, this section prevents the Secretary of this new Department from making substantial or significant changes to the Coast Guard's non-homeland security missions or alter its capabilities to carry out these missions, except as specified in subsequent Acts. It also prohibits the new department from transferring any Coast Guard missions, functions, or assets to another agency in the new Department except for personnel details and assignments that do not reduce the Service's capability to perform its non-homeland security missions.

This section also requires the Inspector General of the new Department to review and assess annually the Coast Guard's performance of its non-homeland security missions and to report the findings to the Congress.

I also am pleased to see the inclusion of my amendment requiring the new Homeland Secretary, in consultation with the Commandant, to report to Congress within 90 days of enactment of this Act on the benefits of accelerating the Coast Guard's Deepwater procurement time line from 20 years to 10 years. The Deepwater project, which will recapitalize all of the Coast Guard assets operating 50 or more miles from our coasts, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. I believe that we must accelerate the Deepwater acquisition project and acquire these much-needed assets for the Coast Guard now, not 20 years down the road.

Madam President, Section 888 is a strong statement by the Congress that the Coast Guard is an essential component of the new Department and that its non-homeland security missions and capabilities must be maintained due to their overriding importance, not only to coastal States such as Maine, but also to the entire nation.

Mr. LIEBERMAN. Madam President, as manager of the legislation to create a Department of Homeland Security, I want to share with the Senate my views on the meaning and intent of several key provisions in H.R. 5005, the final homeland security legislation approved by the Senate on November 19, 2002. These provisions have been through several iterations and they have been debated extensively.

H.R. 5005 is the result of over a year of deliberations begun last October when I introduced legislation (S. 1534) with Senator SPECTER to create a Department of Homeland Security. That legislation was subsequently combined

with legislation by Senator GRAHAM (to create a White House Office for Combating Terrorism) and became S. 2452, which was reported out of the Committee on Governmental Affairs on May 22, 2002.

Before the Senate had a chance to consider that bill, however, the President announced his support for a Department of Homeland Security. The Administration's bill, first submitted to Congress on June 18, 2002, encompassed almost all of S. 2452's organizational elements regarding the Department. The Governmental Affairs Committee held hearings to consider the administration's proposals, and, I prepared an amendment to S. 2452 that was considered, and adopted, at a July 24–25 business meeting of the Committee. That expanded version of S. 2452 went a considerable way to incorporate the administration's proposals.

In late July, the House of Representatives passed its version of the Homeland Security bill, H.R. 5005. This House bill became the base bill for floor consideration in the Senate, and the amended version of S. 2452 was offered on the Senate floor as SA 4471 to H.R. 5005.

The following statement will discuss various provisions in H.R. 5005 and, where appropriate, their relationship to similar provisions in SA 4471. It is intended to supplement a statement and other material I submitted for the RECORD on September 4, 2002, (S8159–S8180) which interpreted key provisions in SA 4471 (also referred to as the Committee bill).

INTELLIGENCE

Title II, Subtitle A, Section 201 of H.R. 5005, establishes a Directorate for Information Analysis and Infrastructure Protection. This is a critical provision that goes to the heart of the weaknesses that have been exposed in our nation's homeland defenses since September 11, 2001—that is, the lack of information sharing related to terrorist activities between intelligence, law enforcement, and other agencies. This directorate stems from the President's legislative submission in June, which included a proposal to create an information analysis and infrastructure protection directorate in the Department. However, the President's concept has been altered and expanded in response to testimony before the GAC and input from key Senators. The version in H.R. 5005, while not exactly what the GAC recommended, represents a substantial improvement over the President's June 18th, 2002 proposal. If fully implemented, and if the new department and the various agencies responsible for gathering and providing intelligence properly interpret its provisions, it will improve our capacity to fuse that intelligence in order to prevent terrorist attacks before they occur.

S. 2452, as originally reported on May 22, 2002, and based largely on recommendations by the bi-partisan Hart-Rudman Commission, included directorates for critical infrastructure, emergency preparedness, and border security. The President's June 18th proposal added a fourth directorate for ''information analysis and infrastructure protection.''

SA 4471 was developed after examining the President's proposal and hearing from expert witnesses on the critical need for a national level focal point for the analysis of all information available to the United States to combat terrorism. On June 26 and 27, the GAC held hearings on how to shape the intelligence functions of the proposed Department of Homeland Security—to determine how, in light of the failure of our government to bring all of the information available to various agencies together prior to September 11, 2001, the government should receive information from the field, both foreign and domestic, and convert it, through analysis, into actionable information that better protects our security.

The GAC's hearings focused specifically on the relationship between the Department of Homeland Security and the Intelligence Community. The hearings featured testimony from some of our country's most noted experts in intelligence issues, including Senators BOB GRAHAM and RICHARD SHELBY, the chairman and ranking member of the Senate Intelligence Committee. Other witnesses included Lt. Gen. Patrick M. Hughes, former director of the Defense Intelligence Agency; Jeffrey Smith, former General Counsel of the Central Intelligence Agency; Lt. Gen. William Odom, former Director of the National Security Agency; Chief William B. Berger, President of the International Association of Chiefs of Police; and Ashton B. Carter, former Assistant Secretary of Defense for International Security Policy. Finally, CIA Director George Tenet and FBI Director Robert Mueller also testified.

Senator GRAHAM's written testimony stated that the Intelligence Committee's hearings thus far have uncovered several factors that contributed to the failures of Sept 11—one of which is ''the absence of a single set of eyes to analyze all the bits and pieces of relevant intelligence information, including open source material.'' Senator SHELBY's written testimony stated that ''most Americans would probably be surprised to know that even nine months after the terrorist attacks, there is today no federal official, not a single one, to whom the President can turn to ask the simple question, what do we know about current terrorist threats against our homeland? No one person or entity has meaningful access to all such information the government possesses. No one really knows what we know, and no one is even in a position to go to find out.'' General Patrick Hughes, former director of the Defense Intelligence Agency, echoed these points. His testimony stated that, ''in our intelligence community, we currently have an inadequate capability to process, analyze, prepare in contextual and technical forms that make sense and deliver cogent intelligence to users as soon as possible so that the time dependent operational demands for intelligence are met.''

These hearings made it clear that: (1) there is currently no place in our government where all intelligence available to the government is brought together to be analyzed, (2) the Department of Homeland Security requires an all-source intelligence analysis capability in order to effectively achieve its mission of preventing, deterring, and protecting against terrorist attacks, (3) the intelligence function should be a smart, aggressive customer of the intelligence community, (4) the intelligence function must have a seat at the table when our nation's intelligence collection priorities are determined, (5) the Department is already a significant collector of intelligence-related information, through such agencies such as the Customs Service and the Coast Guard being transferred into the Department, and (6) the Department must have sufficient access to information that is collected by intelligence, law enforcement, and other agencies. This final point was underscored by Senator SHELBY, who testified that the relatively limited ''access to information'' provisions in the President's proposal were unacceptable, and that it would be a mistake if they were adopted.

The President's proposal was to create an ''information analysis and critical infrastructure protection division''—whose most important role, as CIA Director Tenet testified at the GAC hearing on June 27, 2002, would be ''to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States.'' Its purpose would be to focus the intelligence function on detecting and mitigating against threats to critical infrastructure rather than the entire range of potential threats. Consequently, the intelligence analysis function in the Department of Homeland Security would not be designed to uncover terrorist plots or prevent acts of terrorism before they occurred. The Governmental Affairs Committee rejected this more limited approach and subsequently approved a more robust intelligence directorate, along with a separate directorate for critical infrastructure protection, which were incorporated in SA 4471. Some of these improvements are now incorporated in H.R. 5005.

Most importantly, like SA 4471, H.R. 5005 makes it clear that the purpose of the information analysis function in the Department goes beyond critical infrastructure protection to encompass disseminating intelligence in order to deter, prevent, and respond to all terrorist threats. Section 201(d) of H.R. 5005, which describes responsibilities of the Under Secretary for Information

Analysis and Infrastructure Protection, at paragraph (1), states: ''to access, receive, and analyze law enforcement, intelligence information, and other information from agencies from the Federal Government, State and local government agencies), and private sector entities, and to integrate such information in order to—(A) identify and assess the nature and scope of terrorist threats to the homeland; (B) detect and identify threats of terrorism against the United States; and (C) understand such threats in light of actual and potential vulnerabilities of the homeland.'' Clause (B) especially establishes that the information analysis function must be designed in order to ''detect and identify'' threats of terrorism.

In addition, Section 201(d)(9) states that the responsibilities of the Under Secretary (for information analysis and infrastructure protection) shall include the following: ''to disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.'' Again, it is important that the new information analysis division focus on doing everything within its power to deter, prevent and preempt, acts of terrorism, while also ensuring that our nation is adequately prepared to respond.

As noted earlier, the President's June 18th proposal would have established a more limited function primarily designed to assess threats and vulnerabilities to our critical infrastructure. This is an important task and will clearly be a major focus of the Department of Homeland Security, but the Department's information analysis role will now encompass all terrorist threats, not just those to critical infrastructure. Many potential terrorist attacks—for example a bomb in a shopping mall and attacks using weapons of mass destruction—are not directed at critical infrastructure, but at producing mass casualties. Thus, the intelligence analysis function in the Department can and must focus on the full range of threats that we face. And it must have the capacity to access and properly analyze all of the information about terrorist attacks that our government possesses.

Secondly, though it falls short of the Committee's recommendation, the final legislation does establish dedicated leadership for both the information analysis and infrastructure protection functions. SA 4471 established separate, Senate confirmed Under Secretaries for ''intelligence analysis'' and ''critical infrastructure protection.'' This was to ensure that focused leadership—with sufficient clout—was provided for each of these complex, and major challenges facing our government. With 85 percent of our critical infrastructure owned by the private sector, it is clear that full time leadership will be required to ensure that adequate protective measures are identified and put in place. Similarly, the tremendous challenge of overcoming barriers to information sharing within the intelligence community and establishing a robust intelligence analysis division will likely occupy a significant amount of time of the Secretary and Under Secretary.

H.R. 5005 takes a somewhat different approach: like the President's June 18th proposal, it establishes a single Under Secretary with overall responsibility for both information analysis and infrastructure protection. However, in Title II, Section 201, (b)(1) and (b)(2) it also creates two Assistant Secretaries to lead information analysis and infrastructure protection, respectively. Earlier, Title I, Section 103 of the legislation establishes several officers who shall be appointed by the President ''with the advice and consent of the Senate,'' including not more than 12 Assistant Secretaries (Sec. 103 (a)(8)). The Assistant Secretaries for information analysis and infrastructure protection will clearly occupy two of the most critical positions in our government: consequently, Congress' expectation is they will be among the 12 Assistant Secretaries who will be appointed by the President with the advice and consent of the Senate.

Third, responding to the testimony of Senator SHELBY and others, the SA 4471 provided broad, routine access to information for the Secretary of Homeland Security. The assumption behind the Committee's approach was that, unless the President determined otherwise, all information about terrorist threats, including so-called ''unevaluated intelligence,'' possessed by intelligence agencies would be routinely shared by intelligence agencies and other agencies with the Department of Homeland Security. In contrast, the President's proposal would curtail the Secretary's access to unanalyzed information. The Secretary would have routine access to reports, assessments and analytical information. But, except for vulnerabilities to critical infrastructure, the Secretary would receive access to unanalyzed information only as the President may further provide.

H.R. 5005 has wisely moved towards SA 4471. In Section 202 (a), H.R. 5005 states that, ''except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.'' This is crucial because the Secretary must have access to the information he or she deems necessary to protect the American people, and cannot simply rely on agencies that have historically been reluctant to share information to determine what the Secretary should have.

In Section 202(b)(1) the legislation provides that the Secretary may enter into cooperative agreements with agencies to provide access to such information. At the same time, if no request has been made, or no agreement has been entered into, agencies are still required to provide certain information that is specified in the legislation. This includes, at Section 202(b)(2) (A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary; (B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed; (C) all other information relating to significant and credible threats of terrorism, whether or not such information has been analyzed; and (D) such other information or material as the President may direct.

These provisions require agencies to provide significant amounts of information to the Secretary, even in the absence of a cooperative agreement. With respect to the information required in Section 202(b)(2)(C); in many cases, it may be impossible for agencies to know if certain information is related to ''significant and credible threats'' of terrorism precisely because that can only be determined once the information is fused with information from others. Consequently, to meet the statutory requirement, agencies should clearly endeavor to collect requested information, even if it is not already available, and they should err on the side of providing more, rather than less, information that is already on hand to the Department's analysts. This is clearly the best way to help ensure that the Department can effectively carry out its mandate to prevent, deter, and preempt terrorist attacks.

Finally, like SA 4471, H.R. 5005 makes the Department responsible for working with the Director of Central Intelligence to protect sources and methods and with the Attorney General to protect sensitive law enforcement information (Section 201(d)(12)). Also, as the Committee recommended, the substitute formally includes the elements of the Department concerned with analysis of foreign intelligence in the ''intelligence community'' (Section 201(h)) while also empowering the Secretary to consult with the Director of

Central Intelligence and other agencies on our nation's intelligence gathering priorities (Section 201(d)(10)). These provisions will ensure that the Department becomes a full partner with the Central Intelligence Agency and other agencies in our intelligence community, and that is has a crucial seat at the table in all proceedings where intelligence-gathering priorities are established.

Though H.R. 5005 is not exactly what the Governmental Affairs Committee recommended in SA 4471, it does contain key aspects of the Committee's approach and establishes a single point in our government with the responsibility for receiving and assessing all information about terrorist threats to our homeland. Thus, it does represent a very significant improvement over the Administration's proposal. As a result, the information analysis and infrastructure protection function in the Department, assuming it is properly implemented, will greatly improve our nation's overall capacity to prevent, deter, protect against, and respond to terrorist threats against our homeland.

SCIENCE AND TECHNOLOGY

The Department will have profound scientific and technological needs, and both the immediate and long-term success of its mission will require the implementation of a broadly-coordinated, tightly-focused, and sustained effort to invest in critical areas of research, accelerate technology development, and expedite the transition and deployment of such technologies into effective use. H.R. 5005 attempts to meet this objective by creating a strong, coherent, and well-funded Directorate of Science and Technology. The Directorate established in this legislation follows directly from the model embodied in the homeland security bill passed by the Senate Governmental Affairs Committee, SA 4471, and explicated in the Chairman's Statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). In keeping with that model, the Directorate will be headed by a Senate-confirmed Under Secretary for Science and Technology with expansive responsibilities, as outlined in Section 302, for directing and managing homeland security research, development, demonstration, testing, and evaluation (RDDT&E) activities; coordinating the federal government's civilian efforts, as well as developing a national policy and strategic plan, for meeting homeland security R&D needs; advising the Secretary and supporting the Department's efforts to analyze risks and threats; ensuring the rapid transfer and deployment of technologies capable of advancing homeland security objectives; and conducting research on countermeasures for biological and chemical threats.

RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING & EVALUATION

With respect to his RDDT&E responsibilities, the Under Secretary will act through an array of mechanisms and authorities established in H.R. 5005. The primary driver of innovation within the Directorate will be a Homeland Security Advanced Research Projects Agency (HSARPA), which is conceived to be similar in purpose and organization to the highly successful Defense Advanced Research Projects Agency (DARPA) within the Department of Defense (DOD). Over the past five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the federal government. Its success has been grounded in its ability to recruit outstanding scientific and technical talent, promote creativity and adaptability under a lean, flexible organizational structure, and entice collaboration from other R&D entities by leveraging an independent source of funds. Because the HSARPA created in H.R. 5005 is purposefully patterned after the nearly identical Security Advanced Research Projects Agency (SARPA) contained in SA 4471, the legislative intent concerning the missions, roles, Acceleration Fund, and structure of that organization (see Chairman's Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162–8163) are, of course, straightforwardly applicable to HSARPA.

In order to enable HSARPA to achieve parallel success to DARPA, Section 307 of H.R. 5005 provides HSARPA with a $500 million Acceleration Fund to support key homeland security R&D both within and outside of the federal government, leverage collaboration from R&D entities external to the Department, and accelerate the development, prototyping, and deployment of homeland security technologies. The Secretary is likewise provided with DARPA's flexible authority to hire and manage top-flight personnel. Although SA 4471 placed limits on this authority by setting a ceiling of 100 personnel who may be hired pursuant to this authority and instituting a 7-year sunset provision [SA 4471, Section 135(c)(3)(C)], those limits have been eliminated in H.R. 5005 to allow the Secretary greater discretion in exercising such authority commensurate with need [Section 307(b)(6)]. In a later section, Section 831, H.R. 5005 also confers the Secretary with another important authority currently available to the DOD—the ability to engage in ''other transactions'' for both research and prototype projects. This flexible contracting authority for such projects has been integral to DARPA's success, and HSARPA will therefore have the same authority. While the legislation vests this authority directly in the Secretary, it is clearly and specifically contemplated that such authority will be delegated appropriately to other officials within the Department, particularly the Under Secretary for Science and Technology and the Director of HSARPA, for use in connection with R&D and prototyping activities under their direction or management, including extramural RDDT&E projects and projects supported by the Acceleration Fund. Nothing in this legislation should be construed as requiring or encouraging HSARPA to adopt or replicate any specific programs within DARPA, such as the Total Information Awareness Program, or as conferring HSARPA with any additional authority to overcome privacy laws when developing technologies for information-collection.

Separate provisions for the Department's other extramural and intramural RDDT&E activities are set forth in Section 308. These provisions are not intended to supercede the specific provisions established for HSARPA under Section 307, and should not be in any way limiting on HSARPA. Regarding the university-based center or centers for homeland security described in Section 308(b)(2), legislative intent regarding the need for flexible application of this provision in order to avoid unfairly favoring one or more particular institutions was clarified in the November floor statements of the Republican manager of the final bill, Senator PHIL GRAMM. It should therefore be emphasized that the criteria listed under Section 308(b)(2)(B) should not be considered absolute or dispositive in nature, but rather, as factors that should be considered in the context of national homeland security needs and the relative strengths of candidate institutions in meeting those needs. Consistent with this intent, Section 308(b)(2)(C) specifically provides the Secretary and the Under Secretary with full ''discretion'' in determining whether, how, and when to implement these provisions. Consideration of additional relevant criteria to supplement (and, within their discretion, to supercede) those delineated under Section 308(b)(2)(B) is specifically contemplated in Section 308(b)(2)(C). This subsection anticipates as the Secretary and Under Secretary exercise their discretion that they actively engage in a comprehensive, dispassionate, and competitive review of available institutions to determine the optimal selection for serving national interests. It is contemplated that consortia of universities capable of meeting particular areas of required expertise would be eligible to serve as a university center or centers; therefore, there is no restriction on such consortia being considered under Section 308(b)(2). To assure full oversight of the fairness of the selection process, the Secretary is required to report to Congress under Section 308(b)(2)(C) on the full details of the selection and implementation of the university centers.

Regarding the headquarters laboratory described in Sections 308(c)(2)–(c)(4), it deserves reiterating that the establishment of such a headquarters laboratory is not mandatory under the legislation. The Secretary and the Under Secretary should use their discretion in determining whether the designation of such a laboratory is necessary and would better assist the Directorate in fulfilling its functions. It

is the intent of H.R. 5005 that the Directorate coordinate and draw broadly upon the full range of S&T resources and expertise available in the federal government rather than creating new, duplicative stovepipes. Accordingly, the risks attaching to the latter should be weighed carefully against the potential benefits of establishing a single headquarters laboratory. As an alternative, the Secretary could certainly opt to select a group of institutions and laboratory elements with expertise in a variety of fields to fill the pertinent need.

Consequent to the principle of affording the Department with rapid, non-bureaucratic, expansive, and flexible access to existing federal S&T capabilities, the legislation in Section 309 provides the Secretary with authority to utilize any of the Department of Energy (DOE) laboratories and sites through a variety of mechanisms, most notably, joint sponsorship agreements, and in Section 309(g), establishes an Office for National Laboratories within the Directorate to create a networked laboratory system among the DOE laboratories to support the missions of the Department. With regard to Section 309(c), it should be clarified that this provision is limited to those programs and activities that are transferred from the DOE to the Department under this legislation. There is no general requirement or obligation within this or any other provision to execute or maintain separate contracts for work commissioned by the Department to non-transferred DOE laboratories or sites or their operators.

INTERAGENCY COORDINATION AND THE NATIONAL POLICY AND STRATEGIC PLAN

Notwithstanding the mechanisms described above for enabling the Department to engage and support important homeland security R&D, H.R. 5005 recognizes that the vast bulk of research and development relevant to homeland security will continue to occur outside the direct control of the Department—in other agencies, in academia, and in the private sector. A critical challenge, therefore, will be to ensure that the Department has the proper tools and mechanisms to elicit cooperation across a wide range of disparate R&D entities, each with their own missions and priorities, and to coordinate their collective efforts in service to homeland security goals.

A key coordination mechanism envisioned by the legislation is the development of a national policy and strategic plan as described in Section 302(2). This national policy and strategic plan integrates the concepts of the National Strategy for Combating Terrorism and the technology roadmap articulated in SA 4471 [Title III and Section 135(c)(2)(B)] into a single national blueprint for meeting S&T goals and objectives for homeland security. It is intended that a comprehensive technology roadmapping exercise (which is commonly accepted within the S&T community as a prerequisite to optimal organization and coordination of large-scale R&D projects) serve as a basis for, and central component of, the larger policy and plan, and that the resulting roadmap, policy, and plan provide the framework within which all relevant stakeholders, both within and outside of government, will coordinate on a common homeland security RDDT&E agenda.

Effective coordination will also require a forum and body through which intensive communication and collaboration may occur. Along these lines, the legislation in Section 311 establishes a Homeland Security Science and Technology Advisory Committee (''Advisory Committee'') consisting of representatives from academia and the private sector to both advise the Department and coordinate with communities outside the federal government in conducting homeland security R&D. The utility of having an external, independent entity to inform and guide intra-Department and interagency S&T efforts has been previously demonstrated by the advisory group assembled by the National Academy of Sciences (NAS) in response to the September 11th attacks. This group, which published a prominent review of the government's homeland security R&D efforts in June 2002 (Making the Nation Safer: The Role of Science and Technology in Countering Terrorism), played an important and constructive role in identifying and stimulating much needed improvements. Section 311 requires a similar entity to be established that may, among other things, advise the Department by continuously critiquing homeland security S&T efforts in a ''red team'' capacity or function, and recommending new approaches for the Department and outside agencies. It is specifically anticipated that the National Research Council of the NAS, drawing on its extensive network of S&T contacts and the expertise it developed in compiling its June 2002 report, will select appropriate candidates for membership onto the Advisory Committee [Section 311(b)(2)], as well as support the Advisory Committee's work on an ongoing basis. The Advisory Committee is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Advisory Committee's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Advisory Committee has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will reconstitute or re-establish the Advisory Committee pursuant to his authority under Section 871(a).

With respect to R&D coordination among the federal agencies, H.R. 5005 does not specifically carry over the Homeland Security Science & Technology Council (''S&T Council'') from SA 4471 given that it may be unnecessarily redundant to create a new interagency council when interagency coordination mechanisms already exist in the form of the National Science and Technology Council (NSTC) and its various subcommittees. This does not diminish the importance of such an interagency body to the homeland security R&D effort. To the contrary, an active interagency coordination entity must be considered fundamental to enabling the Secretary and the Under Secretary to fulfill their core responsibilities of coordinating the federal government's civilian homeland security R&D efforts [Section 302(2)] and carrying out the Department's S&T agenda through coordination with other federal agencies [Section 302(13)]. The omission of the interagency S&T Council from H.R. 5005 assumes that the NSTC and the Office of Science and Technology Policy (OSTP), working with the Secretary and the Under Secretary, will establish and promote the strong interagency coordination mandated in Sections 302(2) and 302(13). Consequently, the Secretary, the Under Secretary, the OSTP, and all members of the NSTC are expected to commit to ensuring the viability of the NSTC as a productive coordination mechanism. In the event that such faith proves to be misplaced, a separate interagency group composed of senior R&D representatives from relevant federal agencies and officials from the Executive Office of the White House should be immediately constituted by the Secretary and the Under Secretary based on the authorization for interagency S&T coordination contained in Sections 302(2) and 302(13). These provisions also constitute a directive to agencies with S&T expertise in areas pertinent to homeland security to fully and actively participate in such interagency efforts.

SCIENTIFIC AND TECHNICAL SUPPORT, RISK ANALYSIS, AND THE HOMELAND SECURITY INSTITUTE

Another major set of responsibilities assigned to the Under Secretary relates to providing specialized advise, expertise, and support to other actors within the homeland security organization [Sections 302 (1), (2), and (3)]. Perhaps the most critical of such responsibilities is supporting the Department with respect to assessing, analyzing, and mitigating homeland security threats, vulnerabilities, and risks. Section 302(2) calls for including coordinated threat identification within the national policy and strategic plan, and Section 302(3) specifically calls for the assessment and testing of ''homeland security vulnerabilities and threats.'' Although primary responsibility for coordinating and integrating risk analysis and risk management resides with the Secretary and the Under Secretary for Information Analysis and Infrastructure Protection, the highly complex and technical issues inherent to modern risk analysis methods demand substantial scientific and technical expertise. Section 302(3) mandates that the Under Secretary for S&T support

the Under Secretary for Information Analysis and Infrastructure Protection in this regard. Therefore, Section 305 addresses the problem of obtaining the necessary S&T expertise by giving the Secretary broad authority to establish or contract with Federally Funded Research and Development Centers (FFRDCs), which could perform functions not only related to R&D, but extending to risk, threat, and vulnerability analysis. While this authority is discretionary, H.R. 5005 anticipates that it will be exercised actively in accordance with need. In fact, so compelling was the NAS's recommendation in its June 2002 report to create an independent, non-profit institution for critical analysis and decision support, that H.R. 5005 includes another provision to trigger immediate exercise of the broad FFRDC authority. Specifically, Section 312 mandates the creation of a Homeland Security Institute (''Institute'') focusing expressly on capabilities related to risk analysis, scenario-based threat assessments, red teaming, and other functions relevant to homeland security. The Institute is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Institute's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Institute has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will, pursuant to his authority under Section 305, renew, reconstitute, or re-establish the Institute with appropriately expanded or modified functions to service the Department's ongoing and expanding risk assessment mission.

TECHNOLOGY TRANSITION

The Under Secretary is responsible for ensuring that technologies capable of supporting homeland security are quickly tested, evaluated, transitioned, and deployed to appropriate users within or outside the Department. Section 302(6) explicitly requires the Under Secretary to establish a system for transferring such technologies. This system should include processes and mechanisms for identifying homeland security actors and entities with unmet technological needs; matching such entities and needs with available technologies or, if none are readily available, assisting in the development, testing, evaluation, and deployment of new technologies to meet identified needs; ensuring viable technology transition paths for products of homeland security R&D, including HSRAPA-derived technologies; aligning internal R&D priorities and programs to technological needs inside or outside the Department; communicating externally with both technology developers and users to promote alignment of extra-Departmental R&D efforts with homeland security-related technological needs; providing technology developers with information and guidance on interfacing with governmental customers of homeland security technologies; and providing technical assistance to potential governmental users of homeland security technologies. To support the Under Secretary in executing these responsibilities, Section 313 establishes a Technology Clearinghouse (''Clearinghouse'') to serve as a national point-of-contact for both technology developers and potential users. The Clearinghouse must coordinate with the Technical Support Working Group (TSWG), and may fully integrate with the TSWG. In light of the fact that the mission of the TSWG dovetails with, and is fully embraced by, that of the Directorate, it is contemplated that the Under Secretary may assume full or joint management, technical, and/or policy oversight of the TSWG.

TESTING AND EVALUATION OF TECHNOLOGIES FOR INTERNAL ACQUISITION AND DEPLOYMENT

With respect to technologies being considered for internal use Department-wide or within one or more of its constituent entities, intelligent and well-coordinated testing, evaluation, procurement, and deployment will be crucial given that the new Department will have extensive technological needs, requirements, and dependencies. Too often, government agencies are hampered and distracted from their fundamental missions as a result of unstructured, technically unsophisticated approaches to technology acquisition and deployment that generate interoperability problems downstream. In order to effectively carry out the requirement for the Under Secretary to comprehensively conduct, direct, integrate, and coordinate the demonstrating, testing, and evaluation activities of the Department as articulated in Sections 302(4), 302(5), and 302(12), the Secretary and the Under Secretary should implement procedures to ensure that new technologies being considered for acquisition will be compatible and interoperable with other existing or anticipated technologies. New technologies should not be permitted to move to acquisition without the Under Secretary's sign off on the prior stages in the innovation process, particularly the demonstration, testing, and evaluation stages. The Under Secretary is understood to occupy the role of the Department's chief technology officer, and it is anticipated that he will be provided with responsibilities and authorities befitting that role. Accordingly, the Secretary shall act through the Under Secretary to operationally test and evaluate all major systems targeted for potential acquisition by any entity within the Department, and grant the Under Secretary authority to approve or reject such systems in his discretion. Nothing in this provision is to be construed as proscribing other Departmental entities from undertaking testing and evaluation activities so long as they do so in coordination with, and subject to the final approval of, the Under Secretary. The Under Secretary should also coordinate with the Department's Chief Information Officer, the Under Secretary for Management, and other federal agencies in promoting government-wide compatibility and interoperability of homeland security technologies and systems.

By vesting in the Under Secretary the full and broad authority to manage the Department's full spectrum of innovation, from basic research [Sections 302(4), 302(5), 302(11), and 302(12)] through demonstration, testing, and evaluation [Sections 302(4), 302(5), and 302(12)] to transition and deployment [Section 302(6)], the Under Secretary will have the means and mandate to initiate a powerful, systematic approach to innovation that generates new technologies for combating terrorism and ensures integrated acquisition and use of such technologies. Placing control of all the key innovation stages with the Under Secretary is critical to assuring that research, development, demonstration, testing, evaluation, and deployment in the Department do not become disjointed and fractured so that a coherent innovation process can prevail.

RESEARCH ON COUNTERMEASURES FOR BIOLOGICAL AND CHEMICAL THREATS

True preparation for future biological, chemical, radiological, and nuclear attacks will depend upon the development of vaccines and medicines to combat the most likely threats. At present, our nation is woefully unprepared for this type of attack. In his June 28, 2002 testimony before the Senate Governmental Affairs Committee, Dr. J. Leighton Read discussed the barriers to the development of a national medical arsenal to combat terrorism. The federal government has a long and successful history in conducting basic biomedical research. The National Institutes of Health within the Department of Health and Human Services (HHS) have served as an international model for funding and conducting human health-related research. However, in facing biological and chemical terrorism, we face a new challenge. In addition to encouraging basic research and training the next generation of scientists, the federal government will have to deliver actual pharmaceutical products and will have to deliver them quickly. Unlike the traditional pharmaceutical market, companies that choose to develop drugs to fight bioterrorist attacks that may never occur will not be able to rely on an existing market. Yet producing actual products to meet biological and chemical threats will depend upon private sector involvement. As a result, the Under Secretary should incorporate the goal of engaging the private sector into develop biothreat countermeasures into every level of his strategy, and adopt plans and policies to enable such private sector participation to occur.

H.R. 5005 provides tools to accomplish this task. While Section 302(4) states generally that the Under Secretary's responsibilities do not extend

to human health-related research and development activities, this provision should be construed consistent with other specific provisions in H.R. 5005 ascribing the Under Secretary a major role in addressing biological and chemical threats related to terrorism, a role which will require the Under Secretary to conduct specific types of human health-related research and development activities. Section 302, therefore, does not circumscribe the Under Secretary's authority to conduct research necessary to implement the major biothreat-related functions delineated in Sections 302(2) (requiring the Under Secretary to develop a national policy and plan that addresses, among other things, chemical and biological terrorist threats, and further requiring the Under Secretary to coordinate the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats), 302(5) (requiring the Under Secretary to direct, fund, and conduct national research and development for detecting, preventing, protecting against, and responding to terrorist attacks, which perforce include those involving biological or chemical agents), 302(8) (requiring the Under Secretary to collaborate with the Secretary of Agriculture under the Agricultural Bioterrorism Protection Act of 2002), 302(9) (requiring the Under Secretary to collaborate with the Secretary of HHS in determining biological agents and toxins to be listed as select agents), 303(1)(A) (transferring control and management of certain chemical and biological national security programs within the Department of Energy into the Department of Homeland Security), and Sections 303(2) and 1708 (establishing and transferring into the Department a National Bio-Weapons Defense Analysis Center).

The National Bio-Weapons Defense Analysis Center (''Center'') established and transferred in H.R. 5005 will, in particular, require the Under Secretary to engage in extensive human health-related R&D. The Center is intended to lead the Department's research efforts on bioterrorism by developing ''countermeasures to potential attacks by terrorists using weapons of mass destruction'' (Section 1708). The Center will conduct research on bioterrorism, and by definition, this should include study of the pathogenesis of bioterrorist agents, the immune response to these pathogens, and research on vaccines, drugs, and other medical antidotes. Since the Center is placed under the direction and management of the Directorate, the Under Secretary is conferred with substantial obligations to conduct human health-related R&D.

While the Secretary clearly has the authority to conduct the type of R&D discussed above internally, H.R. 5005 contemplates that the civilian human health-related countermeasures research carried out by HHS shall remain under the direction of the Secretary of HHS. Sections 304(a) and (b) mandate that while the Secretary of HHS shall retain authority for such research, he shall collaborate with the Secretary of Homeland Security in developing between the two Departments a coordinated strategy and outcome measurements for these research activities. As outlined in H.R. 5005, it is crucial that such research reflect the overall national policy and strategic plan developed by the Secretary and the Under Secretary under Section 302(2), and that the efforts of the two Departments be fully in concert. In the biothreat and chemical threat areas, the Secretary should work to ensure the resulting policy, plan, and benchmarks mandated under Section 302(2) reflect what is most needed and what pharmaceutical products can be timely developed against the most likely and dangerous threats to the public. Since this will require participation from the private sector, the policy and plan, which will include a technology roadmap, must necessarily include a strategy for translating basic science results into product development within the private pharmaceutical and biotechnology sectors.

EMERGENCY PREPAREDNESS AND RESPONSE

The Department will coordinate the federal response to disasters. This responsibility will encompass natural and manmade disasters, terrorist attacks and all incidents involving weapons of mass destruction, and other large-scale emergencies. In addition, the Department will assist the Secretaries of Health and Human Services and the Department of Agriculture in responding to public health and agricultural emergencies. The Directorate for Emergency Preparedness and Response was designed to spearhead this effort within the Department.

In order to accomplish these tasks the Department will need an interdisciplinary, well funded, and well-organized Directorate of Emergency Preparedness and Response. The initial design of this directorate was established by the Senate Governmental Affairs Committee in S. 1534. This original design was refined by the Governmental Affairs Committee amendment, SA 4471, and further explained by the Chairman's statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). Consistent with this original design, H.R. 5005 establishes a Directorate that includes the essential federal emergency response agencies and offices.

The Directorate shall build and direct a comprehensive national incident management system and consolidate existing federal emergency response plans into a single, coordinated national plan as outlined in H.R. 5005, Sections 502(5), 502(6), and 507(b)(1–2). States and localities should have access to and information about these systems and plans to ensure optimal coordination during an emergency. These plans should encompass all affected governmental entities and reflect both local and national needs. The consolidated federal response plan, outlined in Sections 502(6) and 507(b)(1–2), must interface with state and local response plans and should utilize local resources wherever possible.

INTEROPERABILITY

The planning responsibilities of the Under Secretary shall include the development of a comprehensive plan and effort for improving communication interoperability during emergency response (H.R. 5005, Section 502(7)). In developing the communication technology and interoperability, the Under Secretary must pay particular attention to the development, support and utilization of effective telemedicine networks, as well as the application of advanced information technology to effective training for and delivery of emergency medical services.

STANDARDS

In order to implement the missions delineated in Section 502, the Directorate shall establish and disseminate standards for equipment, personnel, training, resources, and the resulting emergency response. Standards shall be used as benchmarks for training and acquisition to ensure a uniform quality and interoperability during a response. The Under Secretary shall use these standards to provide recommendations and guidance to state and local governments.

PUBLIC HEALTH AND AGRICULTURAL EMERGENCIES

The Secretaries of Health and Human Services and the Department of Agriculture shall retain the authority to oversee the federal response to public health and agricultural emergencies, respectively. This authority includes the authority to declare such emergencies. However, these agencies shall fully collaborate with the new Department which shall support these agencies in their response, especially with regards to chemical, biological, radiological, and nuclear weapons. The Department should serve as an active and involved resource during bioterrorist and agroterrorist attacks. As outlined in Section 887 of H.R. 5005, the Department shall work in conjunction with the Department of Health and Human Services, the Federal Bureau of Investigation, and other engaged federal agencies to optimize information sharing between agencies commencing forthwith, as well as before and after the declaration of a public health emergency. This provision was intended to ensure that all involved agencies have all the information necessary to effectively perform their role in the federal response. See also, Section 892.

TRAINING

In order to help ''ensure the effectiveness of emergency response efforts'' as required in Section 502(1) of H.R. 5005, the Directorate shall lead federal efforts to train first responders in disaster response. The term, first responder, shall include law enforcement,

fire fighting, emergency medical, health care, and volunteer personnel. To be effective, training shall encompass exercises, on-line computer simulations, drills, courses, and other interactive learning environments. Personnel should be trained in every aspect of emergency response, including prevention/preparation, mitigation, active response, and recovery efforts. Training should include utilization of the Noble Training Center, transferred to the new Department as part of the Office of Emergency Preparedness (Section 503(5)) and other training sites and campuses within the Federal Emergency Management System, as well as full coordination with the National Guard. Finally, the Directorate shall improve, and train first responders in use of, governmental on-line resources to ensure they have the latest information available during a response.

STRATEGIC NATIONAL STOCKPILE

Authority to oversee the Strategic National Stockpile shall be transferred to the new Department. In H.R. 5005, this transfer of authority is described in Sections 502(3)(B), 503(6), and 1705. This language clarifies that the existing structure of the Stockpile program, as described in Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), shall remain intact. The Stockpile shall continue to be a multi-agency effort, with significant roles for the Department of Veterans Affairs and the Department of Health and Human Services. In particular, the Department should continue to incorporate the recommendations of the Centers for Disease Control and Preparedness (CDC) and the Office of the Assistant Secretary for Public Health Emergency Preparedness (OPHEP), within the Department of Health and Human Services, in determining the composition of the stockpile and the parameters for its use. The Department shall consult the CDC and OPHEP in deciding which medications, vaccines, and medical supplies are most appropriate for the Stockpile (Section 1705(a)(1)(C)). The Department shall also coordinate with the Secretary of Health and Human Services in determining the need to deploy the stockpile, on an incident-by-incident basis. The Under Secretary should continue to use the resources of Department of Veterans' Affairs in procuring and storing the contents of the Stockpile (Section 1705(a)(1)(B)). And the Under Secretary shall call upon the Department of Defense and the National Guard to help transport and secure the contents of the stockpile as appropriate.

THE OFFICE OF EMERGENCY PREPAREDNESS

SA 4471 described, in detail, the transfer of the Office of Emergency Preparedness (OEP) from the Department of Health and Human Services to the Department. The transfer of OEP was retained in H.R. 5005 in sections 502(3)(B) and 503(5). Since the Office of Emergency Preparedness is not defined in statute, it should be clarified that the transfer of OEP shall include the Office and all of its component agencies. This includes the National Disaster Medical System, the Metropolitan Medical Response System, the Noble Training Center, the Special Events Disaster Response program, and all other programs directed by OEP. Of course, nothing in the final legislation should be construed to mean that the transfer of the OEP programs shall result in the transfer of personnel whose primary duties reside outside of OEP.

THE NATIONAL DISASTER MEDICAL SYSTEM

For example, the National Disaster Medical System (NDMS) is an interagency program. It involves personnel, facilities, and equipment from the Department of Health and Human Services, the Department of Veterans Affairs, the Department of Defense, and other federal agencies. The personnel and assets from these departments that are deployed by NDMS during the an emergency response, but whose primary day to day roles are central to the missions of agencies outside of the Department, shall remain part of their home agencies. This includes members of the Disaster Medial Assistance Teams (DMATs), the Disaster Mortuary Assistance Teams (DMATs), and the Veterinary Medical Assistance Teams (VMATs). The transfer of the NDMS component of OEP shall be restricted to the management, organizational, and coordinating personnel, functions, and assets.

THE METROPOLITAN MEDICAL RESPONSE SYSTEM

Similarly, the transfer of the Metropolitan Medical Response System (MMRS) does not include transfer of member hospitals. Rather it shall consist of a transfer of the grant programs and related personnel. The MMRS grants have been used to improve hospital and first responder preparedness in select metropolitan regions across the country. Administration of these ongoing grants will become part of the new Department.

Although H.R. 5005 transfers the authority of the Secretary of the Department of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness for OEP (Section 503(5)), the Under Secretary shall at all times attempt to maximize communication and interaction between OEP and its component programs and the Department of Health and Human Services, which will be crucial in meeting the Directorate's mission requirements. As the preceding discussion illustrates, OEP will have to coordinate efforts of personnel from several different agencies. But in addition, OEP and its programs must remain integrated into the larger national public health infrastructure. Particular efforts should be made to coordinate OEP programs with the Office of the Assistant Secretary for Public Health Emergency Preparedness. This office, within the Department of Health and Human Services, is charged with coordinating intra and interagency health preparedness efforts. OEP should remain a part of this larger whole.

CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES

Section 505 of H.R. 5005 addresses two critical issues. First, it is imperative that the efforts to improve our public health infrastructure and their emergency preparedness remain under the control of the Secretary for Health and Human Services, although coordinated with the Secretary. On June 28, 2002 the Governmental Affairs Committee heard testimony from several public health experts. In their testimony, the witnesses concurred that in order to be functional during an emergency, public health preparedness efforts had to be integrated into the larger public health system. This ''dual-use'' improves underlying public health efforts while ensuring health providers remain familiar with emergency preparedness networks and programs. Their testimony pointed out that dual-use was particularly important during a response to a biological attack. In this case, the terrorist attack may not be immediately apparent and detection may depend upon the ability of normal health care systems to detect unusual patterns of illness. H.R. 5005 also stressed this important theme through Section 505 and language in Section 887, which calls for interaction between the agencies before and after the declaration of a public health emergency.

Section 505 stipulates that the Department of Health and Human Services shall retain primary authority over efforts to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats ''carried out by the Department of Health and Human Services.'' In this regard, the Secretary of Health and Human Services shall have authority to set priorities and preparedness goals. However, the Secretary of Health and Human Services, working through the Assistant Secretary for Public Health Emergency Preparedness, must develop a coordinated strategy for these activities in collaboration with the Secretary (Section 505(a)). In doing so, the Secretary of Health and Human Services will also collaborate with the Secretary in establishing benchmarks and outcome measures for success. Nothing in Section 505 should be interpreted as disrupting ongoing preparedness efforts within the Department of Health and Human Services. All ongoing emergency preparedness grants should continue. Selection criteria and the evaluation of grant application shall continue to be determined by the Department of Health and Human Services, consistent with Section 505 provisions.

HUMAN RESOURCES MANAGEMENT

H.R. 5005 contains two key provisions relating to employees at the new Department—section 841, which governs

the establishment of a human resources management system, and section 842, which deals with labor-management relations at the Department. These provisions have been among the most contentious in debate on this legislation.

The Administration has consistently sought what it calls ''flexibility'' in the personnel area, by which it means a carte blanche to waive civil service protections and union rights of the employees at the Department. Sections 841 and 842 of H.R. 5005 are significantly more protective in this regard than the provisions in the President's original proposal (i.e., the one released June 18, 2002), but these sections remain a major disappointment. A risk remains of politicization, arbitrary treatment, and other personnel abuses in the federal government, in a way that may damage the merit-based workplace federal employees and the American people have come to depend on. I hope what I fear does not come to pass, and that this Administration and future Administrations will not overstep bounds, overexert authority, and thereby undermine the effectiveness of the new Department. I have summarized below the protections that sections 841 and 842 do provide.

Establishment of Human Resources Management System. Section 841 authorizes the Secretary, jointly with the Director of the Office of Personnel Management (OPM), to prescribe a ''human resources management system'' (HRMS) for the Department. The section provides that the HRMS may waive certain provisions of the civil service statutes, and specifies required procedures by which the system is to be developed, negotiated, and adopted.

When it comes to the creation of a HRMS, the law still requires that employees in the new Department will be hired, promoted, disciplined, and fired in conformity with all merit system principles and in violation of no prohibited personnel practices. If and when existing civil service rights and protections come up for consideration in the development of a HRMS, the Administration may waive, modify, or otherwise affect such rights and protections only to the extent it can clearly demonstrate that they clearly conflict with the homeland security mission, and that they are not being waived merely in the interest of administrative convenience. Fair and independent procedures must be maintained for employees with grievances, such as those who allege abuse or corruption within the Department. Changes to the system must be carefully crafted through negotiation and collaboration with employees and their representatives; and, if a disagreement arises, the period of at least 30 days that section 841 requires for bargaining and mediation between the Administration and the employee representatives must be substantial and in good faith, not cosmetic.

The provisions in section 841 that allow a HRMS to waive statutes are precisely drawn, detailing which parts of the United States Code may be waived, modified, or otherwise affected and which parts may not. For example, the legislation specifically forbids waiver of merit system principles or prohibited personnel practices. Furthermore, as to provisions referred to in 5 U.S.C. §§2302(b)(1), (8) and (9), the legislation forbids waiver not only of the provisions themselves, but also of provisions implementing those protections through affirmative action or through any right or remedy. Sections 2302(b)(1), (8) and (9) include laws against discrimination, against reprisal for whistleblowing, and retaliation for exercising rights. Section 841 thus assures that the HRMS will not affect employees' ability to appeal a personnel action to the Merit Systems Protection Board, under existing law, in a case where the employee alleges a discrimination, retaliation, or reprisal covered and referred to by §§2302(b)(1), (8) and (9). Section 841 also requires the HRMS to ensure that employees may organize and bargain collectively, subject only to exclusion from coverage or limitation on negotiability established by 5 U.S.C. chapter 71 or other law.

Furthermore, the grant of waiver authority under section 841 refers explicitly and only to part III of title 5, United States Code. Section 841 thus grants no authority to waive any provision of law outside of part III. This means, for example, that the HRMS may not waive, modify, or otherwise affect such government-wide employee rights and protections as, for example: (1) the Office of Special Counsel's authority to investigate any prohibited personnel practice and seek corrective action or disciplinary action from the Merit Systems Protection Board (MSPB) (5 U.S.C. §§1211 et seq.); (2) employees' right to seek corrective action from the MSPB in a case of reprisal for whistleblowing (5 U.S.C. §§1221–1222); (3) the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended; printed as an appendix to 5 U.S.C.); (4) Veterans benefits (including appeal rights to MSPB) (38 U.S.C.); and (5) the Fair Labor Standards Act of 1938 (29 U.S.C. §§201 et seq.). Likewise, some of the right and protections applicable to particular agencies or groups of employees being transferred to the Department are set forth in portions of the United States Code outside of part III of title 5, or were not enacted by Congress as incorporated into the United States Code at all, and these rights and protections may not be waived by the HRMS.

While the waiver authority granted by section 841 is broad, the provisions noted above and other provisions that may not be waived under section 841 can afford significant protections against politicization, arbitrary action, and abuse. The Secretary and the Director must be scrupulous in not attempting to waive, modify, or otherwise affect any provisions of law that are beyond the express waiver authority, because such an attempt would violate section 841.

Labor-Management Relations. 5 U.S.C. §7103(b)(1) states that the President may issue an executive order excluding any agency from coverage under the Federal Sector Labor-Management Relations Statute (FSLMRS) if the President determines: that the agency has a primary function in intelligence, counterintelligence, investigative, or national security work, and that the provisions of the FSLMRS cannot be applied consistent with national security. Section 842 of H.R. 5005 builds on that existing provision by stating that, for the President to issue an executive order excluding an agency transferred to the Department, not only must the criteria in 5 U.S.C. §7103(b)(1) be satisfied, but also two additional clarifying criteria must be satisfied: that the mission and responsibilities of the agency materially changed, and that a majority of the employees in the agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

That provision would provide employees at the Department some appropriate measure of stability in their labor relations, although the provision is subject to a subsequent provision of section 842. The President can override the earlier provision if he determines that the earlier provision would have a substantial adverse impact on the Department's ability to protect homeland security, and provides Congress a detailed written finding explaining the reasons for the determination. The President has to give the Congress 10 days' advance notice by submitting the written explanation. At the expiration of the ten day period, the President would then have the power to issue an executive order under 5 U.S.C. §7103(b)(1) under the criteria of that section only.

I still fail to understand why any President would need to remove collective bargaining rights from federal employees, whose union rights are very limited in comparison with the private sector, and who have a long history of helping to protect the homeland and continue to do the same protective work in the new Department. But if and when this President or a future President does move to eliminate collective bargaining within a unit of the Department, the President can take this step only if it is truly essential to national security and homeland security and not merely a convenience to management. This requires that the Department's leadership must first make good-faith efforts to work cooperatively with the unions before the President can determine that union representation is incompatible with national security or homeland security.

And the written explanation that the President is required to provide to Congress must of course be thorough and specific. The requirement reflects a bipartisan concern that this Administration and future Administrations must

make the case for stripping workers of their right to bargain collectively before issuing an Executive Order. The President must provide Congress a comprehensive and specific explanation on the threshold issue of how and why the right of workers in a particular agency or subdivision to collectively bargain would have a substantial adverse impact on homeland security.

Other provisions. Two other provisions of H.R. 5005 relating to human resources management warrant comment.

Section 881 requires that the Secretary, in consultation with the Director of OPM, shall review the pay and benefit plans of each agency transferred to the Department and, within 90 days, submit a plan to Congress for ensuring the elimination of disparities, especially among law enforcement personnel. Nothing in section 881 provides for how the elements of the plan shall be put into effect, however, so I believe it would be desirable for the plan to identify the specific changes to law, regulation, and policy that would be needed to eliminate the disparities, and make specific recommendations for effecting those changes.

Section 1512(e) states that the Secretary, in regulations prescribed jointly with the Director of OPM, may adopt the rules, procedures, terms and conditions established by statute, rule, or regulation before the effective date of the Act in any agency transferred to the Department under the Act. This section 1512 contains the Savings Provisions for the reorganization effected by the Act, and subsection (e) is intended to enable the Secretary to keep a transferred agency subject to the same rules, procedures, terms and conditions that applied to the agency before the transfer. This provision does not, of course, provide authority to the Secretary to take a provision that was applicable to one agency before the effective date and apply it to another agency or other part of the Department.

Mr. THOMPSON. Madam President, putting a significant piece of legislation like this bill together is a difficult and time-consuming task. Many Senators have played important roles in this legislation, but the contributions of our staff members have also been of great significance. Without the aid of our staff members, little would get done in this institution. I would like to take a moment to recognize the hard work and dedication of just a few of the staff members who contributed significantly to this legislation.

For the Majority, I want to recognize the contributions of Chairman LIEBERMAN's staff, especially his staff director, Joyce Rechtschaffen, and Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper. Also, let me acknowledge the contributions of staff to the other members of the Governmental Affairs Committee and of Sarah Walter of Senator BREAUX's staff, David Culver of Senator BEN NELSON's staff, and Alex Albert of Senator MILLER's staff.

IOn the Republican side, I must single out the work of Rohit Kumar of Senator LOTT's Leadership staff. He has been the linchpin around whom everything got done. We would have no bill without his persistence, diligence, and intellect. Mike Solon of Senator GRAMM's staff also placed a crucial role in developing the Gramm-Miller amendment on which much of the final legislation is based. David Morgenstern of Senator CHAFEE's staff was also helpful.

Finally, let me recognize my own staff on the Governmental Affairs Committee, who provided me with outstanding support. The successful adoption of this legislation is due to their hard work and constant efforts. Almost my entire staff was involved in some way or another with this bill. I want to recognize the efforts of Richard Hertling, my staff director on the Governmental Affairs Committee, who led the effort, and Libby Wood Jarvis, my legislative director. Other members of my staff whose assistance I wish to recognize are Ellen Brown, Bill Outhier, Mason Alinger, Alison Bean, John Daggett, Johanna Hardy, Stephanie Henning, Morgan Muchnick, Jayson Roehl, Jana Sinclair, and Elizabeth VanDersarl, along with Allen Lomax, a fellow in my office from the General Accounting Office.

Our staff members toil diligently and well, largely in anonymity. I think it appropriate on occasion to recognize their work publicly, so that Americans may share the knowledge of the members of this institution about how well served they are by our staff members.

I thank the Presiding Officer for allowing me to take this brief time to recognize the efforts of some of the staff members responsible for this bill.

Mr. KENNEDY. Madam President, soon after the vicious attacks of September 11, it became clear that Congress needed to act on a bipartisan basis to win the war on terrorism and protect the country from future attack. Congress quickly approved strong bipartisan legislation authorizing the use of force against the terrorists and those who harbor them. It also enacted bipartisan legislation to provide aid to victims and their families, to improve airport security, to give law enforcement and intelligence officials enhanced powers to investigate and prevent terrorism, to improve border security, and to strengthen our defenses against bioterrorism.

The September 11 attacks also demonstrated the need to consolidate overlapping functions and establish clear and efficient organizational structures within the Federal Government. I fully support these goals. Reorganization without reform, however, will not work. It is not enough to consolidate different agency functions, if the underlying problems relating to management, information sharing, and coordination are not also addressed. And we do the Nation a disservice if, in the course of reorganizing the Government, we betray the ideals that America stands for here at home and around the world.

We know that our Nation faces a very serious threat of terrorism. To protect our national security in today's world, we need an immigration system that can carefully screen foreign nationals seeking to enter the United States and protect our Nation's borders. Our current Immigration and Naturalization Service is not up to these challenges. For years, INS has been unable to meet its dual responsibility to enforce our immigration laws and to provide services to immigrants, refugees, and aspiring citizens.

The Lieberman homeland security bill included bipartisan immigration reforms that were carefully designed to correct these problems and bring our immigration system into the 21st century. It untangled the overlapping and often confusing structure of the INS and replaced it with two clear lines of command—one for enforcement and the other for services. It also included a strong chief executive officer to ensure accountability, a uniform immigration policy, and effective coordination between the service and the enforcement functions.

On these key issues, the Republican bill moves in exactly the wrong direction. It transfers all immigration enforcement functions to the Border and Transportation Security Directorate. Immigration service functions are relegated to the Bureau of Citizenship and Immigration Services, which lacks its own Under Secretary. These agencies will have authority to issue conflicting policies and conflicting interpretations of law. The formulation of immigration policy—our only chance to achieve coordination between these dispersed functions—will be subject to the conflicting views of various officials spread out in the new Department. With its failure to provide centralized coordination and lack of accountability, the Republican bill is a blueprint for failure.

The Republican bill also eliminates needed protections for children who arrive alone in the United States. Often, these children have fled from armed conflict and abuses of human rights. They are traumatized and desperately need care and protection. The Lieberman bill included safeguards, developed on a bipartisan basis, to ensure that unaccompanied alien children have the assistance of counsel and guardians in the course of their proceedings. Under this bill, immigration proceedings will remain the only legal proceedings in the United States in which children are not provided the assistance of a guardian or court-appointed special advocate.

Finally, the Republican bill will seriously undermine the role of immigration judges. Every day, immigration courts make life-altering decisions.

The interests at stake are significant, especially for persons facing persecution. We need an immigration court system that provides individuals with a fair hearing before an impartial and independent tribunal, and meaningful appellate review. The Republican bill undermines the role and independence of the courts and the integrity of the judicial process.

It vests the Attorney General with all-encompassing authority, depriving immigration judges of their ability to exercise independent judgement. Even more disturbing, the bill gives the Attorney General the authority to change or even eliminate appellate review. This result is a recipe for mistakes and abuse. An independent judicial system is essential to our system of checks and balances. Immigrants who face the severest of consequences deserve their day in court.

Today, many Americans are concerned about the preservation of basic liberties protected by the Constitution. Clearly, as we work together to bring terrorists to justice and enhance our security, we must also act to preserve and protect our Constitution. Unfortunately, the Republican bill undermines the civil rights and privacy safeguards that Senator FEINGOLD and I worked to include in the Lieberman bill. In particular, I am disappointed that the civil rights officer in the new Department will not be subject to Senate confirmation, and that there will not be a designated official in the Inspector General's Office to investigate civil rights violations.

These changes to the civil rights and privacy safeguards are particularly disturbing in light of the fact that the bill explicitly authorizes the new Department to engage in the controversial practice of data mining. This practice allows the Government to establish a massive data base containing public and private information, with files on every American. The bill provides no language ensuring that the Government acts in compliance with Federal privacy laws and the Constitution.

On the issue of worker rights, we should remember that union members risked and lost their lives and saved countless others through their actions on September 11. We will never forget the fine example that firefighters, construction workers, and many Government workers set that day. Union workers have also shown great bravery and sacrificed mightily in the service of homeland security since September 11. The postal workers and the hospital worker killed as a result of bioterrorism were all union members. The brave flight attendant whom the President recognized in the State of the Union Address for preventing terrorism was a member of a union.

The dedication and resolve of these union members truly represents the best of America. Over 43,000 of the Federal workers affected by the proposed Government reorganization are currently union members. On September 11, unionized Federal workers played critical roles at both the World Trade Center and the Pentagon as they worked round the clock to make our homeland secure. These are the workers who risk their lives each day to protect our Nation's borders.

This bill completely undermines the collective bargaining rights of the unionized employees transferred to the new Department on whom our security depends. It gives the President unlimited and unchecked authority to eliminate those collective bargaining rights. He only needs to claim that continued union rights would interfere with homeland security. Federal workers will also have no opportunity to meaningfully participate in creating the personnel system for the new Department. Moreover, this bill does not include any Davis-Bacon protections, despite longstanding Federal policy that workers should be paid prevailing wages on Federal construction projects. This bill displays a contempt for the Federal workers who serve with dedication every day to keep our Nation Safe.

Denying Federal workers fundamental rights will also undermine our Nation's homeland security at a time when we can ill afford it. Among the many lessons we have learned since September 11 about lapses in intelligence efforts connected with those events is that Federal workers need protection to be able to speak out when they believe our Nation's security is at risk. Without the protections afforded by a union, Federal workers will be far less likely to speak out and protect the public for fear of unjust retaliation.

The Republican bill's fundamental flaws were compounded to by the last-minute addition of numerous special-interest provisions. These provisions include the creation of new procedural barriers for the issuance of emergency security rules deemed essential to protect travelers by the Transportation Security Agency; an earmark for a new homeland security research center program at Texas A&M; and an exemption from the open-meetings requirement of the Federal Advisory Committee Act. The bill gives broad liability protection to manufacturers of ''anti-terrorism technology'' for claims arising from acts of terrorism. This provision will reduce the incentive of industry to produce effective antiterrorism products and limit the ability of victims to recover if future terrorist acts occur. It also shields from liability pharmaceutical companies that produce vaccine additives such as Thimerosal—the subject of pending litigation initiated by parents of autistic children. This provision has nothing to do with bioterrorism preparedness or homeland security—and everything to do with rewarding a large contributor to the Republican Party.

While I agree with my Republican colleagues that we need to reorganize the Government in responses to the challenges that we now face, I cannot support the deeply flawed bill now before the Senate. In too many aspects, it misses the opportunity for real reform and is likely to undermine, not strengthen, the security of our homeland.

Mr. WARNER. Madam President, I rise today to urge my colleagues to reject the pending Lieberman amendment to the homeland security bill. This amendment will prevent the President from gaining the authorities he needs to effectively deal with the very real and growing threat to our homeland. We should act, and act quickly. to give the President this authority.

The current amendment would keep the President from addressing a key issue in providing protection to our homeland, that is, the issue of liability risk which must be resolved if the private sector is to actively provide innovative homeland defense technologies and solutions. Some form of indemnification or limitation of lability has been a part of U.S., war efforts since World War II, as evidence by congressional passage of the War Power Act of 1941 2 weeks after Pearl Harbor, and, since 1958, the use of the National Defense Contracts Act, or Public Law 85–804, to indemnify contracts issued by the Department of Defense and other national security agencies.

To address the current terrorist threat, I have worked on the liability issue with the High Technology Task Force under the leadership of Senators ALLEN and BENNETT to fashion various solutions to enable America to access the best private sector products and technologies to defend our homeland. This is particularly important to those innovative small businesses who do not have the capital to shoulder significant liability risk.

The Lieberman amendment would nullify the compromise recently worked out with the House to limit this liability risk through limited tort reform. The Lieberman amendment would not provide any alternative to address the underlying problem. If this amendment passes what would be the incentives for This amendment is contractors to provide innovative solutions to our homeland security? For example, contractors will not sell chemical/biological detectors already available to DOD to other Federal agencies and State and local authorities because of the liability risk. Some of our Nation's top defense contractors will not sell these products because they are afraid to risk the future of their company on a lawsuit. There is an urgent need for authority to address this situation.

While my earlier proposal on indemnification, which is another approach to addressing liability risk, is not included in the current bill, I believe that the compromise language will go a long way to addressing the problem. If it appears that additional authorities are necessary to complement the language in this bill, I pledge to work in

the coming Congress to provide any necessary authority that the Present needs to ensure that innovative homeland defense technologies and solutions are available to the Federal State and local governments, as well as to the private sector.

I would also like to remark on the importance of Section 882 in the homeland security legislation to create an Office for National Capital Region Coordination within the new Department. This office will enable the Washington metropolitan region to prevent and respond to future terrorist attacks by coordinating the efforts of the Federal Government with state, local and regional authorities.

The September 11 attacks underscored the unique challenges the National Capital Region faces. As the seat of our Nation's Government, the location of many symbolic structures, the venue for many public events attended by large numbers of people, a key tourism destination point and home to thousands of Federal workers and lawmakers, it has been and may continue to be a prime location for potential future terrorist attacks.

The Washington metropolitan region needs a central Federal point of coordination for the many entities in the region which must deal with the Federal Government on issues of security. These authorities include the Federal Government, Maryland, Virginia and the District of Columbia, the Metropolitan Washington Council of Governments, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, the Military District of Washington, the judicial branch, the business community and the U.S. Congress. In no other area of the country must important decisionmaking and coordination occur between an independent city, two States, seventeen distinct local and regional authorities, including more than a dozen local police and Federal protective forces, and numerous Federal agencies.

A central Federal point of contact compliments the work of the Metropolitan Washington Council of Governments, COG, which established a comprehensive all-sector task force to improve communication and coordination when an incident of regional impact occurs. Currently, several Federal agencies have been involved in the task force, including the Office of Homeland Security, FEMA, the Office of Personnel Management, the Army Corps of Engineers, the Military District of Washington, the Department of Health and Human Services, the U.S. Public Health Service, and the Centers for Disease Control. Without a central Federal point of contact, it has been difficult, if not impossible, for effective coordination to occur among the region and these many entities.

For example, the Continuity of Operations Plans for several federal agencies are instructing employees to use Metrorail and Metrobus service in the event of an emergency. There is not a central Federal contact, however, for the Washington Metropolitan Area Transit Authority, WMATA, to work with to ensure that the Federal Government's needs are met and Federal employees are fully protected.

This new office within the Department of Homeland Security will resolve this problem by providing a much needed central Federal point of coordination. It will give all entities in the region a one-stop shop for dealing with the Federal Government on security issues, including plans and preparedness activities, including COG, WMATA, the Greater Washington Board of Trade and the Potomac Electric Power Company, PEPCO, whose statements have appeared in previous versions of the CONGRESSIONAL RECORD.

On behalf on the region's 5 million residents, I commend the House and Senate for recognizing the unique needs of our nation's capital in preventing and responding to terrorism by supporting creation of the Office for National Capital Region Coordination.

Passage of legislation to create a new Department of Homeland Security is crucial to our Nation's ability to respond to and prevent possible future terrorist attacks.

Mr. LEAHY. Madam President, the idea of coordinating homeland security functions in a cabinet-level department is a constructive one and a sounds one. In large part it originated in this body with legislation offered by Senator LIEBERMAN and Senator SPECTER, who deserve great credit for their work. President Bush, after initially opposing this idea, also deserves credit for coming to understand its value and for reversing his administration's resistance to it.

In the several months that the Congress has spent in writing and debating this complex bill, the issue has not been whether such a department should be created, but how it should be created. The Judiciary Committee, which I chair, has played a constructive role in examining these issues in our hearings and in providing guidance in the writing of this bill, and I have supported and helped to advance the key objectives envisioned for this new department. The fact that we are on the verge of enacting a charter for the new department is good for the Nation and our efforts to defend the American people against the threats of terrorism. Many of the ''hows'' that have found their way into this bill, and the process by which that has happened, are a needless blot on this charter. As we act to approve this charter, we should also feel obligated to remedy many of these ill-advised and ill-considered provisions in succeeding congressional sessions, through corrective steps and through close oversight.

As they come to understand some of the imprudent extraneous additions to this bill, many Americans will feel that their trust and goodwill have been abused, and I share their disappointment about several elements of this version of the bill that has been placed, without due consideration, before the Senate. This deal, negotiated behind closed doors by a few Republican leaders in the House and Senate and the White House, has been presented to us as a done deal. It includes several blatant flaws that should at the very least be debated. That is why I could not vote for cloture to end debate on a bill almost 500-pages long that was presented to us for the first time only five days ago, on November 14.

The bill undertakes a significant restructuring of the Federal Government by relocating in the new Department of Homeland Security several agencies, including the Immigration and Naturalization Service, the U.S. Secret Service, the Federal Emergency Management Agency, the Office of Domestic Preparedness, the Transportation Security Administration, the U.S. Customs Service, and the Coast Guard. In addition, many functions of the Bureau of Alcohol, Tobacco, Firearms and Explosives would be transferred to the Department of Justice.

Overall I support the President's conclusion that several government functions should be reorganized to improve our effectiveness in combating terrorism and preserving our national security, although he has been responsible for leading all of these agencies and fulfilling their responsibilities since assuming the Presidency in January 2001, and the President himself opposed significant reorganization until recently. Homeland security functions are now dispersed among more than 100 different governmental organizations. Testimony at a June 26, 2002, Judiciary Committee hearing illuminated the problem of such a confusing patchwork of agencies with none having homeland security as its sole or even primary mission. I had thought that the Department of Justice and FBI were the lead agencies responsible for the country's security in 2001 and 2002, but I understand why the President has come to realize that the lack of a single agency responsible for homeland security increases both the potential for mistakes and opportunities for terrorists to exploit our vulnerabilities.

The bill will bring under one cabinet level officer agencies and departments that share overlapping missions for protecting our border, our financial and transportation infrastructure and responding to crises. Having these agencies under a single cabinet level officer will help coordinate their efforts and focus their mission with a single line of authority to get the job done.

This is something that I support.

The bill also encourages information sharing. Our best defense against terrorism is improved communication and coordination among local, State, and Federal authorities; and between the U.S. and its allies. Through these efforts, led by the Federal government and with the active assistance of many

others in other levels of government and in the private sector, we can enhance our prevention efforts, improve our response mechanisms, and at the same time ensure that funds allotted for protection against terrorism are being used most effectively.

The recent sniper rampage in the Washington, DC area demonstrated the dire need for such coordination among Federal, State and local law enforcement agencies. Fortunately, we were able to see the productive results of effective information sharing and coordination with the arrests of the two alleged snipers on October 31.

While we all support increased sharing of relevant information with the new Department of Homeland Security by and among other Federal, State and local agencies, we must be careful that information sharing does not turn into information dumping. We want our law enforcement officials to have the information they need to do their jobs effectively and efficiently, with communications equipment that allows different agencies to talk to each other and with the appropriate training and tools so that multiple agencies are able to coordinate their responses during emergencies. We know that large amounts of information were collected, but never read or analyzed, before September 11, and we know that translators and resources are what we need to help make the already-gathered information useful.

There is no dispute that information sharing is critical, but we have to make sure we do not go overboard. Information dumping is harmful to our national security if the information is not accurate, complete, or relevant, or if it is dumped in such a bulk fashion that end-users are unable to determine its reliability. The legislation before us provides very broad authority for information collection from and sharing with not just Federal, State and local law enforcement authorities, but also other government agencies, foreign government agencies and the private sector. Highly sensitive grand jury information, criminal justice, and electronic, wire, and oral interception information is authorized to be shared to not just across this country but also around the world. Without clear guidance, this sweeping new authority can be a recipe for mischief. The Congress now will have an imperative to monitor vigilantly and responsibly the implementation of this new authority to ensure that the risks to the privacy of the American people and the potential for abuse do not become a reality.

This bill contains several constructive provisions, including establishment in the new Department of a Privacy Office and an Office for Civil Rights and Civil Liberties. The bill also includes the Sessions-Leahy bill, S. 3073, and whistleblower protections that the administration's original proposal rejected. In addition, as I will discuss in more detail in these remarks, the bill includes a prohibition on both the TIPS Program and a national identification system or card.

I am pleased the bill, in section 880, forbids the creation of Operation TIPS, a proposed citizen reporting program theoretically designed to prevent terrorism. The ill-designed program threatened to turn neighbors into spies and to discredit valuable neighborhood watch programs. When I questioned the Attorney General about the program earlier this year, I found his answers to be incomplete and far from reassuring. As such, I was prepared to offer an amendment in the Senate to bar Operation TIPS, and I welcome the House's strong opposition to the program that has made my amendment unnecessary.

Under the plan originally announced by the Justice Department, Operation TIPS would have enlisted millions of Americans as volunteers who would report their suspicions about their neighbors and customers to the government. This plan was criticized by Republicans and Democrats alike, and Justice Department officials then said they planned to make the program smaller than originally anticipated. But the Department never made clear how the program would work, what it would cost, or how the privacy interests of American citizens would be protected.

Indeed, the administration offered a constantly shifting set of explanations to Congress and the public about how Operation TIPS would work, leaving Congress unable even to evaluate a program that could easily lead to the invasion of the privacy of our fellow Americans. Even the Operations TIPS website offered differing explanations of how the program would work, depending on what day a concerned user accessed it. For example, before July 25, the web site said that Operation TIPS ''involving 1 million workers in the pilot stage, will be a national reporting system that allows these workers, whose routines make them well-positioned to recognize unusual events, to report suspicious activity.'' By contrast, the July 25 version declared that ''the program will involve the millions of American workers who, in the daily course of their work, are in a unique position to see potentially unusual or suspicious activity in public places.'' It was unclear whether these changes reflected actual changes in the Justice Department's plans, or whether they were simply cosmetic differences designed to blunt opposition to the program raised by concerned citizens, newspaper editorials, and Members of Congress.

The administration originally proposed Operation TIPS as ''a nationwide program giving millions of American truckers, letter carriers, train conductors, ship captains, utility employees, and others a formal way to report suspicious terrorist activity.'' In other words, the administration would recruit people whose jobs gave them access to private homes to report on any ''suspicious'' activities they discovered. Nor would this program start small; the Administration planned a pilot program that alone would have enlisted 1 million Americans.

We also never received a full understanding of how the Administration planned to train Operation TIPS volunteers. The average citizen has little knowledge of law enforcement methods, or of the sort of information that is useful to those working to prevent terrorism. Such a setup could have allowed unscrupulous participants to abuse their new status to place innocent neighbors under undue scrutiny. The number of people who would have abused this opportunity is undoubtedly small, but the damage these relatively few could do would be very real and potentially devastating. In addition, it was crucial that citizen volunteers receive training about the permissible use of race and ethnicity in their evaluation of whether a particular individual's behavior is suspicious, but the Justice Department seemed not to have considered the issue.

Even participants acting in good faith may have been prone to report activity that would not be suspicious to a well-trained professional. One law enforcement agencies are already operating under heavy burdens, and I questioned the usefulness of bombarding them with countless tips from millions of volunteers. As the Washington Post put it in a July editorial: ''It is easy to imagine how such a program might produce little or no useful information but would flood law enforcement with endless suspicions that would divert authorities from more promising investigative avenues.''

The administration's plan also raised important questions about how and whether information submitted by TIPS volunteers would be retained. Many of us were deeply concerned about the creation of a TIPS database that would retain TIPS reports indefinitely. When he testified before the Judiciary Committee in July, the Attorney General said that he, too, was concerned about this. He told us that he had been given assurances that there would be no database, but he could not tell us who had given him those assurances. Many months later, the administration's plans on this issue still are unclear. We simply cannot allow a program that will use databases to store unsubstantiated allegations against American citizens to move forward.

Opposition to Operation TIPS has been widespread. Representative ARMEY, the House Majority Leader, has led the fight against it in the House. The Postal Service refused to participate. The Boston Globe called it a scheme Joseph Stalin would have loved. In an editorial, The New York Times said: ''If TIPS is ever put into effect, the first people who should be turned in as a threat to our way of life are the Justice Department officials who thought up this most un-American of programs.'' The Las Vegas Sun said that ''Operation TIPS has the potential

of becoming a monster.'' The Washington Post said that the Administration ''owes a fuller explanation before launch day.''

In evaluating TIPS, we need to remember our past experience with enlisting citizen informants on such a grand scale. During World War I, the Department of Justice established the American Protective League, APL, which enrolled 250,000 citizens in at least 600 cities and towns to report suspicious conduct and investigate fellow citizens. For example, the League spied on workers and unions in thousands of industrial plants with defense contracts and organized raids on German-language newspapers. Members wore badges and carried ID cards that showed their connection to the Justice Department and were even used to make arrests. Members of the League used such methods as tar and feathers, beatings, and forcing those who were suspected of disloyalty to kiss the flag. The New York Bar Association issued a report after the war stating of the APL: ''No other one cause contributed so much to the oppression of innocent men as the systematic and indiscriminate agitation against what was claimed to be an all-pervasive system of German espionage.'' No one wants to relive those dark episodes or anything close to them.

I am pleased that we have achieved bicameral and bipartisan agreement that Operation TIPS goes too far, infringing on the liberties of the American people while promising little benefit for law enforcement efforts. If the administration comes to Congress with a limited, common-sense proposal that respects liberties, Congress will likely support it. But Congress cannot simply write a blank check for such a troubled program.

I am also pleased that the bill, in section 1514, states clearly that nothing in the legislation shall be construed to authorize the development of a national identification system or card. Given the other provisions in the bill that pose a risk to our privacy, this at least is a line in the sand which I fully support.

The House-passed bill also includes, in section 601, a provision that Senator SESSIONS and I introduced last month as S.3073. This provision will facilitate private charitable giving for servicemen and other Federal employees who are killed in the line of duty while engaged in the fight against international terrorism. Under current law, beneficiaries of members of the U.S. Armed Forces get paid only $6,000 in death benefits from the government, over any insurance that they may have purchased. Moreover, these individuals may not be eligible for payments from any existing victims' compensation program or charitable organization. The Session-Leahy provision will provide much-needed support for the families of those who have made the ultimate sacrifice for their country. It encourages the establishment of charitable trusts for the benefit of surviving spouses and dependents of military, CIA, FBI, and other Federal Government employees who are killed in operations or activities to curb international terrorism. This provision also authorizes Federal officials to contact qualifying trusts on behalf of surviving spouses and dependents, pursuant to regulations to be prescribed by the Secretary of Defense. This will help to inform survivors about benefits and to ensure that those who are eligible have the opportunity to access the money. It will also spare grieving widows the embarrassment of having to go to a charity and ask for money. Finally, for the avoidance of doubt, this provision makes clear that Federal officeholders and candidates may help raise funds for qualifying trusts without running afoul of federal campaign finance laws.

I am also pleased that, unlike the President's original, the current bill would ensure that employees of the new Department of Homeland Security will have all the same whistleblower protections as employees in the rest of the Federal Government. As we saw during the many FBI oversight hearings that the Judiciary Committee has held over the last 15 months, strong whistleblower protection is an important homeland security measure in itself.

Indeed, it was whistleblower revelations that helped lead to the creation of this Department. The President was vehemently opposed to creating the new Department of Homeland Security for 9 months after the September 11 attacks. Then, just minutes before FBI whistleblower Coleen Rowley came before the Judiciary Committee in a nationally televised appearance to expose potential shortcomings in the FBI's handling of the Zacarias Moussaoui case before 9/11, the White House announced that it had changed its position and that the creation of a new cabinet-level Department of Homeland Security was vital. Of course, that made it all the more ironic that the President's original proposal did not assure whistleblower protections in the new Department.

In any event, although the new Department has the same legal protections as those that apply in the rest of the government, the protections will mean nothing without the vigorous enforcement of these laws by the administration. The leadership of the new Department and the Office of Special Counsel must work to encourage a culture that does not punish whistleblowers, and the Congress—including the Judiciary Committee—must continue to vigorously oversee the new and other administrative departments to make sure that this happens.

While I am glad that the many employees of the new Department will have the same substantive and procedural whistleblower protections as other government employees, I wish that we could have done more. Unfortunately, a Federal court with a monopoly on whistleblower cases that is hostile to such claims has improperly and narrowly interpreted the provisions of the Whistleblower Protection Act. Senators GRASSLEY, LEVIN, AKAKA and I had proposed a bipartisan amendment to this measure that would have strengthened whistleblower protections in order to protect national security. The amendment was similar to S. 995, of which I am a cosponsor, and our amendment would have corrected some of the anomalies in the current law. It is unfortunate for the success of the Department and for the security of the American people that the amendment was not part of the final measure, and I hope that we can work to pass S. 995 in the 108th Congress.

The administration was slow to accept the idea for a cabinet-level department to coordinate homeland security, but experience in the months after the September 11 attacks helped in the evolution of the Administration's position. Soon after the President invited Governor Ridge to serve as the Director of an Office of Homeland Security within the White House, I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about how he would improve the coordination of law enforcement and intelligence efforts and about his views on the role of the National Guard in carrying out the homeland security mission, but he declined our invitation at that time. The administration would not allow Director Ridge to testify before Congress.

Without Governor Ridge's input, the Judiciary Committee continued oversight work that had begun in the summer of 2001, before the terrorist attacks, on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings with the Attorney General and with officials of the Federal Bureau of Investigation and the Immigration and Naturalization Service. In the weeks immediately after the attacks, the committee turned its attention to hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. Committee members worked in partnership with the White House and the House to craft the new anti-terrorism law, the USA PATRIOT Act, which was enacted on October 26, 2001.

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security, but we did not do so at the request of the White House. Indeed, from September, 2001, until June, 2002, the administration was steadfastly opposed to the creation of a cabinet-level department to protect homeland security. Governor Ridge said in an interview with National Journal reporters in May, 2001, that if Congress put a bill on the President's desk to make his position statutory, he would, ''probably

recommend that he veto it.'' That same month, White House spokesman Ari Fleischer also objected to a new department, commenting that, ''You still will have agencies within the Federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn't solve anything.''

In one respect, the White House was correct: Simply moving agencies around among departments does not address the problems inside agencies like the FBI or the INS—problems like outdated computers, hostility to employees who report problems, lapses in intelligence sharing, and lack of translation and analytical capabilities, along with what many have termed ''cultural problems.'' The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. We have worked hard to be bipartisan and even nonpartisan in this regard. To that end, the Committee unanimously reported the Leahy-Grassley FBI Reform Act, S. 1974, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, that bill has been blocked on the Senate floor since it was reported by the Judiciary Committee in April, 2002, by an anonymous Republican hold.

The White House's about-face on June 6, 2002, announced just minutes before the Judiciary Committee's oversight hearing with FBI Special Agent Coleen Rowley, telegraphed the President's new support for the formation of a new homeland Security Department along the lines that Senator LIEBERMAN and Senator SPECTER had long suggested.

Two weeks later, on June 18, 2002, Governor Ridge transmitted a legislative proposal to create a new homeland security department. It should be apparent that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the administration's early proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply, nor would the conflicts of interest and accountability rules for agency advisors. The new department head would have the power to suspend the Whistleblower Protection Act and the normal procurement rules and to intervene in Inspector General investigations. In these respects, the administration asked us to put this new department above the law and outside the checks and balances these laws are there to ensure.

Exempting the new department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start—not the sure footing we all want for the success and endurance of this endeavor.

We all wanted to work with the President to meet his ambitious timetable for setting up the new department. Senate Democrats worked diligently to craft responsible legislation that would establish a new department but would also make sure that it was not outside the laws. We all knew that one sure way to slow up the legislation would be to use the new department as the excuse to undermine or repeal laws not liked by partisan interests, or to stick unrelated political items in the bill under the heading of ''management flexibility.'' Unfortunately, the Republican leadership and the White House have been unable to resist that temptation, even as they urge prompt passage of a bill unveiled for the first time only 5 days ago.

This bill has its problems. As I will discuss in more detail in the balance of my remarks, this legislation has five significant problems. It would: (1) undermine Federal and State sunshine laws permitting the American people to know what their government is doing, (2) threaten privacy rights, (3) provide sweeping liability protections for companies at the expense of consumers, (4) weaken rather than fix our immigration enforcement problems, and (5) under the guise of ''management flexibility,'' it would authorize political cronyism rather than professionalism within the new department. These problems are unfortunate and entirely unnecessary to the overall objective of establishing a new department of homeland security. Republican leaders and the White House have forced on the Senate a process under which these problem areas cannot be substantively and meaningfully addressed, and that is highly regrettable and a needless blot on this charter. Though I will support passage of this legislation in order to get the new department up and running, the flaws in this legislation will require our attention next year, when I hope to work with the administration and my colleagues on both sides of the aisle to monitor implementation of the new law and to craft corrective legislation.

First, the bill guts the FOIA at the expense of our national security and public health and safety. This bill eliminates a bipartisan Senate provision that I crafted with Senator LEVIN and Senator BENNETT to protect the public's right to use the Freedom of Information Act, FOIA, in order to find out what our Government is doing, while simultaneously providing security to those in the private sector that records voluntarily submitted to help protect our critical infrastructures will not be publicly disclosed. Encouraging cooperation between the private sector and the government to keep our critical infrastructure systems safe from terrorist attacks is a goal we all support. But the appropriate way to meet this goal is a source of great debate—a debate that has been all but ignored by the Republicans who crafted this legislation.

The administration itself has flip-flopped on how to best approach this issue. The administration's original June 18, 2002, legislative proposal establishing a new department carved out of FOIA exemption, in section 204, and required non-disclosure of any ''information'' ''voluntarily'' provided to the new Department of Homeland Security by ''non-Federal entities or individuals'' pertaining to ''infrastructure vulnerabilities or other vulnerabilities to terrorism'' in the possession of, or that passed through, the new department. Critical terms, such as ''voluntarily provided,'' were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the administration's proposal on June 26, 2002, when the administration reversed its long-standing position and allowed him to testify in his capacity as the Director of the Transition Planning Office.

Governor Ridge's testimony at that hearing is instructive. He seemed to appreciate the concerns expressed by Members about the President's June 18th proposal and to be willing to work with us in the legislative process to find common ground. On the FOIA issue, he described the Administration's goal to craft ''a limited statutory exemption to the Freedom of Information Act'' to help ''the Department's most important missions [which] will be to protect our Nation's critical infrastructure.'' (June 26, 2002 Hearing, Tr., p. 24). Governor Ridge explained that to accomplish this, the Department must be able to ''collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities.'' (Id., at p. 23).

I do not understand why some have insisted that FOIA and our national security are inconsistent. The FOIA already exempts from disclosure matters that are classified; trade secret, commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety and to ensure that the private sector can provide needed information to the government.

Current law already exempts from disclosure any financial or commercial information provided voluntarily to the government, if it is of a kind that the provider would not customarily make available to the public. *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Such information enjoys even stronger nondisclosure protections than does material that the government requests. Applying this exception, Federal regulatory

agencies are today safeguarding the confidentiality of all kinds of critical infrastructure information, like nuclear power plant safety reports (*Critical Mass*, 975 F.2d at 874), information about product manufacturing processes land internal security measures (*Bowen* v. *Food & Drug Admin*., 925 F.2d 1225 (9th Cir. 1991), design drawings of airplane parts (*United Technologies Corp. by Pratt & Whitney* v. *F.A.A.*, 102 F.3d 6878 (2d Cir. 1996)), and technical data for video conferencing software (*Gilmore* v. *Dept. of Energy*, 4 F. Supp.2d 912 (N.D. Cal. 1998)).

The head of the FBI National Infrastructure Protection Center, NIPC, testified more than 5 years ago, in September, 1998, that the ''FOIA excuse'' used by some in the private sector for failing to share information with the government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a ''national security intelligence'' investigation, including information submitted confidentially or even anonymously. [Sen. Judiciary Subcommittee On Technology, Terrorism, and Government Information, Hearing on Critical Infrastructure Protection: Toward a New Policy Directive, S. HRG. 105–763, March 17 and June 10, 1998, at p. 107]

The FBI also used the confidential business record exemption under (b)(4) ''to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received.'' NIPC was developing policies ''to grant owners of information certain opportunities to assist in the protection of the information (e.g., 'sanitizing the information themselves') and to be involved in decisions regarding further dissemination by the NIPC.'' Id. In short, the former administration witness stated: ''Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act (FOIA). The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law.'' (Id.)

Nevertheless, for more than 5 years, businesses have continued to seek a broad FOIA exemption that also comes with special legal protections to limit their civil and criminal liability, and special immunity from the antitrust laws. The Republicans are largely granting this business wish-list in the legislation for the new Department of Homeland Security.

At the Senate Judiciary Committee hearing with Governor Ridge, I expressed my concern that an overly broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks, and said he was ''anxious to work with the Chairman and other members of the committee to assure that the concerns that [had been] raised are properly addressed.'' Id. at p. 24. He assured us that ''[t]his Administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.'' Id. at p. 25. This turned out to be an empty promise.

Almost before the ink was dry on the administration's earlier June proposal, on July 10, 2002, the administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt State sunshine laws if the designated information is shared with State or local government agencies, (4) impose criminal penalties of up to one year imprisonment on Government employees who disclosed the designated information, and (5) antitrust immunity for companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the administration's promulgation of two separate proposals for a new FOIA exemption in as many weeks, in July, Director Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to ''convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector.'' (p. 33)

The need for more study of the administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affects. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the administration's proposal, companies could avoid enforcement action by ''voluntarily'' providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

I worked on a bipartisan basis with many interested stakeholders from environmental, civil liberties, human rights, business and government watchdog groups to craft a compromise FOIA exemption that did not grant the business sector's wish-list but did provide additional nondisclosure protections for certain records without jeopardizing the public health and safety. At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee, in particular Senator LEVIN and Senator BENNETT, to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security without providing incentives to ''game'' the system of enforcement of environmental and other laws designed to protect our nation's public health and safety. We refined the FOIA exemption in a manner that satisfied the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

This compromise solution was supported by the administration and other members of the Committee on Governmental Affairs and was unanimously adopted by that Committee at the markup of the Homeland Security Department bill on July 24, 2002. The provision would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the compromise FOIA exemption made clear that the exemption only covered ''records'' from the private sector, not all ''information'' provided by the private sector and thereby avoided the adverse result of government agency-created and generated documents and databases being put off-limits to the FOIA simply if private sector ''information'' is incorporated. Moreover, the compromise FOIA exemption clearly defined what records may be considered ''furnished voluntarily,'' which did not cover records used ''to satisfy any legal requirement or obligation to obtain any grant, permit, benefit (such as agency forbearances, loans, or reduction or modifications of agency penalties or rulings), or other

approval from the Government.'' The FOIA compromise exemption further ensured that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. This compromise did not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement enforcement action, nor did the compromise preempt state or local sunshine laws.

Unfortunately, the new Republican version of this legislation that we are voting on today jettisoned the bipartisan compromise on the FOIA exemption, worked out in the Senate with the administration's support, and replaced it with a big-business wish-list gussied up in security garb. The Republican FOIA exemption would make off-limits to the FOIA much broader categories of ''information'' and grant businesses the legal immunities and liability protections they have sought so vigorously for over 5 years. This bill goes far beyond what is needed to achieve the laudable goal of encouraging private sector companies to help protect our critical infrastructure. Instead, it will tie the hands of the federal regulators and law enforcement agencies working to protect the public from imminent threats. It will give a windfall to companies who fail to follow Federal health and safety standards. Most disappointingly, it will undermine the goals of openness in government that the FOIA was designed to achieve. In short, the FOIA exemption in this bill represents the most severe weakening of the Freedom of Information Act in its 36-year history.

In the end, the broad secrecy protections provided to critical infrastructure information in this bill will promote more secrecy which may undermine rather than foster national security. In addition, the immunity provisions in the bill will frustrate enforcement of the laws that protect the public's health and safety.

Let me explain. The Republican FOIA exemption would allow companies to stamp or designate certain information as ''Critical Infrastructure Information'' or ''CII'' and then submit this information about their operations to the government either in writing or orally, and thereby obtain a blanket shield from FOIA's disclosure mandates as well as other protections. A Federal agency may not disclose or use voluntarily-submitted and CII-marked information, except for a limited ''informational purpose,'' such as ''analysis, warning, interdependency, study, recovery, reconstitution,'' without the company's consent. Even when using the information to warn the public about potential threats to critical infrastructure, the bill requires agencies to take steps to protect from disclosure the source of the CII information and other ''business sensitive'' information.

The bill contains an unprecedented provision that threatens jail time and job loss to any Government employee who happens to disclose any critical infrastructure information that a company has submitted and wants to keep secret. These penalties for using the CII information in an unauthorized fashion or for failing to take steps to protect disclosure of the source of the information are severe and will chill any release of CII information not just when a FOIA request comes in, but in all situations, no matter the circumstance. Criminalizing disclosures—not of classified information or national security related information, but of information that a company decides it does not want public—is an effective way to quash discussion and debate over many aspects of the Government's work. In fact, under this bill, CII information would be granted more comprehensive protection under Federal criminal laws than classified information.

This provision has potentially disastrous consequences. If an agency is given information from an ISP about cyberattack vulnerabilities, agency employees will have to think twice about sharing that information with other ISPs for fear that, without the consent of the ISP to use the information, even a warning might cost their jobs or risk criminal prosecution.

This provision means that if a Federal regulatory agency needs to issue a regulation to protect the public from threats of harm, it cannot rely on any voluntarily submitted information—bringing the normal regulatory process to a grinding halt. Public health and law enforcement officials need the flexibility to decide how and when to warn or prepare the public in the safest, most effective manner. They should not have to get ''sign off'' from a Fortune 500 company to do so.

While this legislation risks making it harder for the Government to protect American families, it will make it much easier for companies to escape responsibility when they violate the law by giving them unprecedented immunity from civil and regulatory enforcement actions. Once a business declares that information about its practices relates to critical infrastructure and is ''voluntarily'' provided, it can then prevent the Federal Government from disclosing it not just to the public, but also to a court in a civil action. This means that an agency receiving CII-marked submissions showing invasions of employee or customer privacy, environmental pollution, or government contracting fraud will be unable to use that information in a civil action to hold that company accountable. Even if the regulatory agency obtains the information necessary to bring an enforcement action from an alternative source, the company will be able to tie the government up in protracted litigation over the source of the information.

For example, if a company submits information that its factory is leaching arsenic in ground water, that information may not be turned over to local health authorities to use in any enforcement proceeding nor turned over to neighbors who were harmed by drinking the water for use in a civil tort action. Moreover, even if EPA tries to bring an action to stop the company's wrongdoing, the ''use immunity'' provided in the Republican bill will tie the agency up in litigation making it prove where it got the information and whether it is tainted as ''fruit of the poisonous tree''—i.e., obtained from the company under the ''critical infrastructure program.''

Similarly, if the new Department of Homeland Security receives information from a bio-medical laboratory about its security vulnerabilities, and anthrax is released from the lab three weeks later, the Department will not be able to warn the public promptly about how to protect itself without consulting with and trying to get consent of the laboratory in order to avoid the risk of job loss or criminal prosecution for a non-consensual disclosure. Moreover, if the laboratory is violating any State, local or Federal regulation in its handling of the anthrax, the Department will not be able to turn over to another Federal agency, such as the EPA or the Department of Health and Human Services, or to any State or local health officials, information or documents relating to the laboratory's mishandling of the anthrax for use in any enforcement proceedings against the laboratory, or in any wrongful death action, should the laboratory's mishandling of the anthrax result in the death of any person. The bill specifically states that such CII-marked information ''shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith.'' [H.R. 5710, section 214(a)(1)(C)]

Most businesses are good citizens and take seriously their obligations to the government and the public, but this ''disclose-and-immunize'' provision is subject to abuse by those businesses that want to exploit legal techniques to avoid regulatory guidelines. This bill lays out the perfect blueprint to avoid legal liability: funnel damaging information into this voluntary disclosure system and pre-empt the Government or others harmed by the company's actions from being able to use it against the company. This is not the kind of two-way public-private cooperation that our country needs.

The scope of the information that would be covered by the new Republican FOIA exemption is overly broad and would undermine the openness in government that FOIA was intended to guarantee. Under this legislation, information about virtually every important sector of our economy that today the public has a right to see can shut off from public view simply by labeling

it ''critical infrastructure information.'' Today, for example, under current FOIA standards, courts have required Federal agencies to disclose (1) pricing information in contract bids so citizens can make sure the government is wisely spending their taxpayer dollars; (2) compliance reports that allow constituents to insist that government contractors comply with federal equal opportunity mandates; and (3) banks' financial data so the public can ensure that federal agencies properly approve bank mergers. Without access to this kind of information, it will be harder for the public to hold its Government accountable. Under this bill, all of this information may be marked CII information and kept out of public view.

The Republican FOIA exemption goes so far in exempting such large amount of material from FOIA's disclosure requirements that it undermines Government openness without making any real gains in safety for families in Vermont and across America. We do not keep America safer by chilling Federal officials from warning the public about threats to their health and safety. We do not ensure our nation's security by refusing to tell the American people whether or not their federal agencies are doing their jobs or their Government is spending their hard earned tax dollars wisely. We do not encourage real two-way cooperation by giving companies protection from civil liability when they break the law. We do not respect the spirit of our democracy when we cloak in secrecy the workings of our Government from the public we are elected to serve.

Notably, another part of the bill, section 892, would further undermine Government sunshine laws by authorizing the President to prescribe and implement procedures requiring Federal agencies to ''identify and safeguard homeland security information that is sensitive but unclassified'' The precise type of information that would be covered by this new category of ''sensitive'' information that is not classified but subject to carte blanche executive authority to keep secret is not defined and no guidance is provided in the Republican bill as to how far the President may go.

As the Rutland Herald so aptly put it in an editorial on November 16, the Republicans ''are moving to cloak the Federal Government in an unprecedented regime of secrecy.'' The argument over the scope of the FOIA and unilateral executive power to shield matters from public scrutiny goes to the heart of our fundamental right to be an educated electorate aware of what our government is doing. The Rutland Herald got it right in explaining. ''The battle was not over the right of the government to hold sensitive, classified information secret. The government has that right. Rather, the battle was over whether the government would be required to release anything it sought to withhold.''

Second, extraneous provisions added by the House also pose significant privacy risks. As I noted before, increased information sharing is necessary but also poses privacy risks if the government is not properly focused on the information necessary to collect, the people appropriate to target for surveillance and the necessary controls to ensure that dissemination is confined to those with a need to know.

Recent press reports have warned that this bill will turn it into a ''supersnoop's dream'' because it will allow creation of a huge centralized grand database containing a dossier or profile of private transactions and communications that each American has had within the private sector and with the government. Indeed, in section 201, the bill authorizes a new Directorate for Information Analysis and Infrastructure Protection to collect and integrate information from government and private sector entities and to ''establish and utilize . . . data-mining and other advanced analytical tools.'' In addition, in section 307, the bill authorizes $500,000,000 next year to be spent by a new Homeland Security Advanced Research Projects Agency, HSARPA, to make grants to develop new surveillance and other technologies for use in detecting, preventing and responding to homeland security threats.

We do not want the Federal Government to become the proverbial ''big brother'' while every local police and sheriff's office or foreign law enforcement agency to become ''little brothers.'' How much information should be collected, on what activities and on whom, and then shared under what circumstances, are all important questions that should be answered with clear guidelines understandable by all Americans and monitored by Congress, in its oversight role, and by court review to curb abuses.

Other provisions added in haste to the Republican House-passed bill raise serious concerns about privacy protections for the sensitive electronic communications of law-abiding Americans. In particular, the so-called ''emergency disclosure'' amendment in section 225(d) would greatly expand the ability of Internet service providers to reveal private communications to Government agencies without any judicial authority or any evidence of wrongdoing.

As Americans move their lives online, the privacy of their sensitive e-mails, instant messages, and web traffic is of growing concern. Current law protects the privacy of electronic communications by prohibiting service providers from revealing the contents of those communications to anyone without proper lawful orders. Emergency disclosure provisions exist in the current law based on the reasonable premise that ISPs who encounter an imminent threat of death or serious injury should be able to reveal communications to law enforcement agencies on an emergency basis, even without judicial oversight. We just recently expanded that emergency exception a year ago in the USA PATRIOT Act to provide even more flexibility for service providers.

In practice, however, the emergency disclosure authority is being used in a different way. Reports in the press and from the field indicate that ISP's university and libraries are approached by Government agents and asked to disclose communications ''voluntarily'' for ongoing investigations. Providers are then faced with a terrible choice—turn over the private communications of their customers without any court order, or say ''no'' to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such ''voluntary disclosure'' provisions risk becoming a major exception to the law. Section 225(d) takes this exception even further and turns it into a loophole big enough to drive a truck through. It would allow literally thousands of local, State and Federal employees to seek private e-mails, instant messages, and other sensitive communications without any judicial orders ad even a subpoena. ISPs could turn over those communications based on vague concerns of future injury to someone, even if those concerns are totally unreasonable.

Section 225(d) makes three important changes to the already very generous authorities for these extraordinary disclosures, which Congress gave to law enforcement in the USA PATRIOT Act just one year ago. First, it would remove the requirement that there be ''imminent'' danger of injury or death. Instead it would allow these extraordinary disclosures when there is some danger, which might be far in the future and far more hypothetical. As the Attorney General and the President have warned us consistently over the last year, the entire country faces some risk of future attack. Under this new language, there will always be a rationale for using the so-called ''emergency'' disclosure provision.

Second, section 225(d) would remove even the low hurdle that there be a ''reasonable belief'' in danger on the part of the ISP. Instead, this new provision would allow these sensitive disclosures if there is any good faith belief—even if totally unreasonable—of danger. Vague, incoherent, or even obviously fictitious threats of future danger could all form the basis for disclosing our most private electronic communications under this new provision of law.

Finally, section 225(d) would allow disclosure of sensitive communications to any local, State or Federal Government entity, not just law enforcement agents. That could include literally hundreds of thousands of Government employees. The potential for abuse is

enormous. More importantly, in cases of real threats of death or serious injury, it is law enforcement agencies—trained to deal with such situations and cognizant of legal strictures—who should be the first contact point for concerned citizens.

As a result of Section 225(d), many more disclosures of sensitive communications would be permitted without any court oversight. Moreover, these disclosures would happen without any notice to people—even after the fact—that their communications have been revealed. It would allow these disclosures to be requested by potentially thousands of government employees, ranging from cotton inspectors to dogcatchers to housing department administrators.

The public's most sensitive e-mails, web transactions, and instant messages sent to love ones, business associates, doctors and lawyers, and friends deserve the highest level of privacy we can provide. The provisions of section 225(d) make a mockery of our privacy laws, and the carefully crafted exceptions we have created in them, by allowing disclosure of our most private communications to thousands of Government officials based on the flimsiest of excuses. These provisions were never approved by any committee in the Senate, are not in the interests of the American people, and should not now be finding there way into the law of the land.

Third, the bill provides liability protections for companies at the expense of consumers. I am disappointed that the measure also contains sweeping liability protection for corporate makers of vaccines and any other products deemed to be ''anti-terrorism technology'' by the Secretary of Homeland Security. This unprecedented executive authority to unilaterally immunize corporations from accountability for their products is irresponsible and endangers the consumers and our military service men and women.

These provisions, for example, would apply to negligence, gross negligence and even willful misconduct in producing vaccines, gas masks, airport screening machines and any other ''anti-terrorism technology'' used by the general public and our service men and women.

In addition, the bill would completely eliminate punitive damages against the maker of such a defective product. Without the threat of punitive damages, callous corporations can decide it is more cost-effective to continue cutting corners despite the risk to American lives. This would let private parties avoid accountability in cases of wanton, willful, reckless, or malicious conduct.

There is no need to enact these special legal protections and take away the rights of victims of defective products. At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror, these ''tort reform'' proposals are unprecedented, inappropriate, and irresponsible. At the very moment that the President is calling on all Americans to be especially vigilant, this legislation lets special interests avoid their responsibility of vigilance under existing law.

I am disappointed that some may be taking advantage of the situation to push ''tort reform'' proposals that have been rejected by Congress for years. This smacks of political opportunism. I strongly oppose rewriting the tort law of each of the 50 States for the benefit of private industry and at the expense of consumers and our service men and women, and their families.

Further, I am saddened that this so-called compromise provides retroactive liability protection for some private airport security firms involved in the September 11th terrorist attacks. Last year, Congress explicitly excluded private airport security firms from the liability limits for airlines in the Aviation and Transportation Security Act because we did not know if any airport screening firm may have contributed to the September 11th attacks through willful misconduct or negligence. Unfortunately, we still do now know all the facts regarding the 9/11 attacks because the Bush Administration has opposed Congressional oversight and an independent commission to investigate the attacks.

This special-interest provision in the so-called compromise is a travesty to the families of the victims of September 11th. Indeed, I have already been contacted by a family member of a 9/11 victim outraged by this retroactive liability protection. I share their outrage.

I also find it particularly galling, that just because ''the White House wants it,'' this bill includes a provision that balantly puts the interests of a few corporate pharmaceutical manufacturers before the interests of thousands of consumers, parents, and children. Sections 714 through 716 give a ''get out of court free card'' to Eli Lilly and other manufacturers of thimerasol. Let's be clear, this provision has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. Thimerasol is a mercury-based vaccine preservative that was used until recently in children's vaccines for everything from hepatitis B to diphtheria. By making changes to the Vaccine Injury Compensation Program sought by the pharmaceutical industry, this provision cuts the legs out from under thousands of parents currently in court seeking compensation for the alleged harm caused by thimerosal.

For years, I have been working to remove sources of mercury from our environment because of the neurological effect of mercury on infants and children. Although Eli Libby's own documents show that they knew of the potential risks from mercury-based preservatives in the 1940s, its use was not stopped until 1999 when pediatricians and the Public Health Service acted. Instead of looking into why pharmaceutical companies and the Federal Government failed to act for so long or improving the current compensation system, the Homeland Security bill takes away the legal options of parents and gives pharmaceutical companies new protections from large penalties.

Fourth, the bill weakens immigration enforcement just when we need it the most. The Republican House-passed bill fails to take important steps to help fix and restructure our immigration agencies. This Republican package abandons the close coordination between immigration enforcement and immigration services that was included in the Lieberman amendment to the Homeland Security bill. Instead, immigration enforcement falls under the Undersecretary for Border and Transportation Policy, while immigration services are relegated to a bureau that lacks its own undersecretary. Apparently, the Undersecretary for Border and Transportation Security is expected to be an expert in immigration enforcement, FEMA, agriculture, and other issues. Meanwhile, there is no one figure within the Homeland Security Department who is responsible for immigration policy. Testimony before the Judiciary Committee showed clearly the numerous links between the enforcement of our immigration laws and provision of immigration benefits—it is unfortunate that this bill fails to acknowledge those links.

Unfortunately, this legislation fails to codify the Executive Office of Immigration Review appropriately. Instead of defining the functions, shape, and jurisdiction of the EOIR as the Lieberman amendment did, it simply says there shall be an EOIR and the Attorney General shall have complete discretion over it. It is critical that both immigrants and the Government have a meaningful opportunity to appeal adverse decisions, and we should have done more through this legislation to guarantee it.

In addition, I am disappointed that provisions designed to guarantee decent treatment for unaccompanied minors were not included in the Republican amendment. Through Senator FEINSTEIN's leadership, the Lieberman substitute assured that unaccompanied alien minors received counsel. The Judiciary Committee heard earlier this year from children who had been mistreated by the immigration system, and we had a real opportunity to solve that problem through this bill. We have failed to take advantage of that opportunity.

I will continue to work to ensure that the reorganization of our immigration service proceeds in as orderly and appropriate a fashion as possible. I have spoken often about the valuable service provided by employees of the Immigration and Naturalization Service in Vermont, and the need to retain their expertise in any reshuffling of the agency's functions. We will not make

our nation safer by alienating, underutilizing, or discarding knowledgeable employees, and I will do what I can to prevent that outcome.

Finally, the bill undermines the professionalism in favor of the ''management flexibility'' to engage in political cronyism at the new Department. Although it has already received substantial comment, I want to add my voice to those who have criticized the administration for its heavy-handed and wrong-headed approach to the rights of employees who will come under the new Department. At the same time we are seeking to motivate the Government workers who will be moved to the new Department with an enhanced security mission, the administration is insisting on provisions that threaten the job security for these hardworking Government employees.

The administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the Nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely.

I represent some of those employees and have firsthand knowledge of their dedication to our nation and their jobs. Contrary to the administration's preelection rhetoric, where disputes over employment conditions have had potential effects on the public safety, they have been resolved quickly. I am disappointed that the bill we consider today contains so few protections for these vital employees, and that the White House chose to use these valuable public servants in an election year tactic.

So our vote today will help answer the question of whether a new Department of Homeland Security will be created—a question that has never really been at issue or in doubt. Perhaps there are members of the Senate who oppose creation of this Department, though I am not aware of such opposition. But many troubling questions remain about the ''hows'' as we move forward to charter this massive new agency. A process has been imposed on the Senate that prevents addressing them adequately in the remaining hours of this session. But answering and resolving these questions, in the interest of the security and privacy and well-being of the American people, will be an imperative that the administration and the next Congress must not shirk.

OFFICE OF DOMESTIC PREPAREDNESS

Mr. GREGG. Madam President, one of the Senate's highest priorities, and one of my own personal priorities, has been ensuring that State and local first responders are prepared to handle a terrorist attack, especially one involving weapons of mass destruction. One of the principal ways I have tried to do this is through the Office of Domestic preparedness at the Department of Justice. Through the Appropriations subcommittee that Senator HOLLINGS and I oversee, the Senate built ODP from a $5 million program into an $800 million program in just five years. Since 1998, ODP has been the focal point within the Federal Government for State and local jurisdictions to receive equipment grants, training, technical assistance, and exercise support for combating terrorism.

The original legislation creating the Department of Homeland Security would have combined the preparedness functions of ODP and the response functions of FEMA into a single Directorate, the Directorate of emergency Preparedness and Response. The problem with this framework is that the much larger FEMA would have dominated the new Directorate, and its priorities and philosophies would have obscured those of ODP. ODP possesses unique experience and expertise when it comes to preparing the State and local jurisdictions to handle terrorism. FEMA has very little experience with this side of the equation: its role has always been to respond after an event occurs.

FEMA employs something called the ''all-hazards'' approach to disaster response. Under the all-hazards approach, all disasters are handled the same way. But we cannot treat terrorism the same way we treat other disasters. The attack on the World Trade Center provides an excellent case in point. On September 11, New York City first responders treated the first explosion as a high-rise fire and set up their command center in Tower II. Because the responders employed a generic, all-hazards response, they did not anticipate the second explosion in Tower II. Our approach to terrorism must be different from our approach to natural disasters—it must be innovative and adaptive. It must anticipate a predatory adversary that constantly devises new ways to get around each new set of measures we take.

There are four key components, or ''pillars'', involved in combating terrorism: prevention, preparedness, crisis management, and consequence management. Justice has traditionally been responsible for preparedness, and FEMA has traditionally been responsible for consequence management, or disaster response. The Homeland Security legislation, as originally written, would have lumped these components together. However, the people who are responsible for responding in the immediate aftermath of an attack cannot also be responsible for carrying out sustained training, equipment, and exercise programs. These are programmatic initiatives that must be executed day in and day out. FEMA is a response agency. It will not be able to give terrorism preparedness the time and attention it deserves because it must constantly respond to disasters around the country.

The amendment I offered to the Homeland Security bill acknowledged the importance of consolidating the preparedness and response functions in the new Department of Homeland Security. However, the amendment set them apart in order to preserve both FEMA's and ODP's areas of expertise. The amendment created the Office for Domestic Preparedness under the Directorate of Border and Transportation Security and transferred terrorism preparedness functions to this new office from both the Justice Department and FEMA. Specifically, the new Office for Domestic Preparedness includes Justice's current Office for Domestic Preparedness and parts of FEMA's Office of National Preparedness. ODP will be responsible for all of our preparedness activities and FEMA will continue to have the lead for consequence management. Under this framework, the preparedness and response functions will be preserved, yet will be closely coordinated by the Secretary of Homeland Security. This is the best way to prevent FEMA's and ODP's critical functions from being blurred within the Department of Homeland Security.

The responsibilities of the new Office for Domestic Preparedness will be similar to what they are now under the Department of Justice: coordinating terrorism preparedness at the Federal level; assisting State and local jurisdictions with their preparedness efforts; conducting strategic and operational planning; coordinating communications at all levels of government; managing the preparedness grants to State and local jurisdictions; and assisting them in the implementation of the President's National Strategy. This is, in fact, one of the key reasons why I have pushed for the creation of the Office for Domestic Preparedness within the new Department. It ensures the continuity of preparedness assistance for State and local jurisdictions. The office they have looked to for the last five years for equipment, training, and exercise assistance will continue to exist, but under the leadership of the Undersecretary for Border and Transportation Security.

If not for this amendment, ODP would most likely have been subsumed by FEMA, and all of the work ODP has accomplished would have been lost. ODP's successful methodologies for providing assistance to State and local jurisdictions would have been scrapped in favor of FEMA's undeveloped and untested approach. An example of one such successful methodology is the system of accountability ODP established by requiring States to have a terrorism preparedness strategy before they could receive Federal funding. The State strategies have allowed ODP to make informed and strategic decisions about how to allocate funding for equipment, training, and exercises. FEMA has no such system in place. By keeping ODP's and FEMA's activities distinct, we preserve the progress each has made in their respective areas of expertise.

The amendment permits FEMA to concentrate on a mission that it is uniquely equipped to perform: disaster response. This is extremely important,

especially in light of the fact that there is an average of 34 major disaster declarations per year in the U.S. I know that my coastal State colleagues were very concerned that FEMA's natural disaster responsibilities, in particular its mission of responding to hurricanes, would be eclipsed by its new homeland security responsibilities. I am certain that this concern is shared by Senators from States that face the threat of earthquakes, floods, and wildfires. This provision makes it clear that FEMA is out of the preparedness business.

This was one of the primary reasons why I felt such an amendment was necessary. It will help prevent competition between terrorism response and natural disaster response within the new Department. Under the original legislation, the Directorate of Emergency Preparedness and Response would have been pressured on the one hand to focus its resources and attention on natural disasters, and on the other hand on combating terrorism. This competition would have weakened our level of preparedness for either type of disaster. By setting them apart within the new Department, we have built in a natural balance between these two critical areas.

I was disappointed to learn that some at FEMA are already busy planning ways to avoid having to execute the directive. I am told that FEMA intends, during the next few weeks, to re-designate all of the preparedness staff at the Office of National Preparedness as ''all-hazards staff''. By renaming them all-hazards, FEMA could retain its preparedness functions. These actions come despite the fact that at least 38 U.S. Senators believe those functions should reside at the Office for Domestic Preparedness and not at FEMA. These actions come despite our having negotiated in good faith with the White House. These actions come despite agreement among the Office of Homeland Security, the House of Representatives, and the Senate.

On a different note, it has recently come to my attention that the Office of Management and Budget is considering requiring State and local jurisdictions to match the Federal preparedness grants. OMB should not impose this requirement on State and local jurisdictions. They do not have the fiscal resources to support such a requirement. The equipment, training, and exercise initiatives that I have here discussed are part of a comprehensive National preparedness program. State and local jurisdictions will not be able to achieve the standards or readiness that are required, especially at this time of increased threat to our Nation, if they are forced to comply with matching requirements. In point of fact, State and local governments already bear most of the burden in protecting our Nation from terrorism. They—the first responders, who willingly and courageously put themselves in harm's way—protect the American people. Just after September 11, the President duly acknowledged how critical first responders are to our National security. We cannot shortchange them now. We are at war and the Federal Government must fully support our State and local first responders.

ODP has provided training to approximately 114,000 first responders and exercise support to more than 100,000 first responders nationwide. It has given out nearly $600 million in equipment grants to State and local jurisdictions since its creation in 1998. It also executed the largest terrorism exercise in U.S. history, TOPOFF. I have heard reports that those who participated in the multi-venue TOPOFF were the only ones truly prepared to handle the challenges presented on September 11. The amendment acknowledges that we do have an effective system in place and it preserves what has been accomplished.

The amendment I submitted acknowledges that the Office of Domestic Preparedness and FEMA both perform critical roles and must work closely together. I commend the administration for recognizing the need and working with the Senate to get the job done. I would also like to thank Senator LOTT for his excellent work on this bill, as well as his counsel Rohit Kumar. Finally, I would like to recognize Dean Kueter, Jr., of the National Sheriffs Association for his tireless work in generating grassroots support on this important issue.

Ms. MIKULSKI. Madam President, there is nothing more important than America's national security. I will vote for the Homeland Security Act because it organizes our Government to better detect, prevent and respond to acts of terrorism.

This bill organizes twenty-two very different agencies into a one-stop-shop for homeland security a single, mission-driven agency whose primary goal is protection of the homeland. Why is this important? Because it will improve our ability to detect terrorism before it occurs, by strengthening immigration systems, better coordination of intelligence. It will improve our ability to prevent terrorism, through stronger port security, border security, transportation security. It will improve our ability to respond to acts of terrorism through the Federal Emergency Management Agency.

Yet I am disappointed that this legislation has been politicized in addressing an issue as important as national security. Congress and the President shouldn't be Democrats or Republicans. We should be the Red, White, and Blue Party. In recent weeks, I've seen some cynical actions. I've seen Federal employees treated as if they're the enemy. I've seen a Vietnam War hero's patriotism questioned. I've seen this administration claim that the creation of a Department of Homeland Security was its idea and its priority, though we all know they long opposed it—just as they opposed the creation of a national commission to look at what went wrong on September 11. I've seen a package of special interest goodies forced into a bill for no other reason than pay-back politics.

Let's consider some of these issues. First, on Federal employees, I resent that I am being forced to chose between Homeland Security and protecting the rights of those who guard the homeland—our Federal employees who have the constitutional right to organize, to have freedom of assembly, to do collective bargaining. In standing up for America, why aren't we also standing up for those who are protecting America? Our brave and gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are customs inspectors, border agents or FEMA's emergency workers.

Federal workers stand sentry every day to protect America. When our firefighters ran up those burning buildings at the World Trade Center, nobody asked if they were union. They didn't look at the clock or check their work rules. When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They were there because they were union members. They belong to a union. They belong to a union called the United States of America. That's the union that they belong to, and that's the union they put first.

America is in the midst of a war against terrorism. We have a long way to go. Yet instead of focusing on the war effort, we're waging war on Federal employees. The administration must use this new flexibility responsibly and judiciously. It is not a blank check. If anyone takes undue advantage of this new flexibility, I will lead the charge to change it. But it is sad and disgraceful that the rights of our Federal employees were held hostage in an effort to make our Nation secure against terrorism.

I'm also disappointed with the special interest provisions that were added to this bill. The late Senator Wellstone added a provision on companies that move overseas to avoid paying U.S. taxes. His amendment would have prevented these corporations from being able to contract with the new Department of Homeland Security. Why does the House of Representatives insist on helping those companies who make their money in the U.S. but then turn their backs on the U.S.? What about their responsibility to the U.S.?

This legislation also provides immunity from liability for manufacturers of products or technologies that harm Americans. Why did the House think it's important to protect companies that are grossly negligent, and how does this improve the security of Americans?

Another special interest provision would provide liability protection for pharmaceutical companies that are being sued for using vaccine preservatives that some people believe have

caused autism. This should be decided by scientists and the courts: not by Members of the House of Representatives trying to sneak unrelated provisions into a bill on homeland security. The list of special interest pay backs goes on and on.

I strongly oppose the provisions of this bill that limit the rights of Federal employees, as well as the administration's plan to privatize much of the Federal workforce. I will continue to fight these proposals. I'm also disappointed that the House Republicans have used the need for homeland security to sneak so many special interest give backs into the bill.

Yet despite the serious problems with this bill, I will vote for it because it will enable our government to better detect, prevent and respond to terrorism. Nothing the Senate does is more important than providing security for America. That is why I will vote to create the Department of Homeland Security—for America's national security.

I'm tired of the cynical manipulation of the legislative process. I'm tired of the politicization of something as important as Homeland Security. I hope this is the last time that an issue of national security is politicized. Let's put these politics and hard feelings behind us. Let us get our act together, and let's show America we can govern. Let's show the bullies of the world we're willing to take them on.

Mr. MCCAIN. Madam President, I strongly support the creation of the Department of Homeland Security. I am a cosponsor of the Gramm-Miller substitute and the President's proposal, and have consistently voted to overcome Democratic roadblocks to create a Homeland Security Department. I want this legislation to be enacted, but the House-passed bill includes a number of egregious special interest riders that should not be part of this landmark measure.

If the legislative process had allowed us an opportunity to vote on many of the provisions Senators DASCHLE and LIEBERMAN are now seeking to strike, I believe most of them would have been rejected. Unfortunately, we now find ourselves in a ''take it or leave it'' situation. This is an artificial and unnecessary construct. The Homeland Security legislation effectuates the most dramatic restructuring of the Federal Government in half a century. With the goal of safeguarding our citizens, it creates a 170,000-person cabinet-level department that encompasses almost every governmental function that contributes to protecting Americans against terrorism in the United States. That the Senate is being told that the House will effectively kill the entire bill if this body dare remove politically motivated riders signals to me that the other chamber's priorities have become grossly confused.

I do not approach this vote lightly, but I must vote my conscience, just as each of my colleagues must do. I sincerely hope that upon resolution of the vote, we can move forward expeditiously with the House to resolve the differences and still send a bill to the President by the end of the week.

The Daschle-Lieberman amendment would strike seven special interest provisions that were included in this 484-page bill by the House.

Texas A&M: among them, the amendment proposes to strike a provision that many believe is designed to provide an earmark for Texas A&M University. Specifically, the House-passed bill requires the Secretary to designate a university-based center or centers for homeland security. However, the bill further stipulates 15 specific criteria to be used in making this designation, criteria that many suspect are tailored to describe only one university—Texas A&M. While the provision allows the Secretary to expand the criteria, it doesn't permit the Secretary to eliminate or alter the 15 criteria set forth in the bill.

How many colleges have ''strong affiliations with animal and plant diagnostic laboratories, expertise in water and wastewater operations, and demonstrated expertise in port and waterway security,'' not to mention 12 other requirements?

I have long opposed attempts in Congress to by-pass competitive, merit-based selection processes. There is absolutely no justification for attempting to do so in the Homeland Security bill for a function as important as the one to be fulfilled by the university-based centers.

The Safety Act: the Daschle-Lieberman amendment strikes a provision in the House-passed bill titled ''The SAFETY Act'', which purports to provide reasonable liability protections for antiterrorism technologies that would not be deployed in the absence of these protections.

I believe that real harm has been inflicted on our economy by trial attorneys' abuse of our tort system. I have seen the unfathomable greed of certain attorneys who use ''consumer protection'' as an excuse to extort billions of dollars from corporations, and ultimately, the same consumers they claim to protect. Outrageous awards that may benefit only the lawyers have stifled innovation, kept products off the market, and hurt consumers.

As chairman of the Commerce Committee, I have advanced legislation to reform products liability litigation, and overseen the enactment of a law to limit litigation and damages that might have arisen from the Y2K bug. Despite its potential to kill the bill because of opposition from trial lawyers, I voted to cap attorneys' fees on the comprehensive tobacco legislation that I sponsored. I am appalled that the demise of that bill opened the door for a private settlement under which a handful of lawyers have received literally billions of dollars, and I intend to ensure that these fees are closely examined in the Commerce Committee next year. In addition, I have repeatedly voted for limitations on damages for medical malpractice.

In short, I appreciate the need for legal reform and have long supported it. Despite this, I cannot support the ''SAFETY Act'', which never received a hearing in either chamber, and which was inserted into the House Homeland Security bill late in that chamber's process when Members decided that the government indemnification provisions previously considered would be too costly.

This ill-considered ''SAFETY Act'', which I understand is supported by defense contractors and others seeking liability protection, does not provide reasonable limitations on liability. Intentionally or not, it appears to eliminate all liability in tort claims against Sellers for the failure of any ''antiterrorism technology.'' Whereas previous tort reform measures have sought to limit the abuse of our system by avaricious lawyers, while protecting plaintiffs' rights to obtain a quick and reasonable award, no such balance is reflected in the ''SAFETY Act.''

While many of my Democratic colleagues object instinctively to liability limitations such as those in the SAFETY Act, including the creation of a Federal cause of action, the prohibition on punitive damages, and the requirement for proportional liability for non-economic damages, I have supported these concepts in the past, and continue to support them in this context. What I find objectionable, however, fatally so, is that the SAFETY Act was never the subject of any hearing, was never considered by a committee in either chamber, and, perhaps as a consequence, is to confused in its wording and concepts as to be almost incomprehensible.

While the need for liability protection for manufacturers and sellers of antiterrorism technologies may be very real, this is an issue of significant import that deserves more careful consideration. At a minimum, the SAFETY Act must be rewritten to ensure that its language is consistent with what I understand to be its intent. At present, it is not.

One particularly troublesome provision in the SAFETY Act appears to transform a common law doctrine known as the ''government contractor's defense,'' into an absolute defense to immunize the seller of an antiterrorism technology of all liability. This is a dramatic departure from current law and one that does not seem to have been well thought-out.

Currently, the ''government contractor's defense'' provides immunity from liability when the federal government has issued the specifications for a product; the product meets those specifications; and the manufacturer does not have any knowledge of problems with the product that it does not share.

While I am told that the House advocates of the SAFETY Act did not intend to provide protections for products whose specifications are not

issued by the government, or which do not meet these specifications, the bill language indicates otherwise. It says ''Should a product liability or other lawsuit be filed for claims . . . and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies to such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.''

What happens if the Seller submits proper information to the Secretary, and the Secretary certifies a technology, such as a vaccine or chemical detection device, but a year later there is a gross defect in the manufacturing process, and as a result, the product doesn't work and Americans are injured or killed in a terrorist attack. The language in the bill suggests that the Seller still is not liable. But who is? Can the injured victim seek compensation under the Federal Tort Claims Act? The SAFETY Act does not say. Should they be able to? This is one of many questions affecting plaintiffs that does not seem to have been contemplated or considered when the SAFETY Act was included on the House bill.

Clearly, Congress as a whole should work to address the legitimate liability concerns that may be keeping protective technology off the market. We should do this, however, thoughtfully, if swiftly, and ensure that the language reflects our considered intent.

Prohibition on Contracts with Corporate Expatriates: the Homeland Security bill prohibits the Secretary from contracting with any ''inverted domestic corporation'', which is an American corporation that has reincorporated overseas. More and more U.S. companies are using this highly profitable accounting scheme that allows a company to move its legal residence to offshore tax havens such as Bermuda, where there is no corporate income tax, and shield its profits from taxes.

I applaud efforts to discourage this practice. Already, at least 25 major corporations have reincorporated or established themselves in Bermuda or the Cayman Islands in the past decade. Although I understand that American tax policy has encouraged them to do so, corporations that have moved their legal headquarters offshore to avoid taxes give the appearance of ingratitude to the country whose sons and daughters are risking their lives today to defend them.

This provision, however, has not escaped untouched by special interests. Although the Senate adopted an amendment offered by the late Senator Wellstone that flatly barred the Secretary of Homeland Security from contracting with inverted domestic corporations unless doing so was in the interest of national security, the measure being offered to us on a ''take it or leave it'' basis contains loopholes you could drive a truck through or an entire fleet of trucks to be supplied by a relocated corporation. Although it generally prohibits the Secretary from entering into contracts with inverted domestic corporations, the House-passed measure allows the Secretary to waive this prohibition in the interest of homeland security, or to ''to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.''

The Daschle-Lieberman amendment tightens this loophole by permitting the Secretary to waive the contracting limitation only in the interest of homeland security. That is what this bill is about, it is not a jobs bill, or a fiscal belt-tightening bill. The Senate determined, in adopting the Wellstone amendment, that it was important to stop more corporations from adopting corporate ''flags of convenience.'' We should honor this.

Childhood Vaccines: among the most inappropriate provisions that the Daschle-Lieberman amendment strikes is a modification to the Childhood Vaccine Injury Act of 1986. The language included in the House-passed bill has far-reaching consequences and is wholly unrelated to the stated goals of this legislation. Inserted without debate in either chamber, this language will primarily benefit large brand name pharmaceutical companies which produce additives to children's vaccines with substantial benefit to one company in particular. It has no bearing whatsoever on domestic security.

The National Vaccine Injury Compensation, VIC, Program, established under the Childhood Vaccine Injury Act of 1986, set up a no-fault compensation program as an alternative to legal action to compensate children injured or killed by a vaccine. The VIC Program was adopted in response to a flood of plaintiffs' suits in the early 1980s which ravaged the vaccine industry. Incentives, such as limitations on damages, were established to encourage manufacturers to continue to produce safer vaccines, while education programs and an adverse reaction reporting system were established to ensure prevention of future vaccine injuries.

The 1986 law did not define ''vaccine,'' and suits emerged between families and manufacturers of vaccine additives, many of which are still ongoing. The language contained within the House-passed Homeland Security Act would modify the definition of a ''vaccine'' to include additives. Originally contained within a well-rounded bill written by my friend, Senator FRIST, this language served a sound purpose. However, I am concerned that the passage of these select provisions which benefit pharmaceutical manufacturers will eliminate the incentive to continue negotiations on the important reforms within Senator FRIST's bill which has been negotiated in the HELP Committee for close to a year. Additionally, unlike the bill in Committee, this language would intervene in ongoing litigation without modifying the statute of limitations for bringing a claim under the Vaccine Act, and in so doing, would leave families of some injured children with no available recourse.

As I stated earlier, I am not opposed to reasonable legal reform. I support a comprehensive reform package such as the bill sponsored by Senator FRIST, and hope that such a measure will pass early in the next Congress. It is wrong, however, to cherry pick provisions beneficial to industry and insert them in a Homeland Security bill and to leave for another day those provisions that protect children.

Special interests have no place in any congressional action, least of all one of this magnitude. For this reason, I am compelled to support the Daschle-Lieberman amendment. This administration has worked tirelessly with the House and Senate to produce an extraordinary restructuring of Government to better protect the American people. They have accomplished an amazing feat. Legislation of this gravity should not be sullied by a few special interest riders. I urge my colleagues to join me in striking them.

Mrs. FEINSTEIN. Madam President, today I voted for the Thompson substitute amendment to the Homeland Security Act—the largest restructuring of the Federal Government in over 50 years and perhaps the most important legislation considered in this Congress.

This historic legislation would create a new department combining some 22 Federal agencies with what would amount to about 200,000 Federal employees.

The bill would create one of the biggest departments in the U.S. Government, with an initial annual budget of at least $37 billion.

I voted for this legislation because our current terrorism policy is terribly disjointed and fragmented. I have long supported additional efforts to consolidate and coordinate our terrorism policy.

Currently, homeland security functions are scattered among more than 100 different Government organizations. There is much unnecessary overlap and duplication. There is also a failure to communicate and share information—making it hard to for the law enforcement and intelligence community to ''connect the dots'' to prevent a terrorist attack.

I also voted for the bill because I believe our country is currently at great risk. Terrorists are doing all they can to launch a catastrophic attack on our homeland.

The status quo is simply unacceptable. For example, just last week, I chaired a subcommittee hearing on a new report from released by Senators Hart and Rudman.

Their report is chilling—and its conclusion distributing. It reads:

A year after September 11th, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy.

The creation of a Homeland Security Department is critical to our efforts to try to prevent another devastating terrorist attack against us.

Now, for the first time in our history, this Nation will have one Federal agency charged with the primary mission of preventing terrorist attacks within the United States, reducing the vulnerability of the U.S. to terrorism at home, and minimizing damage and assisting in the recovery from any attacks that may occur.

The new department will have four major divisions: border transportation and security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection.

The border directorate will include a number of key homeland security agencies, including Customs and the Transportation Security Agency.

The emergency preparedness directorate will include FEMA and some other smaller response agencies.

The science directorate will include a number of programs and activities of the Department of Energy, Department of Agriculture, and some agencies.

The information analysis directorate will synthesize and analyze homeland security information from intelligence and land enforcement agencies throughout the government.

This crucial division will identify and assess terrorist threats and vulnerabilities, issue warnings, and act to prevent terrorist acts against critical infrastructures such as bridges, dams, and electric power grids.

Other agencies such as the Coast Guard and Secret Service will be moved to the new department, and there will be an office to coordinate with state and local governments. The legislation also creates a Homeland Security Council in the White House to coordinate the domestic response to terrorist threats.

I am very pleased that this legislation does not neglect State and local law enforcement and first responders. No homeland security solution can be just federal. The reality is the 650,000 State and local law enforcement officers are additional eyes and ears in the war on terrorism. They cannot operate deaf, dumb, and blind.

Moreover, in the event of a terrorist attack, the first people on the scene will be local firefighters, emergency medical technicians, National Guardsman, and other people in the local community. The need proper information, organization, training, and equipment.

Thus, I am pleased that this legislation includes a measure I introduced to increase state and local access to federally collected terrorism information.

This legislation directs the President to establish procedures for sharing homeland security information with state and local officials, ensures that our current information sharing systems and computers are capable of sharing such information, and increases communications between government officials.

The bill also includes a broad exemption under the Freedom of Information Act for cybercrime and cyberterrorism information. This exemption will encourage the private companies that opoerate over 85 percent of our critical infrastructure to share information about computer break-ins with law enforcement—so criminals and terrorists can be stopped before they strike again and severely punished. I have long advocated for such an exemption, and am pleased that it ended up in the final bill.

While I strongly support the creation of a Homeland Security Department, I am disappointed that the bill we passed today includes a number of extraneous special interest provisions and lacks language to ensure appropriate oversight and transparency.

In addition, there is nothing in this legislation addressing what is perhaps the most pressing homeland security problem we face today: the vulnerability of our ports to terrorism.

The issue of port security was left to separate legislation that was passed last Thursday. In my view, that legislation does not go far enough. I believe that Congress needs to return to this issue next year and pass more comprehensive legislation.

The Hart-Rudman Independent Terrorism Task Force, for example, recently issued a report describing major holes in the security of our ports and endorsed such a comprehensive, layered approach.

This new comprehensive legislation would be based on S. 2895, the Comprehensive Seaport and Container Security Act of 2002, which I introduced last summer with Senators, KYL, HUTCHINSON, and SNOWE.

The Comprehensive Seaport and Container Security Act of 2002 is the result of hearings we have had in the Technology, Terrorism, and Government Information Subcommittee of the Senate Judiciary Committee as well as my testimony two years ago to the Interagency Commission on Crime and Security in U.S. Seaports.

The main section in the bill would create a Container Profiling Plan that would focus our nation's limited inspection resources on high-risk cargo.

In addition, the bill also contains provisions requiring: earlier and more detailed container information; comprehensive radiation detection; heightened container security measures—including high-security seals; restricted access to ports; increased safety for sensitive port information; enhanced inspection of cargo at foreign facilities; stronger penalties for incorrect cargo information; improved crime data collection; upgraded Customs service facilities; and better regulation of ocean transport intermediaries.

Unfortunately, we were not able to get much of this Bill included in the conference legislation that passed last week. Indeed, the Conference Bill even omits a number of security provisions included in S. 1214 as it passed the Senate.

That is why, in my view, we will need to revisit this issue early in the 108th Congress. I plan to work with my colleagues to fine-tune my legislation and reintroduce it. I hope that my colleagues will support it.

I am also disappointed with this bill because it does not contain the entire ''Unaccompanied Child Protection Act,'' bipartisan legislation I introduced at the beginning of this Congress and that was included as Title XII of the Lieberman substitute to H.R. 5005.

I have spoken on this issue in some detail already, but feel compelled to reiterate a few points.

Last year, over 5300 children came to this country unaccompanied by a parent or guardian and were held by the INS, many of them in detention facilities. these children have no rights. Many of them can't speak English, they can be detained for years, they have no resort to counsel, and they don't understand the process.

We all remember the Elian Gonzalez case. Every year, there are thousands of Elians. But unlike Elian, these children have no family members to help them navigate the immigration process. They are completely at the mercy of a complex bureaucratic and legal system they cannot begin to understand.

The good news is that this bill transfers authority over the care and custody of unaccompanied alien children from the INS to the Office of Refugee Resettlement within the Department of Health and Human Services.

The bad news is that almost all the ''help'' provisions for these children are left out. This bill is lacking because it does not provide either for a guardian ad litem, or pro bono legal assistance.

This is insufficient, and it is my full intention to reintroduce legislation in the next session to redress this, and to include pro bono counsel and guardian ad litem provisions.

Protecting children, on the one hand, must not prevent us from devising an immigration policy that protects us from those that would do America harm.

We do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a daunting mission as it is, and must never lose that focus.

Two positive steps regarding immigration include the transfer of the visa issuance process from the State Department to the Department of Homeland Security, thereby giving it the

regulatory and oversight authority over issuances and denials.

It also prohibits third-party visa processing, referred to as ''Visa Express'', to ensure closer scrutiny of visa applications and to preserve the integrity of the visa issuance process. These reforms are essential.

Overall, while this legislation's shortcomings cause me serious concern, I believe that they pale in comparison to the dangers facing America, both immediately and in the long-term, at home and abroad.

The terrorist threat to the United States is far too real, and in our freedom-loving country we must now do everything we can to protect our people.

And this, after all, is the Federal Government's paramount task—protecting our citizens. Further delay in creating a Department of Homeland Security would only leave us increasingly vulnerable—and this is something we simply cannot afford.

Ms. SNOWE. Madam President, I rise today in support of this bipartisan legislation creating a new Department of Homeland Security.

Since the horrific terrorist attacks of September 11, we have acted to increase our efforts to counter terrorism by strengthening borders, improving information sharing among agencies, and giving our law enforcement agencies the legal tools to investigate and prosecute terrorists and those that help terrorists financially.

Congress has considered and passed both the USA PATRIOT Act and the Enhanced Border Security and Visa Entry Reform Act which have both changed laws to ensure that providing for our national security in order to prevent future terrorist attacks is a top priority. This bill also ensures that the 22 agencies with a substantial role in protecting our homeland have the materials and resources they require.

This legislation is recognition that homeland security has taken on an entirely new meaning since 9/11. What was once a concern with terrorists acting against U.S. interests overseas has been realized and expanded to include those same acts happening right here at home. The war has been brought to the U.S. and we are now rising to the challenge.

This was precisely the type of thinking demonstrated by President Bush in the summer of 2001, when he instructed the intelligence community to provide an assessment of the threat posed by al-Qaida domestically rather than overseas. And President Bush did exactly the right thing in the wake of last year's horrific attacks when he established the Office of Homeland Security, now headed by Governor Ridge, to coordinate counter-terrorism activities by the various U.S. agencies and departments as well as develop an overall strategy. This strategy has culminated in the proposal of a new Department of Homeland Security.

As the principal advisor to the President on homeland security issues, the service of Governor Ridge has been exemplary. The time has come, however, for the perpetuity of purpose ensured by statutory status for a new Department of Homeland Security.

A Department responsible for safeguarding our homeland defense must not be dependent solely on the relationship between a particular President and his or her Homeland Security director. Rather, it must be run as efficiently and effectively as possible under the leadership of a permanent, cabinet level official. That is the only way to achieve the kind of ''continuity of urgency'' the security of our homeland demands.

The fact of the matter is, we cannot afford a descent into complacency when it comes to this life-or-death obligation to protect the American people. If ever there were a Federal responsibility, this is it.

And while my fervent hope and prayer is that we do not suffer another attack on or anywhere near the scale of 9/11, the reality is that, absent future tragedies and absent a cabinet-level homeland security department, we don't know what kind of attention the issue will receive 5, 10, 20 years down the road. Because the tendency is to focus on the most visible, pressing issues of the day, but we cannot allow ourselves to let down our guard, not for a moment, not a decade from now, not a quarter century from now, never.

So this initiative is not a knee-jerk reaction. It is not a passing whim—far from it. There is no serious debate about the fact that we are now in a new age that will not quickly pass. The threat will be pervasive, and enduring. The level of our vigilance must be equally so.

Under a new cabinet-level department, responsibility would rest with a Secretary of Homeland Security, a position created under law, who would manage the vital day-to-day functioning of the new department. Critically, this person would have their own budget, while they work closely with the administration to develop and implement policy. It is vital that this budgetary authority be granted—otherwise, the department will become a paper tiger, without the teeth that we all know a separate budget provides in terms of authority as well as the ability to get things done.

The bottom line is, I support the creation of the Department of Homeland Security—the largest re-organization of our Government since WWII—because it will centralize our efforts to prevent and respond to any future terrorist attack.

Currently, at least 22 agencies and departments play a direct role in homeland security, encompassing over 170,000 people. This legislation consolidates these various responsibilities into one Department which will oversee border security, critical infrastructure protection, and emergency preparedness and response.

Overall, the new Department, with the Secretary's leadership, will integrate the vast number of government agencies that formulate, support and carry out the functions critical to homeland security such as the border patrol, the Transportation Security Administration, TSA, and the Federal Emergency Management Agency, FEMA.

This new and dynamic Department will utilize all tools and resources of our Government to enhance our homeland security by strengthening and augmenting the preparation, communication, coordination and cooperation of not only the agencies that will be included, but the rest of the government including States and localities.

First, it is important to keep in mind that the functions of many of the agencies that will soon become a part of the new Homeland Security Department are integrated so that dividing them would be detrimental to the purpose of that agency, many of which have non-homeland security functions.

For example, as a member of the Finance Committee, I shared the concerns raised by other members of the committee about any division of the Customs Service when it relocates to the new Department. I supported the Finance Committee's position that Customs move into Homeland Security but that the Secretary of the Treasury maintain the legal authority to issue regulations relating to the customs revenue function.

Defending the country's borders and facilitating legitimate trade are intertwined functions that should not be separated. By moving Customs in its entirety into the Border and Transportation Directorate, this legislation recognizes that the personnel who perform trade enforcement and compliance activities at the border are the same personnel who perform inspections for security and other enforcement purposes. In addition, the information Customs receives from trade compliance examinations and manifests is the same information used to assess security risks for shipments. This information is the cornerstone of many of Custom's counter-terrorism efforts.

This bill also maintains a cohesive and complete Border and Transportation Security Directorate by transferring all key border and transportation security agencies to this directorate, including the Coast Guard, Customs, and TSA. This includes the Border Patrol and a restructured INS which is not included in the Lieberman bill where it is part of a separate Immigration Directorate. Thus, the Directorate responsible for border security is not responsible for the Border Patrol or inspecting aliens arriving at ports of entry.

The same is true for the Coast Guard. Since the terrorist attacks of September 11, the Coast Guard has conducted its largest port security operation since World War II to protect and defend our ports and waterways. But this significant amount of effort is simply not enough.

The Coast Guard needs to be positioned with the other transportation and border security agencies if we are going to improve interagency coordination, maximize the effectiveness of our resources, and ensure the Coast Guard receives the intelligence it needs. I strongly believe the Coast Guard is an outstanding role model for Homeland Security and will serve as a cornerstone upon which this new Department will be built.

At the same time, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection which are all critically important.

The legislative solution I developed with Senators STEVENS and COLLINS, that is included in the bill, strikes the proper balance and ensures the Coast Guard's non-Homeland Security missions will not be compromised by the transfer.

To the contrary, our language maintains the primacy of the Coast Guard's diverse missions by assuring the Coast Guard Commandant will report to the new Secretary of Homeland Security, rather than to a deputy secretary; assures no Coast Guard personnel or assets will be transferred to another agency; and provides a mechanism to annually audit the Coast Guard's performance of its non-homeland security missions.

I am pleased to see the inclusion of my amendment requiring the administration to report to Congress within 90 days outlining the benefits of accelerating the Coast Guard's Deepwater procurement timeline from 20 years to 10. The Deepwater project, which will recapitalize all of the Coast Guard assets used off of our coast, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. We must accelerate the Deepwater acquisition project and acquire much needed assets for the Coast Guard now, not 20 years down the road.

Of course, securing our homeland requires that we figuratively ''push out our borders'' as far as possible, and that means we must consider the issuance of visas at our overseas embassies as another vital area to be addressed by legislation. After all, consular officers represent the first line of defense against terrorists seeking entry to the U.S. Entering the U.S. is a privilege, not a right, and this must be the attitude of those reviewing visa applications.

That is why I am pleased that this bill grants the Department of Homeland Security the authority to determine regulations for issuing visas and provides Homeland Security supervision of this process through the stationing of Homeland Security Department personnel in diplomatic and consular posts abroad.

This legislation also builds on a provision I included in the Enhanced Border Security and Visa Entry Reform Act establishing Terrorist Lookout Committees. These committees, comprised of law enforcement and intelligence agency personnel in our embassies, meet once a month to discuss names of terrorists or potential terrorists to be added to the lookout list. The inclusion of Homeland Security personnel to the Terrorist Lookout Committees will ensure that our first line of defense also has the input of this new Department.

I introduced Terrorist Lookout Committee legislation in 1995 as part of my efforts to strengthen our borders and increase information sharing. This, and legislation I introduced to modernize the State Department's antiquated microfiche lookout system, were a result of a trail of errors by our agencies with regard to Sheikh Rahman, the radical Egyptian cleric and mastermind of the 1993 World Trade Center bombing.

In working on terrorism and embassy security issues on the House Foreign Affairs International Operations Subcommittee, what we discovered was startling. We found that the Sheikh had entered and exited the country five times totally unimpeded, even after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, New Jersey about a year before.

But then, unbelievably, the Sheikh requested asylum in a hearing before an immigration judge in the very same city, got a second hearing and continued to remain in the country even after the bombing with the Justice Department rejecting holding Rahman in custody pending the outcome of deportation proceedings and the asylum application, stating that ''in the absence of concrete evidence that Rahman is participating in or involved in planning acts of terrorism, the assumption of that burden, upon the U.S. government, is considered unwarranted.''

Securing our visa process is the reason why legislation I have introduced that requires the new Department to conduct a national security study of the use of foreign nationals in handling and processing visas has been included in this bill.

As was shown in Qatar this summer, foreign nationals handling visas are entrusted with a great responsibility and we must make sure that does not compromise our security. For instance, in July it was discovered that several foreign employees at the U.S. Embassy in Qatar may have been involved in a bribery scheme that allowed 71 Middle Eastern men, some with possible ties to al-Qaida, to obtain U.S. visas.

To strengthen security, my provision requires the Department of Homeland Security to review the specific role that foreign nationals play in handling visas and determine the security impact this has at each overseas mission and make recommendations as to the role foreign national should have with regard to visas.

On this same note, I am also pleased that another provision of mine to stop ''visa shopping'', the practice of a foreign national traveling to different U.S. Embassies in order to find one that will grant a visa, has also been included in this bill.

Now, current State Department regulations calling on consular officers to enter a visa denial into the lookout list database so it can be accessed by other Embassies will be codified in law. Seeing that a foreign national has traveled to another Embassy and been denied will make the decision of a consular officer on whether to grant a visa that much simpler.

Ensuring that the new Department has its own capabilities to analyze intelligence is critical to the functioning of the Directorate of Information Analysis and Infrastructure Protection. The Directorate will be responsible for accessing, receiving, and analyzing information such as intelligence, law enforcement and other information from agencies from Federal, State and local governments to detect and identify threats to homeland security. The legislation also will ensure that threat analysis, vulnerability assessments, and risk assessments is the responsibility of one Directorate.

Also, the bill contains specific language authorizing the Secretary to provide a staff of analysts with ''appropriate expertise and experience'' to assist the Directorate in reviewing and analyzing intelligence as well as making recommendations for improvements. Moreover, the legislation contains specific language I advocated authorizing the Department to hire its own analysts.

It is vital that clear language be included to ensure that the new Department has its own people and does not rely solely on detailees from other agencies. The bill also permits the new Department to have personnel detailed for analytical duties from the intelligence community. It is clear that in the beginning, intelligence analysts will have to be detailees from other agencies until additional people can be fully trained. However, this must not be a permanent situation. That is why I worked with Senator GRAMM to ensure the new Department has its own intelligence analysts.

Finally, one of the most challenging hurdles to overcome in passing this legislation was a provision of law that has been in statute for almost a quarter-century. This provision referred to as the President's ''national security exclusion authority'' allows the President to exclude agencies, or smaller subdivisions within agencies, from collective bargaining agreements if he determines that the agency or subdivision as a primary function intelligence, counterintelligence, investigative or national security work.

During this debate, attempts to rescind the President's authority which

has been in place since President Kennedy first allowed Federal employees to unionize in 1962 and put into statute by President Carter in 1978 stalled the consideration of the entire bill. I am pleased, however, that both sides were ultimately able to come together to find a workable solution that allows the President to maintain the national security exclusion authority that every President has had since President Kennedy.

Once again, the President was right to create a new Department of Homeland Security and I applaud the efforts of Governor Ridge to formulate this proposal and present it to Congress. We need to come to grips with the reality that a repeat attack could happen at any time and, accordingly, not only work to prevent it but also be prepared to respond. The new Department of Homeland Security will bring us closer to bringing all of our Nation's resources to bear in securing our homeland.

This defining time, as the President has stressed, requires constant vigilance as our permanent condition. Because in our war against terrorism, to quote Churchill, ''Now is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.'' We have now begun a ''new normalcy'' and we can never again let down our guard. We owe taking this historic step to the American people and to future generations of Americans to ensure an enduring level of security.

Mrs. BOXER. Madam President, there is not a person in this Chamber who questions the importance of homeland security or the need to improve the Federal Government's ability to protect our people from terrorism. We all saw what happened on September 11th of last year: There was not enough anticipation or coordination, and not enough accountability. We can and must do better.

What happened last September 11th was a tragedy on a monumental scale. It is a date that we will always remember. It is an anniversary that we will always somberly commemorate.

But, as I have said before, we must learn from the tragedy of September 11th and ensure that our Nation is never again subjected to such horror. The events of that dark day should spur us to take the necessary steps to establish the instruments and institutions that will provide real protection for the American people. The lessons of September 11th will mean little if we are unable to craft a concrete response to terrorism that demonstrates our unwavering resolve to those who would do us harm.

Since shortly after September 11, I have argued that we needed a Cabinet-level Department to address these concerns. That is why, I have decided to vote for the legislation now before the Senate.

We are faced with the choice of either this bill or no bill. And I believe that we must move the process forward, and send the all-important message to the people we represent that we are serious about protecting them that we are serious about having better cooperation, coordination, and preparation in the fight against terrorism.

That is not to say that I do not have reservations. This bill should have been written differently. I supported an amendment proposed by Senator BYRD that would have made the new department less bureaucratic and would have provided more accountability, not less. It also would have ensured that Congress played a greater role as the department got up and running. Unfortunately, the Byrd amendment was defeated.

I was also shocked to see that several special interest riders were added to this bill at the last minute, in the dark of night. I am especially troubled by the new provision that holds harmless any company that makes mercury-based preservatives for vaccines. One example is Thimerosal, which, evidence shows, may be responsible for causing autism in children.

What in the world does such a provision have to do with homeland security? I believe this provision will create insecurity in our homeland by sending a message to thousands and thousands of families that their children's health takes a distant second place to the interests of large corporations. This bill should be about homeland security, not family insecurity.

With one call from the White House, these special interest additions to the bill could have been eliminated. But that did not happen, and the Daschle amendment to strip them from the bill, which I strongly supported, was defeated. As a result, this bill has been perverted from its original meaning and intent. I expect to work with my colleagues next year to reverse these special interest riders.

I am troubled by this bill's treatment of the new department's workers. It gives the President virtually unfettered authority to strip even the most minimal worker protections affecting everything from job classification, pay rates, rules for labor management relations, and the process for firing and demoting employees. These provisions were unnecessary and unfair.

Finally, I am concerned about the effect this legislation will have on my State of California on matters that have nothing to do with homeland security. Many existing Federal agencies will be moved lock, stock and barrel into this new department, with little regard to the services that those agencies provide to the American people and to the people of California. The Department of Homeland Security is largely about protection and enforcement. When vital services for the people of this country such as FEMA disaster assistance and the Coast Guard's search and rescue role are thrown into an agency whose mission and purpose is primarily enforcement, I fear that these much-needed services will suffer.

However, despite these reservations, I will vote for this bill. We must move forward on protecting the American people from another possible terrorist attack. And creating a new Cabinet-level Department of Homeland Security, which I have supported for the past year, is an important step in that direction.

Through my committee assignments and by enlisting the support of my colleagues, I will keep a sharp eye on the new Department of Homeland Security and work to make sure we take the additional steps necessary to truly protect the security of the American people.

Mr. GRASSLEY. Mr. President, I rise in support of the homeland security bill. I believe that today we are taking definitive action to put the Government in a better position to prevent and respond to acts of terrorism. The creation of a Department to oversee homeland security has been a tremendous undertaking for the White House and Congress. It has forced all of us to face multiple challenges, including overcoming the various agencies' desire for self-preservation and the long-standing turf battles we are all too familiar with. Regardless of these difficulties, we have no choice but to strengthen our national security. A Department of Homeland Security is our best answer, and I have tried to do all that I could to enhance the effectiveness of the New Department.

This new Department will have to improve and coordinate our intelligence analysis and sharing functions, as well as our law enforcement efforts. Our Nation needs to do everything possible to make sure the attacks of a year ago never happen on American soil again. The creation of the Department will help coordinate our homeland security efforts and better protect the United States from terrorist attack.

The new Department will also identify and destroy barriers to effective communication and cooperation between the many entities involved in America's national security. It will identify our security and intelligence shortcomings and resolve them appropriately. It should also guarantee that the various infrastructure protection agencies moving to it have a smooth and seamless transition, and that whistle protections are given to each and every employee, without exception.

I was glad to have an opportunity to work with the sponsors of the bill to secure adequate whistleblower rights for Department employees. Because rights are worthless unless you have a process by which those rights can be addressed, I worked with the sponsors to ensure that whistleblowers have procedural remedies. The bill's whistleblower protection language grants the Department's employees the same Whistleblower Protection Act rights that are currently enjoyed by almost all other Federal employees.

Another big part of (the homeland security bill includes provision to restructure the Immigration and Naturalization Service. The new Department will be instrumental in securing our border, but we will have to steadily implement changes to improve the agency's service and enforcement functions. Improvements to this agency are long overdue and cannot be ignored after this bill passes. Just because we have streamlined their management, the INS's performance will be scrutinized in the years to come. The INS will be accountable to the American people, and I look forward to seeing some changes in the way they do their business.

I am pleased that I was able to work on an immigration reform measure that will strengthen the Secretary's visa issuance powers. This provision authorizes the DHS Secretary to put DHS agents at consular posts or requires a finding that DHS agents aren't needed, and it gives the DHS Secretary influence in the State Department personnel matters relating to visa issuance. It also requires annual reports to the Congress on security issues at each consular post. These changes will help us avoid dangerous programs like visa express that let terrorists in without any real screening.

I am also pleased that the homeland security bill we are considering today incorporates a number of our recommendations to ensure that the international trade functions of the Customs Service are not subsumed by the need for strong law enforcement under the Department of Homeland Security. In order to achieve this, we included a number of procedural protections. However, even with these safeguards, I am somewhat concerned that an attitude could prevail over time in which the trade function of the Customs Service become nothing more than a tool for the enforcement functions. I do not think this is an insignificant concern. Today, Customs operates under the umbrella of the Treasury Department, whose core mission it is to serve as a steward of the economy. Moving the 200 year old agency to Homeland Security could fundamentally alter the traditional mission and culture of the U.S. Customs Service. As the ranking member of the Finance Committee, I plan to exercise my oversight function diligently to make sure that this does not happen.

Another provision that I worked hard to secure, along with Senator HERB KOHL of Wisconsin, is the transfer of ATF agents to the Justice Department. The firearms and explosives experts will work alongside the FBI and the DEA at Justice Department. The firearms and explosives expert will work alongside the FBI and the DEA at Justice, and the revenue-collection experts and auditors will stay at the Treasury Department. This move will help coordinate criminal and antiterrorism investigatives at the DOJ, but will keep the ATF's revenue-collection duties at Treasury where they belong. So I thank the leadership for making sure these important changes were made.

I also applaud the inclusion of language that I advocated requiring the new Secretary to appoint a senior official to be responsible for ensuring the adequacy of resources of drug interdiction. The smuggling, transportation, and financing organizations that facilitate illegal drug trafficking can just as easily smuggle terrorists or terror weapons into the United States. Many of the agencies being moved into the new Department were previously focused on the fight against narcotics. By coordinating counternarcotics policy and operations, this new official will ensure that our efforts to respond to future acts of terrorism will not come at the price of relaxing our efforts against the dehumanizing and painful effects of drug use on society and families.

I was also pleased to work with Senators LOTT and BENNETT on FOIA provisions that encourage the private sector to alert government officials about risks to our critical national infrastructures. While public disclosure laws such as FOIA are central to the policy of preserving openness in government, they sometimes serve to inhibit our ability to receive vitally important national security-related information from information from businesses that fear unwarranted loss of public confidence and use by competitors, criminals, and terrorists. This new language will strike the dedicate balance between ''sunshine'' in government and the responsibility that we have to collect and share sensitive information about infrastructure vulnerabilities in an atmosphere of trust and confidence.

The ultimate goal here before us is to help our intelligence and law enforcement communities at being the best they can be at protecting our nation and the American people. But we can't build a new house with broken blocks. If we don't fix the problems at the various agencies that will make up the new Department, we won't see real homeland security. A lot of work has been done, and I believe we are on the right track. I believe this plan is indeed the answer for effective homeland security, now and for the future. Let's move forward from here and get it done.

HOMELAND SECURITY

Mr. CONRAD. Madam President, I will vote for the bill before us today, but I do so with some serious reservations.

First, and most importantly, I do not want the American public to conclude that by passing this one bill we do not need to do anything else in order to protect our homeland. While housing such agencies as FEMA, the Customs Department, and the Border Patrol under one roof will be advantageous, especially in the long run, little in this bill goes the heart of what went wrong leading up to September 11. Simply put, our country has been plagued, and we continue to be plagued, by a myriad of intelligence shortcomings. We have not done an effective job of gathering intelligence on al Qaeda cells residing right now in our country, and, perhaps even more importantly, our intelligence agencies have not been effectively sharing intelligence with each other. We hear story upon story about a lack of analysts with language skills, outdated computer systems, and turf battles.

And now we hear, for the first time, that the administration is considering the need to create a new domestic intelligence agency. We hear that our Nation's top national security officials met for 2 hours this past Veterans Day to discuss this issue. Clearly, we need a plan to deal with domestic terrorism surveillance and to implement systems, procedures, and oversight to make sure that our intelligence agencies are talking to each other. Unfortunately, the current bill is largely silent on these issues.

Second, I have serious concerns that the administration will be undertaking the most massive government reorganization in over 50 years while we are in the middle of our war against terrorism. Osama Bin Laden is still at large, and just last week he threatened new attacks. Indeed, the administration recently has warned us about ''spectacular'' attacks against our country. We must take great care that this massive reorganization does not compromise any of our ongoing efforts in our campaign to protect our homeland.

Finally, I cannot stand silent about the egregious, superfluous, special-interest giveaways put into this bill at the very last minute by the administration acting in concert with Republican leaders in the House and Senate, everything from shutting the courtroom doors to families injured by pharmaceutical companies to allowing offshore tax haven companies to compete for homeland security contracts.

So while I support the bill before us today, it is certainly not a perfect bill. Even more importantly, our work has just begun. The administration now needs to ensure that in creating this massive new Department it does so in a way that does not compromise the vital and ongoing work of the agencies involved. It is also imperative that we fix the central problem with our Nation's homeland security defenses, that of the lapses in our Nation's intelligence gathering and sharing efforts, and that we do so now. I wish we would have dealt with this more gaping security hole first, but all we can do now is to redouble our efforts in this most vital pursuit.

Mrs. MURRAY. Madam President, the Senate today took an important step to combat domestic terrorism and improve safety at home. The Department of Homeland Security will help protect our communities by coordinating prevention and response efforts throughout the country.

The legislation also maintains the integrity of the Coast Guard, so that the important function of search and rescue, drug interdiction, and environmental protection will not be degraded.

Throughout his tenure, I have found Governor Tom Ridge to be a responsive member of this Administration, and I look forward to continuing to work with him in a constructive manner.

While much of this legislation is important and necessary, I am concerned about several of the provisions.

First, are the special interest gifts to the pharmaceutical and manufacturing industries that House Republican leaders slipped into the bill last week.

Second, are the new surveillance powers granted to the Federal Government, and the potential impact on Americans' civil liberties. The Administration has assured Congress and the American people that the new authority will be used judiciously, and the Administration now must act responsibly and prudently.

Third, I believe that men and women who serve their country in uniform are entitled to the same civil service protections as other federal workers, and I am disappointed that because of this bill, some workers will lost important rights.

I intend to work with the new Department to protect Washington State's interests and will continue to monitor the implementation of this bill.

Mr. INHOFE. Madam President, our world has changed dramatically since the tragic events of September 11, and by passing this bill, we are taking a momentous step forward in providing for the security of Americans at home. But I am concerned we might be missing an integral component to this secure system. We have outlined parameters for information security, privacy and authentication. But, how can we truly ensure someone is who he/she says they are before we give them these high-tech credentials? We have gone to great lengths to ensure the security of these counterfeit-proof credentials, but we need to also account for the validity of the information used to establish identity in the first place. What happens if we give someone a secure document with a biometric under a false name?

The events of September 11 were orchestrated by a group of foreign individuals who used false information to receive legitimate U.S. identification documents like visas, passports, driver's licenses, and illegally entered this country. Identity fraud is no longer just a crime perpetrated by a common criminal to steal a credit card. Identity theft is now a tool employed by terrorist organizations to infiltrate America and harm our citizens. Terrorists have been able to take advantage of our ineffective and antiquated systems and assume false identities.

In this bill, we establish an Under Secretary for Border and Transportation Security with the charge of preventing terrorists from entering this country. We need to make sure he or she has the tools necessary to authenticate a person's identity. Authentication of non-U.S. citizens entering the United States must be a top priority. We have bipartisan support for such an effort and we must establish a system that ensures the identity of foreign individuals upon initial entrance into this country.

For years, identity authentication systems have been used in the U.S. to prevent fraud in the consumer banking industry. Following the terrorist attacks on September 11, these systems have been adapted for national security purposes. These systems access a wide number of identifiers in domestic public records and use scoring and modeling methods to determine whether a particular person is who they say they are. These systems must be expanded to include publicly available information on individuals from foreign countries.

The President has said, ''This nation, in world war and in Cold War, has never permitted the brutal and lawless to set history's course. Now, as before, we will secure our nation, protect our freedom, and help others to find freedom of their own.'' Let me be clear. There are people who deserve to enter this country and there are people who don't deserve to enter any country. We must have the ability to verify an individual is who they say they are the first time they apply for a visa. As we move forward, we must establish an identity authentication system that targets the 26 nations designated by the State Department as state sponsors of terrorism.

Mr. REED. Madam President, I rise to discuss the legislation before the Senate to create a Department of Homeland Security. I have said throughout the debate on this legislation that I support the creation of a homeland security department, and despite my strong reservations about many of the specific provisions in the bill, I intend to support final passage today. The Senate has expressed its will through the amendment process, and while I have been disappointed with the outcome of many of the votes, the bill before us has the potential to improve our government's ability to combat terrorism against our people. Insuring domestic tranquility and providing for the common defense are among the most sacred Constitutional duties our constituents sent us here to fulfill, and on that basis alone this bill, while far from perfect, deserves to move forward.

I will discuss many of the positive aspects of this legislation shortly, but first I want to outline some of my concerns with the bill. First, I am deeply disappointed that the House Republican leadership inserted into this must-pass legislation to protect our homeland a host of special interest giveways. The bill creates new liability protection for pharmaceutical companies by wiping out pending litigation; guts the Wellstone amendment that prohibited contracting with corporate expatriates; reverses the aviation security bill by providing special immunity to the companies that provided passenger and baggage screening in airports—companies that may have violated numerous security regulations on September 11; allows the Department to hold secret advisory committee meetings with hand picked industry advisors, even on non-sensitive matters, waiving the Federal Advisory Committee Act; and provides immunity from liability for manufacturers of products or technologies that cause harm to Americans.

I also have concerns about provisions in this bill that would undermine the basic rights of federal employees to belong to unions and to bargain collectively with management over working conditions.

Forty years ago, President Kennedy issued Executive Order 10988 granting federal employees the right to organize and bargain collectively. President Nixon expanded employees' rights in 1969, and these rights were subsequently codified in the 1978 Civil Service Reform Act. These fundamental rights have never interfered with the provision of government services, including homeland security, and in fact I would argue they have strengthened our government by helping us to recruit and retain highly qualified employees who might otherwise look elsewhere for work. Union members are among our nation's most patriotic, dedicated and selfless public servants. When the World Trade Center was burning on September 11, the unionized firemen, police officers, and emergency medical personnel in New York did not stop and ask for a collective bargaining session. They went up the stairs, into the fire, and gave their lives so that others might be saved.

Of the 170,000 federal employees who would likely be moved to the new Department of Homeland Security, at least 40,000 belong to unions and possess collective bargaining rights, including employees of the Customs Service, Border Partrol, and other important agencies. Our goal, as was proposed in the bill drafted by Senator LIEBERMAN and reported by the Senate Governmental Affairs Committee, was to ensure that no federal employee who currently has the right to join a union would lose that right under the homeland security reorganization. Agencies where employees currently do not have collective bargaining rights, such as the Transportation Security Administration and the Secret Service, would not have been affected.

To maintain the existing rights of union members transferred into the new Department, the Governmental Affairs Committee bill included a bipartisan provision that would update this formula. Under that bill, management could deprive transferred employees of their collective bargaining rights if

their work is ''materially changed'' after the transfer; their ''primary job duty'' is ''intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism''; and their rights would ''clearly'' have a substantial adverse effect on national security.'' This provision was carefully crafted on a bipartisan basis to give the new Secretary of Homeland Security the flexibility he or she needs while preserving the rights of tens of thousands of employees who have possessed collective bargaining rights for decades and will be performing exactly the same work under a different letterhead.

Unfortunately, the House drafted bill before us today does away with these protections. Under this bill, the President may waive existing union rights if he determines they would have a substantial adverse impact on the Department's ability to protect homeland security. He must send a written explanation to the House and Senate at least 10 days in advance, but no Congressional approval is required. Furthermore, the bill allows the Administration to waive existing civil service protections over union objections. Although he would be required to notify Congress and engage in a 30-day mediation administered by the Federal Mediation and Conciliation Service, if mediation is not successful the President could waive civil service provisions notwithstanding union objections and act without Congressional approval.

I am also concerned about the provisions related to the Vaccine Injury Compensation Program, VICP. The VICP is a no-fault alternative to the tort system for resolving claims resulting from naturally occurring, adverse reactions to mandated childhood vaccines.

Over the years, the VICP has proven to be a successful component of our National Immunization Program. It has protected vaccine manufacturers, who play a critical role in the protection of public health against unlimited liability while also providing injured parties with an expeditious and relatively less contentious process by which to seek compensation.

However, the provisions contained in this homeland security bill consist of one page of a 26-page bill introduced by Senator FRIST earlier this year, S. 2053, the Improved Vaccine Affordability and Availability Act. While it has been argued that these provisions are needed to protect vaccine manufacturers, the fact is that manufacturers are already protected under VICP.

Senator FRIST's bill contains a number of provisions related to increasing vaccine rates among adolescents and adults, bringing greater stability to the vaccine market through the creation of a rigorous stockpile of routine childhood vaccines and reforms to the Vaccine Injury Compensation Program. Letters of support that have been cited on the Senate floor, from the Advisory Committee on Childhood Vaccines and the American Academy of Pediatrics, expressed support for these provisions, but only in the context of the comprehensive legislation set forth by Senator FRIST, not on their own. The three sections that have been inserted simply have no place in a homeland security bill. These sections lack the thoughtful and comprehensive approach that is required to address the myriad challenges facing our childhood immunization program.

Finally, I am concerned with the immigration provisions in this legislation. There is general agreement on the proposal to transfer all functions of the Immigration and Naturalization Service into the new Department. However, rather than establishing a single, accountable director for immigration policy, the bill calls for enforcement functions to be carried out by the new Bureau of Border Security within the Border and Transportation Security Directorate, while immigration service functions will be in a separate Bureau of Citizenship and Immigration Services that reports directly to the Deputy Secretary. While the bill does call for coordination among policymakers at each of the bureaus, they will ultimately establish their own immigration policy and interpretation of laws. I urge the Administration to ensure that policy coordination among the enforcement and services bureaus is comprehensive and consistent, so that the result for the nation's immigration system is real reform and not a new period of disarray.

Nothwithstanding all of the concerns I have summarized, I believe that this legislation and the new department it creates have the potential to make the American people safer. The legislation will consolidate more than two dozen disparate federal agencies, offices, and programs into a focused and accountable Department of Homeland Security. The bill will bring together into a single Border and Transportation Security Directorate our Customs Service, the border quarantine inspectors of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, the new Transportation Security Administration, and the Federal Law Enforcement Training Center. Within this directorate, the bill also creates an Office of Domestic Preparedness to oversee our preparedness for terrorist attacks and to provide equipment, exercises, and training to states. The Coast Guard will also be in the new department, reporting directly to the Secretary of Homeland Security.

The Directorate for Information Analysis and Infrastructure Protection will enable the Department to ''connect the dots'' by organizing analyzing, and integrating data it collects at ports and points of entry with intelligence data from other parts of the government. The bill also provides the Department with access to unevaluated intelligence. It establishes separate Assistant Secretaries for information analysis and infrastructure protection, and has language making it clear that the Directorate's intelligence mandate is broader than infrastructure protection and including deterring, preempting, and responding to terrorist attacks.

The Directorate for Science and Technology will conduct and promote long-term homeland security research and spearhead rapid technology development and deployment. It will bring together scientific capabilities now spread throughout the federal government to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats.

In addition, the bill establishes a directorate of Emergency Preparedness and Response, with the Federal Emergency Management Agency, FEMA at its core, which will help to ensure the effectiveness of emergency response to terrorist attacks,major disasters and other emergencies by bringing under the Department's directorate several federal programs in addition to FEMA: the Domestic Emergency Support Teams of the Department of Justice, and the Strategic National Stockpile and the National Disaster Medical System of the Department of Health and Human Services. The Department will also have the authority to coordinate the response efforts of the Nuclear Incident Response Team, made up of elements of the Environmental Protection Agency and the Department of Energy. One of most important responsibilities of this directorate will be to establish comprehensive programs for developing interoperative communications technology, and to ensure that emergency response providers acquire such technology.

These are all laudable and important goals, but because we have been blocked from passing the appropriations bills that would provide the resources the Department needs to perform its mission, our work is far from complete. Providing these resources will be our task on homeland security in the months ahead, and I hope my colleagues and the President give this task the same attention and effort they gave to creating a Department of Homeland Security.

Madam President, because I believe the people of Rhode Island and Americans everywhere want to see the creation of a Homeland Security Department that will improve our ability to prevent and respond to terrorist attacks, I intend to support this legislation despite my concerns about many of the specific provisions included in the House draft of the bill before us today.

Mr. BUNNING. Madam President, I am pleased the Senate is able to pass legislation to establish the Department of Homeland Security before Congress adjourns the 107th Congress sine die. After the terror attacks on September 11, 2001 it has been the mission of President Bush and many in Congress to create this new Department, and it

is particularly pleasing to get this done now rather than waiting until Congress starts up the 108th Congress in January of 2003. And I know as well the American people are supportive of getting this legislation passed now rather than later.

Those who oppose this legislation before us may have some legitimate and principled concerns as to why they do not support this bill. By all means, the bill is not entirely perfect and I think most members of Congress would attest to that. But neither were the original bills to create any other federal department or agency perfect on the first try. That is why we have committee hearings on these issues, and I am sure we will pass supplemental and technical bills over the years to legislatively mold the new Department of Homeland Security so that it is stronger and more efficient.

But we needed to get this bill rolling now. Every day is vital as we fight this new war on terrorism. Delaying the creation of this new department another three or four months could set America back in her defenses. Every day that goes by without work being done to create and organize this new department simply puts us back further and further. We just can't afford to let that happen. This is serious business.

Although this bill may not be perfect and some may disagree with a few of its provisions, it is not so controversial that the bill deserves nor needs to be killed outright. We can come back and revisit those extraneous provisions some of my colleagues have been talking about. But we need to get the ball rolling. Agencies need to be realigned. We need to get rid of some of the duplicity amongst some of these agencies. Communication and information channels need to be streamlined. There is a lot of work to be done and every day counts.

Earlier in this debate I came to the floor and spoke about the need for President Bush and future presidents to be able to have the authority and flexibility to hire and transfer employees, and even be able to terminate some employees, within the new Department of Homeland Security to ensure its mission can be undertaken. For weeks we had a real disagreement on this issue. Some wanted to ensure that workers were protected and preserved in their employment regardless of their performance or real need.

Fortunately, in the end we have a piece of legislation that frees the hands of the president by giving him the necessary management and personnel flexibilities to integrate these new agencies into a more effective whole. While providing this flexibility, we still preserve the fundamental worker protections from unfair practices such as discrimination, political coercion, and whistle-blower reprisal. This flexibility and authority will better serve our president, the homeland and Americans.

New provisions are also added to this bill to help protect our borders. We do this by moving the Coast Guard, Customs Service, Immigration and Naturalization Service, and border inspectors at Animal Plant Health Inspection Services all under the new Department of Homeland Security. This action is long overdue and a reminder to us that the first step in defending America is to secure her borders.

As well, this bill helps to ensure that our communities and first responders are prepared to address threats. This bill does this by moving FEMA and the Secret Service under the new Department of Homeland Security. By moving FEMA, we are clarifying who's in charge, and response teams will be able to communicate clearly and work with one another. We will also benefit by the Department of Homeland Security being able to depend on the Secret Service's protective functions and security expertise.

Some have voiced concerns that we are limiting and not protecting the freedoms and privacy of Americans in this bill. I would say to my colleagues that at the core, the real reason for this bill is to ensure just the opposite, to provide security and protect our freedoms. We have in this bill specific legal protections to ensure that our freedom is not undermined. This bill prohibits the federal government from having the authority to nationalize drivers' licenses and other ID cards.

Also, the bill establishes a privacy officer. This is the first such officer established by law in a cabinet department. Working as a close advisor to the Secretary of the Department of Homeland Security, this privacy officer will ensure technology research and new regulations respect the civil liberties Americans enjoy.

There are many other vital provisions in this bill which are needed to better protect our freedom and the homeland. It is a good and solid bill. It may not be perfect, but rarely are there any perfect pieces of legislation we pass here in the Senate. I am sure we will revisit this legislation and issue again, in committee hearings as well as considering technical and supplemental homeland legislation on the Senate floor.

But it is imperative we pass this legislation now. We have worked hard on this bill, too hard to just let it die in the 107th Congress. We need to get it to President Bush's desk before we adjourn sine die. The sooner we get it to him, the better it is for the protection of the homeland and Americans.

Ms. CANTWELL. Madam President, I rise to express my support for the creation of a Cabinet level Department of Homeland Security that better enables our border security agencies to coordinate and work together. I believe that if properly implemented such a Department will better protect our country from the threat of terrorism.

The tragedy of September 11 demonstrated that our homeland security apparatus is dangerously disorganized, and that our vulnerabilities were real; we learned that we need organizational clarity and accountability to face the crucial challenge of improving homeland security.

On balance, the new Department of Homeland Security will reduce our vulnerability to the terrorist threat and minimize the damage and help recover from any attacks that do occur. However, we need to recognize that this is only a first step. The challenge of homeland security will require more than bureaucratic reorganization, we need to ensure that our efforts are bolstered with a real commitment to the attention and funding necessary to implement some of the goals of this legislation.

Although I will ultimately support the homeland security bill, I do so with the recognition that no legislation is perfect. This legislation is, indeed, not perfect and it will demand continued attention and oversight by Congress to ensure that it lives up to its aspirations in ensuring our homeland security, while not betraying our principles of governance and freedom.

One area that I have particular concerns is in regards to our continued efforts to address the issue of information and information sharing within the careful balance of security goals and civil liberty protections.

I am particularly concerned with provisions of the bill that fail to explicitly address the broader concerns of privacy for American citizens and that reduce our access to public information through the FOIA process. I am particularly frustrated because both of these troubling provisions, provisions to enhance sharing of information about suspected terrorist activity with local law enforcement, and provisions to limit access to sensitive information available under the Freedom of Information Act, were negotiated and careful compromises were arrived at in the earlier version of the Gramm-Miller Senate substitute and in Senator SCHUMER's bill, S. 1615, the Federal-Local Information Sharing Partnership Act.

The timely sharing of investigative information between various enforcement and intelligence agencies can provide necessary improvements in our nation's security. Unfortunately, the version that is contained in this legislation provides absolutely no limitations on how this information can be used or disseminated. This is particularly troubling because we have already expanded the type and amount of personal information available in federal databases. To greatly expand access to personal information without providing any protections on its use is a dangerous erosion of our valued right to privacy and has the potential to eviscerate the protections that the Constitution guarantees Americans against unfettered government intrusion into privacy. I support greater access to information, and I believe that

it is primarily through appropriate use of information technology that we are likely to make real improvements in our domestic security, but greater access to personal information cannot come without offsetting protections against its misuse.

The very broad language, inserted for the first time by the House, offers no procedural mechanisms to assure the government adheres to protections of privacy or civil liberties. Information sharing without citizen recourse or correction, without adequate procedural safeguards, has the potential to undermine the privacy of every citizen. The Senate has already acted on this issue and language exists that can better provide access to local law enforcement while also providing real protections to our citizens. This legislation has already passed the Judiciary Committee and I am committed to working with Senator SCHUMER to passing this legislation next year.

In addition, this bill previously contained carefully crafted language that protected sensitive information from discovery through the Freedom of Information act. The Freedom of Information act is a valuable tool in assuring open and accountable government and I believe that any effort to alter it must be carefully considered. This careful consideration produced the language in the original bill, a compromise crafted by Senators BENNETT, LEVIN and LEAHY. As the editorial board of the Olympian wrote today ''The public is already leery of government and understands that public records are one means of keeping elected and appointed officials in check'' Unfortunately, this bill contains a very broad exemption which has the potential to protect much information from public scrutiny. We must be cautious in taking steps that reduce open access to government and I am concerned about the broad nature of this language.

I am also very disappointed by how the Immigration and Naturalization Service is reorganized within the Homeland Security Agency. By completely separating the service and enforcement functions of the INS, I believe that we will only be compounding the problems that already plague this moribund agency. Coordination between the service and enforcement arms of the INS is required to make the agency more efficient and to ensure that its dual missions of enforcing the law against those here illegally and facilitating residence and citizenship for those here legally achieve the same level of support.

Last, a major stumbling block in passing this legislation has been the concern with the rights of many talented employees already employed by agencies who will be moving into the Homeland Defense Department. I do not believe this legislation provides adequate safeguards for these employees and I believe that the Congress will need to perform a great deal of oversight to make certain that abuses do not occur in this arena.

As I said before, no legislation is perfect, and our job in Congress is not over with the passage of this bill. We need to remain dedicated and focused in our task of ensuring that the implementation of this bill is accomplished effectively and consistent with the principles and rights that have made this country great.

Mr. REID. Mr. President, I want to discuss the bill before us dealing with the creation of a department of Homeland Security.

I applaud Senator LIEBERMAN for developing this idea of a new department to protect our Nation against the horrible specter of terrorist attacks on our cities and citizens.

The people of Nevada look to the Federal Government to make sure that our State and our Nation are secure.

We all agree that our Federal Government can, and should, do much better at preventing attacks, defending against attacks, and mitigating the consequences of attacks.

In Nevada, we have already begun to help. The Nevada Test Site has established itself as one of the premier centers for emergency responder training. Under the new Department, this facility will only flourish. The new Department will also help develop the burgeoning counterterrorism programs at Nevada's major research institutions, including the University of Nevada-Las Vegas and the University of Nevada-Reno. The people of Nevada have a proud history of providing the nation with the necessary skills, hard work and vision to protect our Nation. I know Nevada will do the same for the war on terrorism.

A new department of Homeland Security will be a good start, but this new Department is by no means the finish line in the effort to defense our nation.

More important, this new Department must not be a distraction from the job of protecting our Homeland. If it turns our that the consolidated departments, agencies and bureaus are spending more time looking for their new desks instead of hunting down Osama Bin Laden, I will be the first one to work on legislation to fix it.

We must not believe that establishing this Department ends the need for vigilant oversight, and we must not give in to the false security that a new Department could provide. Protecting our Nation from the horrors of terrorist attacks involves more than changing the name, moving offices and shuffling desks around.

Protecting our Nation requires strengthening our intelligence gathering and analysis—it means improving the communication between many Federal departments and agencies—it means providing the funding we need for research and technology investments—it means tapping the resources of the American entrepreneur and the soul of the American worker.

The proposed Department will address many of these concerns, but not all of them.

I am voting to support this legislation, because the President claims that it will be more than just a name change. I will be watching very closely to make sure that it is.

There are several areas that I plan to keep a close eye on.

First, this new Department, though it has some new intelligence sharing responsibilities, will not fix the problems at either the Federal Bureau of Investigation or the Central Intelligence Agency or the lack of coordination and cooperation between the two. Those agencies were left out of the Department of Homeland Security, even though they share tremendous responsibility for the Administration's failure to properly interpret the intelligence warnings before September 11.

Second, this bill gives tremendous authority to the executive branch of the Government. With that authority comes tremendous responsibility. In particular, this new strong authority presents a tremendous potential for abuse and misuse. I am disappointed that such an important piece of legislation would be used to weaken important provisions of our law. This bill makes unnecessary attacks on the ability of the American people to access Federal documents, and on the protections afforded the people who work for the Federal Government.

The labor provisions of this bill still fall far short of what I'd like to see. I still believe that it is entirely possible to reorganize our homeland defense efforts and dramatically improve the state of our Nation's security without stripping dedicated and loyal workers of basic protections in their jobs. All across the country, there are union members holding jobs that require flexible deployment, immediate mobilization, quick response, and judicious use of sensitive information. Police and firefighters have union protections, and their ability to bargain collectively actually improves our ability to fight crime and fires. The union protections make the jobs attractive enough for talented individuals to want to stay in the positions for long periods of time. We as a society gain because we are able to retain skilled people to work on our behalf.

Senator LIEBERMAN's bill was able to preserve a fair balance in this respect. His legislation retained most labor rights, but in cases where national security might otherwise be compromised, the President would have the flexibility to do whatever was necessary to protect the country.

This bill, on the other hand, will drive many talented individuals to look for employment elsewhere, in positions that afford at least a minimal level of job security and due process. I fear that over time we will see a deterioration in the caliber of employees that join this department, and I expect to revisit the labor provisions before many years have passed.

I am also deeply troubled by the efforts to allow this department to operate in secrecy. We have seen the unfortunate impacts of secrecy in the development of a national energy policy by the administration. This bill would continue this dangerous trend on the part of the administration. The administration appears to be more concerned with protecting the corporations' bottom-line than defending the citizens right-to-know.

I also have strong concerns about many of the provisions included in this bill that do not relate directly to the creation of the department of security.

A tax loophole has allowed dozens of U.S. corporations to move their headquarters, on paper only, to tax haven countries to avoid paying their fair share of U.S. taxes. Several months ago, Paul Wellstone and I offered an amendment to bar the Department of Homeland Security from awarding government contracts to these corporate tax runaways. The Senate adopted that amendment unanimously, but this bill guts that agreement. It is a sad reality that these corporate expatriations are technically legal under current law. But legal or not, there is no reason why the U.S. government should reward tax runaways with lucrative government contracts.

Paul and I felt that if these corporations want Federal contracts so badly, they should come home. Just come back to the United States, and they'd be eligible to bid on homeland security contracts. And if they didn't want to do that, then they should go lobby the Bermuda government for contracts there. It should have been a priority of this legislation to guarantee that the Department of Homeland Security conduct its business with corporations who do their share to bear the burdens of protecting this country. This legislation is more concerned with window-dressing on this issue.

Although I agree that the agency primarily responsible for the security and safeguarding of nuclear material, the Nuclear Regulatory Commission, should not be in the new Department, the bill does not address the important issues of chemical and nuclear power plant security. Protecting our energy infrastructure involves challenges related to the appropriate sharing of responsibility between the private companies who own and operate these facilities and the Federal Government. Our existing laws do not considered fully the implications a terrorist attack would have on our ability to prevent and respond to terrorist attacks on these facilities.

These concerns are real. In fact, the President raised the specter of a terrorist attack on one of our nation's nuclear power plants in his State of the Union address. And just a few days ago we were warned again that these facilities are potential targets. The Department of Homeland Security should work quickly with other federal agencies to improve their security, until the Congress is able to enact appropriate legislation to protect them.

Many of my colleagues have eloquently described the outrageous special interest provisions that were included in this bill, so I won't repeat many of those points. I do want to say that I am disappointed that the administration chose to include these provisions. They knew that this bill would pass, because it is so important to our country. They knew they could try to sneak these outrageous provisions in. This is not the way to increase the security of our country following the horrendous attacks of September 11.

There are several provisions I am particularly pleased will be enacted into law. These provisions deal primarily with the aviation industry in the aftermath of September 11.

I am pleased that a provision to allow the Transportation Security Administration flexibility to extend the baggage claim deadline for airports was included in the legislation. This is extremely important to Las Vegas McCurran and Reno/Tahoe International Airports in Nevada. Las Vegas is the second leading airport in the nation for origination and destination passengers. Only Los Angeles International airport handles more. In fact, Las Vegas handles more luggage than most of the nation's larger airports. Allowing TSA to work with selected airports to implement the 100 percent baggage screening requirement over a reasonable time period will in the long run be the most secure course for the traveling public.

This legislation also includes language extending the time frame and expanding the scope of War Risk Insurance made available to commercial airlines under the FAA's War Risk Insurance program. This was a top priority for the airline industry, described by leading industry officials as the single most important and cost effective action Congress could take at a time when commercial airlines are facing enormous financial challenges. The provision in the bill should help stabilize the insurance crisis resulting from the terrorist attacks of September 11th. The War Risk Insurance provision of the bill mandates extension of coverage through August 31st, with an option to extend War Risk coverage through December 31, 2003. It also calls for expansion of the scope of War Risk Insurance made available to airlines, adding coverage for passengers and crew and loss of aircraft to the coverage for third party liability currently made available by the FAA.

Finally, the bill reinstates a short term limitation of third party liability in cases of terrorist acts involving commercial aircraft. Last year's airline stabilization bill capped third party liability at $100 million where the Secretary of Transportation certifies that an air carrier was a victim of an act of terrorism. This short term limitation of liability expired in March, however, and has now been reinstated through the end of 2003.

Today I am supporting the creation of the Department of Homeland security. Establishing a new department is an important way to ensure we have a coordinated Federal response to potential terrorist attacks.

This legislation may have flaws, but the principle is correct. So today I am choosing to support the legislation, but I will keep a close eye on its implementation. If there are changes that need to be made, I will work hard to fix the flaws.

Mrs. CLINTON. Madam President, in the months following September 11, a new reality took hold in every corner of our country. We saw the National Guard standing guard at our airports and in front of Government buildings. Bioterrorism and border security were discussed every day. The skies over New York and Washington, DC were patrolled by our military. And every American believed that these new measures made our Nation stronger and protected us against terrorist attacks.

But time has passed and that vigilance has faded. Not by our police officers, firefighters, or emergency response personnel. Not by the brave men and women who are serving in Afghanistan. Not by the workers along our borders and in our ports. But by the Federal Government. We have slipped into an almost piecemeal approach to Homeland Security and that has to change, starting today.

''Are we safer today than we were on the morning of September 11, 2001?'' The answer is only marginally, because somewhere along the line, we lost our way.

Those individuals who are sacrificing and working to do their best and secure our country want to do more. But each day, despite some of our efforts, we do less and less for them. We issue warnings about new threats. We expect people and cities and towns to react accordingly, but we do not provide enough funding, support, or guidance for them to do their jobs. We need to redefine our focus on Homeland Security, and one way to do that is to reorganize the way our Government works.

The votes we cast today for the creation of a new Homeland Security Department are just that-votes for the creation of a department. Our Nation and particularly the people I represent in New York, learned the hard way on September 11, 2001—the status quo is unacceptable.

My hope is that approval of this bill sets in motion a necessary reorganization process that will ultimately result in improved coordination, information sharing, and a stronger and safer America. We need to send a clear message that our Government is doing more than simply talking about strengthening our homeland security; that we are once again focused on concrete steps that will defeat the terrorists and protect our people.

But we must be clear about what we are voting on today—this bill has much

to do with structural reorganization and very little to do with enacting real steps that will protect our Nation against terrorist attacks. There are many things in this bill that should not be; and there are many things that should be in this bill that are not.

I am concerned that the American people will think that simply because we have passed this bill that our Nation is safer. They need to know that this measure does not increase patrols along our northern borders.

It does not give our firefighters, police officers, and emergency personnel the resources, training, and equipment they need to protect our frontlines at home. It does not increase security measures at our ports, along our railroads, and public transportation systems. It does not increase our capabilities of detecting biological, chemical, and nuclear weapons. What this bill does is it falls short on many counts, especially when it comes to real measures that would improve our security.

We had the opportunity to do this right. We had the opportunity to do more than create a department, but we missed it. The Senate's original bill included critical measures that would make our country safer today than it was yesterday. But in the end, this Congress failed to put safety first and special interests last.

There is a lot in this bill that secures the future for the special interests and very little that secures our country. Those who are using this legislation—this legislation that's about the security of our Nation—as a vehicle for the special interests have done this country a great disservice.

That is why Congress must not, cannot, stop here. Our job is far from over. We must continue to fight to make sure that every substantive part of the old bill that increased our security gets passed in the next Congress.

Let's start with the obvious-supporting our first responders. They are a critical part of our Homeland Security. Our firefighters, police officers, and emergency personnel need direct funding, training, and additional equipment to keep our Nation safe.

When it comes to Homeland Security, we need to listen to the experts—our mayors, police commissioners, fire chiefs, and our public health workers.

They continue to ask for direct funding, and that is why I proposed legislation that would provide direct funding to local communities, the Homeland Security Block Grant Act.

Since we began the war on terrorism, we have done everything to ensure that our men and women in the military have the resources, equipment and training they need to fight the war on terrorism, and that's how it should be. But we are not doing the same at home. It is unconscionable to me that a Homeland Security Bill such as this one would not include support for our Nation's frontline defenders.

At the end of October, Senators Hart and Rudman released the Terrorism Panel's report that clearly states that we are not doing enough to support our first responders and keep our country safe. They expressed grave concern that 650,000 local and state police officers still operate without adequate US Intelligence information to combat terrorists. We haven't done enough to help local and State officials detect and respond to a biological attack. The report expressed concern that our firefighters and local law enforcement agencies still do not have the proper equipment to respond to a chemical and biological attack. Their radios are outdated and do not allow them to communicate in an emergency.

What kind of tribute is this to the heroes who lost their lives in last September? What would the firefighters, police officers, and emergency response workers who did not think twice about rushing to Ground Zero to save lives say about the lack of progress that's been made?

Additionally, the SAFER Act, a provision that allows our country to hire 25,000 firefighters over the next couple of years has been eliminated from this bill. This is the time for us to do more for our first responders, not less. They are the most important link in our Homeland defense, and to shortchange them in these difficult times is incredibly shortsighted.

We must also act to better secure our Nation's nuclear power infrastructure. While the Homeland Security Bill will create a new department, it does not adequately address the very real threat of terrorists' capabilities and desire to destroy our nuclear power plants. Our efforts to protect our infrastructure is moving much too slow. Last year, Senators JEFFORDS, REID, and I introduced the Nuclear Security Act. This summer, we succeeded in moving the Act through Committee.

It is a shame that the Homeland Security Bill does not address nuclear security and it should. These protections should be included in this discussion, and the new Congress must work together to pass the Nuclear Security Act promptly.

We must also better protect ourselves against the very real threat of terrorists detonating a dirty bomb in our country. It is imperative that we better secure our domestic radioactive materials. Every year, highly active sources used in industrial, medical and research applications are lost or stolen in America. This is why I introduced the Dirty Bomb Act to strengthen these security measures and enhance our security.

And, while we work in the Congress to pass security measures like these, we will have to also work to get rid of provisions that do not belong here.

As I described on the Senate floor and in a press conference last week, this bill includes unrelated vaccine liability provisions. Protecting manufacturers from liability can be appropriate as part of a comprehensive vaccine bill that addresses a balanced range of important goals, including strengthening vaccine supply and addressing families' interest in compensation. But plucking out industry liability protections and addressing only that side of the issue clearly prioritizes manufacturers over families, and puts politics ahead of homeland security.

The provisions protect one particular manufacturer by dismissing existing lawsuits brought by parents of autistic children who believe there may be some connection between the mercury-based preservative and their child's illness. There may or may not be a connection, and the tort system may or may not be the right solution.

However, enacting only provisions that help manufacturers, while ignoring families concerns for compensation, and children's needs for a strong vaccine supply not only fail to protect homeland security, they fail to adequately protect children from preventable disease. All they do is protect vaccine manufacturers against lawsuits and undermine our bipartisan efforts to assure that every child is vaccinated safely.

While I believe the Congress should debate issues of tort reform and reasonable arguments have been made, I am also concerned that some of the tort provisions included in this legislation have nothing to do with homeland security and have not been debated by the Senate. One provision is the ''Support Anti-Terrorism by Fostering Effective Technologies Act of 2002,'' ironically named the ''SAFETY Act.''

This measure lowers standards by giving manufacturers immunity from liability for the products they make that our first responders will use. How will this help America build a stronger homeland defense? It doesn't—it just makes it easier for manufacturers to get away with indefensible actions.

There is a provision in this bill that upsets the balance between the public's right to know and the Government's responsibility to protect certain information so that it can better secure our country.

The House-passed bill contains significant loopholes that would provide protections for certain information by limiting access, prohibiting its use in court, and even making it a crime to make such information available. It appears that the bill may even allow companies to decide for themselves what information should be afforded such protections. This means certain protections could potentially be extended to information that doesn't even have anything to do with security, thereby shielding potentially damaging information from the public and the courts.

While private entities should be encouraged to provide critical infrastructure information to the Government in order to help assess and address vulnerabilities to future terrorist attacks, it should not come at the expense of the public's right to know.

I am also troubled by the so-called compromise over the civil service and

labor provisions in the new bill. The bill gives the President the authority to waive civil service protections in six key areas including rules for labor-management relations and appeals to the Merit Systems Protection Board.

I am concerned that this will hinder the ability of the new department to recruit and retain civil service employees who have expertise in the agencies that will be shifted to the new Department. This shortchanges the workers and shortchanges all Americans who believe we should have the most qualified individuals working in this new department.

The bill will also allow the Administration to strip workers of their collective bargaining rights through a waiver authority. I must say that we have every reason to believe that this Administration will take advantage of this authority. It has already taken away these rights from secretaries at the U.S. Attorney's offices. And I fully expect that it will use this authority, if it is granted, to strip away the rights from the more than 50,000 workers who will make up the newly formed Department of Homeland Security.

As a Senator from New York, I have a particular interest in this new department and have some specific concerns on behalf of my State. When it comes to protecting New York and New York City, I do not believe that this bill goes far enough and I will work to fix these provisions so that they do. The bill ensures a special coordinator of homeland security in the Capitol Region, DC, Maryland and Virginia, but does not establish a similar coordinator for New York City's metropolitan region.

Intelligence reports indicate that like Washington, DC, New York City is a high-risk area, still a target for terrorists and a symbol of our Nation. Even as we recover, we are still vulnerable, and the New York region needs its own coordinator.

In the aftermath of September 11, FEMA was able to respond to an unprecedented kind of disaster, precisely because it was a highly functioning, well-run agency. All of us in New York are indebted to Director Allbaugh and his staff for their good work. I am concerned that transferring FEMA into the new department could force a highly competent independent agency into a new bureaucracy that will have challenging integration issues and thus diminish the effectiveness of FEMA's ability to respond to crises of all kinds.

I also oppose moving Plum Island from the Department of Agriculture into the new Department. Also, I fear that this move could be a precursor to raising the biosafety level at the Plum Island facility. This would allow research on life-threatening exotic animal diseases and these harmful materials could be transmitted through the air. This would pose too many risks to those in my State who live near the facility, and I will strongly oppose any efforts to raise the biosafety level at Plum Island.

As I have said throughout the last fourteen months, we need this new department to better coordinate and share information. There is no question we must change the way things work in Washington so that we adapt to the post 9/11 world. There are many problems with this bill, some of which I have outlined here. These problems will need to be addressed in the months and years ahead.

Today, the Senate will also vote on a continuing resolution to fund the Government at last year's funding levels from now through January 11th. While it is imperative we keep the Government running, it is shameful, not to mention ironic, that we will depart without ensuring that we fund homeland security. It is not enough to create a new Department without investing in the necessary funding to protect against bioterrorism, increase our port inspections, secure our Nation's nuclear weapons plants, invest in technology so that our first responders can communicate in a disaster.

At best, we are sending mixed messages to the American people about our priorities; even more troubling is that these actions reflect what actually are the Government's present priorities.

But at the end of the day, we must move forward with this bill. Hopefully, it will spur us to focus once again with the same commitment and vigilance we had in those weeks and months after that tragic day in September. The threats continue to come in. Attacks occurred in Bali, Yemen, and in Kuwait. A new tape reveals that Osama Bin Laden is most likely alive. And al-Qaida is plotting all the while.

We do not have the time or the luxury to remain in this status quo. This bill is the smallest step forward we can take, but it is a step forward nonetheless and that is why I support it.

On its own, it will not make us safer but it pulls us out of this piecemeal approach to Homeland Security and directs our Government to pursue one fundamental goal—to make sure that we do everything in our power to make America stronger and safer so that no other American life is taken by the hands of a murderous few.

Mr. HOLLINGS. Madam President, I am voting against the legislation before the Senate to institute a new Department of Homeland Security. The President says we need a Department to prevent another September 11, but all this legislation does is produce an elephantine bureaucracy. It does nothing to fund the people on the front lines, who really could fight terrorism; instead funds will be spent in Washington by bureaucrats for bureaucrats.

The proposed department excludes the very entities that failed on September 11, but includes all the ones that did not. On September 11 the CIA dropped the ball on intelligence it possessed. So did the FBI. Yet they aren't included. But the Coast Guard did not mess up on September 11th, nor did FEMA, nor did the Agriculture Department's Animal and Plant Health Inspection Service yet they are all included.

This is a game of musical chairs. It shuffles and reorganizes 170,000 employees, at 22 different agencies, involving more than 100 bureaus or branches. Yet roughly 110,000 of the personnel scheduled to be moved are already together. Airport, seaport, rail security, and the Coast Guard are already part of the Transportation Department.

The legislation is loaded with items purporting to be helpful to our national security, but which may have little effect or would even hinder security. It rolls back the deadline for all airports to check every passenger's luggage, not just the few dozen that may need some additional time. It is crazy to call for the urgency of a new Homeland Security Department, and then say to our highest profile targets, ''take your time.''

It lets pilots carry guns in cockpits, but doesn't require impenetrable cockpit doors, which the Senate agreed was critically needed. What more proof do we need then on Sunday, when the locked door on an El Al airplane helped prevent the hijacker from flying into skyscrapers in Tel Aviv?

The bill is full of payoffs and surprises the House leadership included at midnight, right before they left town. Suddenly, we are helping Eli Lilly—why? Suddenly, we are helping American companies that went to Bermuda to avoid taxes. Suddenly, we are absolving private aviation screening companies from liabilities related to their September 11 failures. What does any of that have to do with homeland security?

This legislation is supposed to create an independent commission to determine what went wrong on September 11. Incredibly, the very provisions Congress inserted to establish this Commission, freeing the investigation from political hand wringing in the Select Committee on Intelligence, were dropped by House leaders after the elections. The so-called independent commission is now anything but independent.

And in nearly 500 pages, the legislation fails to contain a very important item that would be immediately helpful. No where is the National Security Council re-organized. September 11 was an intelligence failure. It was not due to lack of information. As soon as the terrorists struck we knew who they were. Immediately, we rounded up suspects here and moved into Afghanistan. Instead, the problem was a failure on the part of the National Security Council to coordinate, analyze, and deliver the intelligence to the President.

The President should be able to get well-analyzed reports of domestic threats on a timely basis. But how can he when his own National Security Council does not even include the Attorney General or the Director of the FBI? If Congress wants to re-organize, we should re-organize the Council to

include law enforcement and to make certain intelligence is shared with Customs, INS, the Coast Guard, and the others who need to know. Equally important, intelligence should be shared with and received from state and local officials, but it's not here in this bill.

Right to the point: this Senator has not waited for a behemoth bill to take action on homeland security. In the Commerce Committee, we moved several concrete measures to improve our transportation security, insofar as air and sea ports, and trains and buses that criss-cross the country.

When Americans fly this holiday, they will see huge improvements in the way security is provided. Congress just passed our legislation to close the gaps that exist at ports along America's coasts, for the first time creating a national system for securing our maritime borders.

Is there more this Senator wants this Congress to do for those on the frontlines of homeland security? Absolutely. We should provide for the security of Amtrak's 23 million passengers. We should improve security on buses and freight rail. We should finish the job at our airports and at our seaports. We should prepare our hospitals and other first responders to react to an act of bioterrorism.

But how can we when we are going to throw billions to shuffle bureaucrats from one side of Washington to the other. Designing a new logo is not going to help secure our homeland. Nor is renting office space, or buying more desks, and everything else like that. We will be paying more for nonsense redecorating than arming those on the front lines.

We have our priorities messed up. A new Department of Homeland Security is unnecessary. And the worse case is for the Department to be set up and our country lulled into thinking we are all safe and secure. A September 11 could still easily happen again.

Mr. FEINGOLD. Madam President, I regret that I am unable to support the Department of Homeland Security bill. While this reorganization may make sense, it should not have come at the expense of unnecessarily undermining our privacy rights or weakening protections against unwarranted government intrusion into the lives of ordinary Americans.

We need to be better able to review and identify critical information, take more rapid steps to address terrorist threats and, when necessary, share information quickly with local law enforcement. I had hoped that the proposed creation of a new Department of Homeland Security would have focused on those priorities.

Protecting the American people is the number one responsibility of our government. As a result of the tragic events of September 11, we all recognized that a major review of our government was needed. As we have debated the need for, and the details of, the new Department of Homeland Security, I have been guided by two principles: Will this reorganization make all of us safer? And will it preserve our liberties as Americans? Unfortunately, while there is much that is good in this bill, there are a number of critical areas where the bill simply goes too far, or falls short.

After careful review, I must conclude that this bill is not well thought out. The American people would benefit from the Congress paying closer attention to the details of this new version of the bill. This proposal threatens to erode the fundamental civil liberties and privacy of all Americans. It does not ensure that the new Department will be able to effectively communicate and share information with agencies like the FBI. It is weighed down with special interest provisions that have nothing to do with the creation of the new department. It does not give our first responders all of the tools and information necessary to protect our communities. It lacks adequate civil rights oversight, and it needlessly undermines the employment rights of the dedicated workers in this new Department who will be protecting all Americans. At times, the proposal reads like a dusted off copy of an earlier administration wish list, much of which has nothing to do with our fight against terrorism.

We need not unnecessarily sacrifice treasured civil liberties and privacy in order to be secure. I fear that the bill we are voting on today will authorize the federal government to maintain extensive files on each and every American without limitations. The data mining provisions in the bill encourage retired Rear Admiral John Poindexter's massive government effort to create a computer file on the private life of every American. The Total Information Awareness system now under development needs active congressional oversight, particularly in these early days of the program. Rather than giving further authorization to this kind of effort in this bill, we should be demanding that the administration immediately suspend the Total Information Awareness initiative until Congress has conducted a thorough review and refrain from implementing this program in the new Department.

In addition, the present proposal, in a section about cyber-security, actually creates a sense of insecurity for all of us. The Federal Government would have the right to obtain the contents of our private computers without adequate judicial oversight. This bill weakens important safeguards on government access to our e-mails and information about what we do on the Internet without the need for a court order. The Department should be focused on protecting us from our enemies, not on snooping on innocent activity.

While the bill does make some progress toward enhancing communication among many agencies that are charged with protecting Americans, it falls short in ensuring that the essential work of agencies like the FBI will be adequately shared with and utilized by the new department. Overall, the proposal fails to enable the new department to be a full participant in the intelligence community.

While our public safety must be our highest priority, we should not turn a blind eye to the bottom line. And we should not aggravate our budget problems by adding expensive special interest provisions that have nothing to do with this new department.

Special interest provisions in the bill would cap liability for drug companies for vaccine additives, give the Secretary of the new department broad authority to designate certain technologies as so-called ''qualified anti-terrorism technologies,'' thus entitling the seller of that technology to broad liability protection no matter how negligent the seller, and apparently earmark the university-based homeland security research center for Texas A&M.

All of us know that local law enforcement, fire fighters, and other first responders are on the front lines in the fight against terrorism. The Department of Homeland Security needs to ensure that Federal, State and local law enforcement agencies, fire fighters, and other first responders are able to work together to adapt and respond to the evolving challenges of terrorism. Unfortunately, the new department is not organized in a manner that provides the maximum possible help to those on our front lines. A Department of Homeland Security must ensure that it provides our local first responders with the necessary information, tools, and resources that are required to adapt and respond to the evolving challenges facing our First Responders.

I am disappointed that my bill, the First Responder Support Act, introduced with the Senator from Maine, Ms. COLLINS, is not part of the present proposal. It had been included in the Lieberman bill, but was stripped out of the bill last week without any warning by the House leadership. The First Responder Support Act will help first responders get the information and training they need from the Department of Homeland Security, and that measure will be a top priority for me in the next Congress.

I am also concerned with the proposal's disdain for the public's right to open government. The bill would undermine the protections of the Freedom of Information Act and exempt the proposed department's advisory committees from the open meetings requirements of the Federal Advisory Committee Act. Current law already provides adequate protection for sensitive information. The broad language of this bill is far too sweeping.

Finally, I believe that while this bill includes some civil rights oversight, it offers weaker protections than are found in other federal agencies. Steps should have been taken to strengthen

the Civil Rights Office in the new department by requiring that the head of that office be subject to confirmation by the Senate and therefore accountable to the Congress and the American people. The bill should have designated an official in the office of the Inspector General to fully investigate allegations of civil rights violations. This bill also should have included stronger protections for the Americans who will be working in this new Department and protecting our Nation. Congress owes these Americans the same employment rights that other public servants enjoy.

We must not forget that we are having this debate because of what happened on September 11. We need to learn from September 11 and ensure that we do not fall victim to a similar tragedy in the future. I believe that we could have given the American people a Department of Homeland Security that would ensure their safety and security, and protect their civil liberties. Unfortunately, this bill has too many provisions that unnecessarily jeopardize our basic freedoms, and I cannot support it.

Mrs. LINCOLN. Madam President, I rise tonight to strongly support the creation of a Department of Homeland Security. By consolidating the agencies responsible for protecting our borders and infrastructure, we can make significant progress in ensuring the security of the American people, and this body would be remiss if we were to fail in passing this critical legislation before we adjourn.

Just this week we've learned that Osama bin Laden is still alive and still posing a threat to American interests at home and abroad. Recent activity and communications by his al-Qaida terrorist network, which we have seen reported in the media, suggest that the threat is as serious today as it was 14 months ago. These are glaring reminders that the War on Terrorism is far from finished and that we must be vigilant both at home and abroad to protect and defend this Nation.

I also want to reassure all Arkansans that the creation of this Department is not the only step in the protection of this Nation. Homeland security must be an ongoing process as we respond to new threats and the inevitable needs to correct deficiencies in this legislation—including modifications to this department over time. I intend to continue to seek any and all ways that we can increase the security of our homeland.

As I said in remarks on the Senate floor last week, I would like to state for the record my disappointment with some provisions that were added by the House of Representatives in the final hours without any opportunity for debate.

Three provisions in particular give me pause: waivers that the administration will be able to use to grant Federal contracts to companies that reincorporate offshore to avoid paying U.S. taxes; provisions that would broaden limits on lawsuits against vaccine makers to manufacturers of other vaccine components, covering still-pending litigation; and highly specific criteria that would be used to designate universities as part of a homeland security research system. A few of other provisions added by the House have merit, but they deserve an open debate. For example, I believe that we need to limit the liability of companies that make ''qualified anti-terrorism technology'' against claims arising from acts of terrorism, but this issue deserves more debate. We also ought to limit lawsuits against companies that manufacture aviation security equipment. It's unfortunate that these provisions, which may be perfectly worthy legislative remedies, have been slipped in to the bill without full consideration by Congress. I certainly hope each of these provisions will be revisited and fully debated next year.

Again, I'm deeply disappointed by some special interest provisions that were added to the homeland security bill. However, I believe that the necessary creation of a Department of Homeland Security outweighs the special interest provisions added to this legislation and I am proud to aid in its creation. I'm casting my vote in order to serve the higher good of protecting the American people from present and future terrorist threats.

Mr. LEVIN. Madam President, I am a strong supporter of creating a new department for homeland security, and I was glad to be able to cosponsor the bipartisan legislation that passed out of the Governmental Affairs Committee in July of this year. But this legislation, now, falls so short of the promise of that committee-passed bill, that I am compelled to vote no. The legislation the Senate will pass tonight has numerous unrelated and inappropriate special interest provisions, omits numerous related and appropriate homeland security provisions, and fails to address probably the most central question to our security the coordination and sharing of information between the CIA and the FBI.

The homeland security bill that we are debating today is a dramatic departure from the bipartisan legislation that passed out of the Governmental Affairs Committee.

The new bill now has numerous provisions that no one had seen until the Thompson amendment was presented to the Senate late last week, and too many of the provisions have less to do with homeland security and more to do with the access of special interests.

One of these provisions provides liability protection for pharmaceutical companies that make a mercury-based vaccine preservative that may cause autism in children.

Another provision guts the Wellstone amendment, which would prohibit Federal agencies from contracting with corporations that have moved offshore to avoid paying their fair share of U.S. taxes—taxes that are used for important security agencies such as the FBI, Coast Guard, Customs Service, the INS, and the Border Patrol.

Another provision provides an earmark to Texas A&M University for research.

At the same time the Thompson amendment added weakening and special interest provisions like these, it deleted important provisions that would enhance our homeland security—including a grant program for additional firefighters, a program to improve the security and safety for the Nation's railroads, and a program to improve information flow amongst key Federal and State agencies with responsibility for homeland security. The bill completely removes key areas that we had come to bipartisan agreement on at the committee level such as important language relative to foreign intelligence analysis and the Freedom of Information Act, FOIA.

Finally, it hands the President a blank check with regard to so-called reforms of the civil service.

The over-reaching by the Republicans to include special interest provisions and to exclude strong bipartisan provisions is nothing less than shocking. The exclusion of strong bipartisan provisions addressing key issues with respect to homeland security is nothing less than dangerous to our security.

Let's back up and look how we got to where we are today. Senator LIEBERMAN initiated legislation to create a new Department of Homeland Security last year shortly after the September 11 terrorist attacks. We had hearings on the proposal and the first committee markup, and at that time, President Bush opposed the creation of a new Department. As a result, the vote to report the bill we reported from Governmental Affairs was along party lines, with all of the Democrats, including myself, voting for it and the Republicans voting against it.

In the spring, President Bush changed his mind and put forth his own proposal for a new department. We in the Governmental Affairs Committee then worked on a compromise committee amendment, merging most of what the President wanted with the committee-passed bill. We reported that to the floor at the end of July. A great deal of time went into crafting that bill. Chairman LIEBERMAN held 18 hearings on various issues dealing with homeland security. We had a two day mark-up; we considered dozens of amendments; and we passed the bill out of the Governmental Affairs Committee by a 12–5 vote. We ultimately came up with what I believe was a good bill.

However, the bill before us today takes some major step backwards.

For one, this bill muddles the issue of responsibility for foreign intelligence analysis at precisely the time we should be clarifying it. The intelligence issues we face are some of the most important issues in this reorganization. Many of us on the Intelligence Committee have been taking a

hard look at possible intelligence failures before 9/11. Whether or not these failures, if they hadn't occurred, could have avoided 9/11 could be the subject of endless speculation, and that is not the point. The point is, we need to do a better job of coordinating our intelligence. We need to give those who do coordinate our intelligence the resources that they need, and we need to better define their roles and responsibilities. The Governmental Affairs Committee passed bill contains language I offered with respect to the new Department's role in gathering and analyzing intelligence on possible terrorist attacks in the United States. My language clarified the intelligence gathering functions and assigned responsibility. The language in the Thompson amendment leaves the intelligence community without clearly defined roles and creates the possibility for unnecessary and costly duplication of efforts. We cannot afford that kind of situation post 9/11.

Let me explain. Right now we have an office at the CIA called the Counter Terrorist Center or CTC, where all information, regardless of source, about international terrorism is sent and analyzed. Whether it is obtained overseas or in the U.S., the CTC is the central place for counter terrorism intelligence.

The CTC, which has 250 analysts, receives 10,000 incoming intelligence reports a month about international terrorism from the State Department, Customs, local law enforcement, FBI, INS, and a range of other sources. Representatives from the FBI, Department of Defense, Department of State, Department of Justice and other agencies that are involved in collecting and receiving information about international terrorism, work at the CTC with CIA analysts. One of the questions we faced in the Governmental Affairs Committee was how the responsibilities of the new Department in terms of intelligence gathering and analysis related to the ongoing role of the CTC.

My language in the Governmental Affairs passed bill kept the principal responsibility for analyzing information about international terrorism at the CTC. Under my language, the CTC would receive all foreign intelligence, regardless of source, and would be primarily responsible for its analysis. As defined by the National Security Act, 50 U.S.C. 401(a), ''foreign intelligence'' is ''information relating to the capabilities, intentions or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.'' My language makes it clear that the principal responsibility for collecting and analyzing information about international terrorism would be at the CTC.

Under the Committee-passed bill the new Department of Homeland Security would have a directorate of intelligence that would be responsible for the receipt and analysis of all information relating to acts of terrorism in the United States including the foreign intelligence analyses from the CTC, as well as information and analyses relating to terrorist activities of U.S. persons or organizations. The new directorate would be responsible for linking all that information and analyses to an assessment of vulnerabilities to acts of terrorism on U.S. soil.

Under the Governmental Affairs Committee bill, the new Department would, therefore, not only be responsible for the domestic terrorism intelligence analyses, but it would fuse foreign intelligence analyses with the domestic intelligence analyses and obtain an assessment of vulnerabilities to terrorism existing in the U.S. In other words, the new Department would, as many have used the phrase, ''connect the dots''—intelligence analyses, foreign and domestic, and U.S. vulnerabilities.

By maintaining the role of the CTC in international intelligence and adding the role of the new Department in the overall analytical responsibility with respect to terrorism in the United States, we would avoid duplication and redundancy.

The Thompson amendment includes language that would appear to duplicate the CTC at the new Department, and I cannot support that.

Duplicating the responsibility of analysis of foreign intelligence would only waste valuable and limited resources and undermine our objective of getting the best counter terrorism intelligence we can get. According to the Congressional Research Service, the number of experienced and trained analysts ''tends to be in short supply.'' We just don't have the resources or the people to duplicate analyses of foreign intelligence. It is important not to duplicate the CTC's capability, but to strengthen it and keep the primary responsibility for the analysis of information about international terrorism, from wherever obtained, in one place.

Another reason that I am voting against this bill is because the Bennett-Levin-Leahy compromise with respect to the Freedom of Information Act, a compromise that the administration supported at the Governmental Affairs Committee mark-up, is not in this bill.

One of the primary functions of the new Department will be to safeguard the Nation's infrastructure, much of which is run by private companies. The Department will need to work in partnership with private companies to ensure that our critical infrastructure is secure. To do so, the homeland security legislation asks companies to voluntarily provide the new Department with information about their own vulnerabilities, the hope being that one company's problems or solutions to its problems will help other companies with similar problems.

Some companies expressed concern that current law did not adequately protect the confidential business information that they may be asked to provide to the new Department from public disclosure under the Freedom of Information Act. They argued that without a specific statutory exemption they would be less likely to voluntarily submit information to the new Department about critical infrastructure vulnerabilities.

We crafted a compromise to put into statute important protections established in case law. The resulting compromise would protect from public disclosure any record furnished voluntarily and submitted to the new Department that:

First, pertains to the vulnerability of and threats to critical infrastructure, such as attacks, response and recovery efforts;

Second, the provider would not customarily make available to the public;

Third, are designated and certified by the provider as confidential and not customarily made available to the public.

The Bennett-Levin-Leahy compromise made clear that records that an agency obtains independently of the Department are not subject to the protections I just enumerated. Thus, if the records currently are subject to disclosure by another agency, they would remain available under FOIA even if a private company submits the same information to the new Department. The language also allowed the provider of voluntarily submitted information to change a designation and certification and to make the record subject to disclosure under FOIA. The language required that the new Department develop procedures for the receipt, designation, marking, certification, care and storage of voluntarily provided information as well as the protection and maintenance of the confidentiality of the voluntarily provided records.

The Bennett-Levin-Leahy compromise is not included in the Thompson amendment. Instead, the bill cuts back on FOIA access by the public by expanding the type of information that the new department can keep from the public. The language in this bill could result in the issuance of rules by the new Department based on information not included in the rule making record. It could prevent the Federal Government from using critical infrastructure information in a civil suit seeking to protect public safety. Finally, the language in the Thompson amendment could result in a criminal penalty against a whistle blower who leaks the kind of information presented to the new Department on critical infrastructure.

The principles of open government and the public's right-to-know are cornerstones upon which our country was built. With this bill, we are sacrificing them in the name of protecting them. The Bennett-Levin-Leahy compromise would have balanced the need between openness and security to protect these principles.

I will also be voting against this bill because of the civil service provisions

that President Bush is calling ''flexibility'' but that I consider an unnecessary blank check. There are really two issues here, one concerns collective bargaining, and the other concerns the civil service in general.

Under existing law, the President can issue an executive order excluding any agency or subdivision of an agency from collective bargaining if it is involved in a matter of ''national security.'' For example, in January of this year, the President issued an executive order which took collective bargaining rights away from hundreds of Department of Justice employees, many of them clerical workers involved in civil issues under the label of ''national security.''

But even without the national security exception, under current law, in an emergency, the new Department could waive collective bargaining rights, because under 5 U.S.C. 7106, ''nothing, in the chapter establishing collective bargaining rights, shall affect the authority of any management official of any agency . . . to take whatever actions may be necessary to carry out the agency mission during emergencies.'' In addition, current law prohibits federal employees from striking under any circumstances.

The Thompson bill would allow the President to waive collective bargaining rights, whether or not there is an emergency, as long as he gives 10 days notice and sends a written explanation to Congress. This provision does not provide a standard under which the President's authority is to be exercised. So in the most extreme example, under this provision, the President could remove the collective bargaining rights of every single employee who was transferred into the new Department. That is unacceptable. What we tried to do in the Governmental Affairs Committee bill was to allow workers with collective bargaining rights transferred into the new Department to maintain those rights if their job descriptions did not change. Given the President's authority to act in an emergency under current law, I believe that protected our national security without unnecessarily trampling on rights of employees.

The Thompson amendment also allows the Secretary of the new Department to alter civil service rules. If the Secretary does so, then the employee unions would have 30 days to review the changes and make recommendations to the Secretary. If the Secretary doesn't agree with those suggestions, he or she could declare an impasse and send the dispute to federal mediators. After another 30 days, the Secretary could go ahead with the changes, regardless of what the mediator suggests. The President argues that this process gives the unions a say in any changes, but the reality is that the unions have no real substantive remedy to the Secretary's proposed changes. No matter how much the employees and unions oppose the new rules, how much they fight against them, in the end, the Secretary has unilateral power to issue the rules under the Thompson amendment.

I supported creating a Department of Homeland Security from the beginning—like many of my Democratic colleagues well before the President came on board. It's disheartening that the President and the Republican leadership couldn't accept the bipartisan bill reported by the Governmental Affairs Committee and work with that to develop a bill without the major flaws described above. It's also distressing indeed that the President and the Republican leadership chose to use the Homeland Security Department legislation as a vehicle for unrelated special interest legislation while leaving behind a number of very important security-related provisions.

I would have been happy to stay here to work out the differences in this legislation and develop the strongest legislation possible. But with this vote, now, that is an impossibility. So, I hope in the next Congress to work with my colleagues who share my views on some of these provisions to make some needed changes to this legislation.

Let me add one more thing about how far astray we have gone with this legislation. While the President has been holding out on passage of this legislation in order to get the authority to waive collective bargaining rights for employees at the new Department, the key agencies in the Federal Government that are at the front lines of protecting our homeland have gone underfunded in this fiscal year. According to the House Appropriations Committee Staff: while we have authorized $38 billion for homeland defense, we have actually appropriated only $640 million to the new Department and other agencies; while we have authorized an additional 200 immigration inspectors and 200 immigration investigators, to date we have appropriated no money for these positions; and while we have authorized $520 million for hospital emergency rooms, we have only appropriated $135 million. The Republican leadership in the House has failed to send us the appropriations bills for fiscal year 2003 that would increase funding for the Customs Service, the Border Patrol, the Coast Guard, the FBI, the CIA—all of the agencies we need to have additional resources to stave off or adequately respond to a terrorist attack. That is the unfortunate final chapter to this story. By not taking up the appropriations bills for next year, we are delaying the delivery of desperately needed dollars to the very agencies charged with protecting us from terrorist attacks. The misdirection of priorities involved is harrowing.

Mr. KOHL. Madam President, today the Senate will finally pass a homeland security bill. This debate began in the Senate with Senator Lieberman's efforts in the Government Affairs Committee last Spring, and it ends today with the Senate left with no choice but to pass the House of Representative's version of the bill. This is an imperfect bill, and it has come to this point through an imperfect process. The desire to create a domestic agency capable of protecting Americans from terrorism is bipartisan—even universal. Unfortunately, the creation of the bill to do that has been partisan and destructively political.

Few of us have had a chance to consider this new proposal carefully. And what we have found has not been encouraging. The House version of the homeland security bill includes too many special interest provisions slipped in at the last minute. The Daschle-McCain amendment, which I supported, would have eliminated the most egregious of these, but the Senate narrowly rejected it. It is shameful that some used this vital Government reorganization legislation to pay back unrelated political debts.

I also must go on record strongly in opposition to the bill's provisions on Federal employees and their rights to organize a union and exercise their rights as members of a union. The President's authority to manage the Federal workforce has never been an issue before now. No one claimed that if the President had more flexibility over the Federal workforce that the September 11 attacks would have been avoided or that new work rules would have made it easier for the CIA and FBI to exchange information. Again, these unprecedented restrictions on workers' rights were inserted in must-pass legislation. Again, it is shameful that this vehicle was used to pursue a political agenda.

The House bill, however, at its core does take some needed steps to make us all safer. The United States must better focus its counter-terrorism efforts if we are to avoid future attacks. Too many agencies and organizations inside the Government share responsibility for responding to terrorism domestically. The old saying has been quoted on the floor many times during this debate, but is worth doing it one more time: ''When every one is in charge—no one is in charge.'' By making one Cabinet level agency in charge of Homeland Security we will have only one person in charge. The bureaucracy underneath the Secretary will have only one unifying priority. The advantages of that change cannot be overestimated.

However difficult the crafting of the homeland security legislation has been, it was the easy part. Now we face the difficult and monumental task of actually putting the parts together into a whole greater than its sum. The offices that make up the Department of Homeland Security cannot forget the other important missions they perform. Organizations like the Coast Guard and the Animal and Plant Health Inspection Service have valuable missions outside of their homeland security function that cannot be overlooked.

The Congress's work on homeland security should not stop here. As the transfer of offices begins, there will no doubt be changes necessary. Congressional oversight is more important now than ever. With this bill Congress has decided that the Executive Branch needs to take homeland security more seriously. But Congress needs to take it seriously, too. That means giving up our short-term political games in order to work together—Republican and Democrat, White House and Congress—to build a bipartisan, functioning agency that will deliver all Americans the security they deserve.

Mr. KERRY. Madam President, since September 11, 2001, many in Congress have been assiduously working to create a Department of Homeland Security, and I am pleased that today we are finally completing our work. After the terrorist attacks on New York and Washington it became clear that to thwart future attacks on the United States the Federal Government would have to do a better job gathering and coordinating intelligence. Since September 11 I, along with several colleagues, have believed that a reorganization of the Federal Government is critical to improving the security of this country. Though the President and many Congressional Republicans initially opposed this major reorganization, there is now consensus on the need to create a new department.

It is imperative that we move quickly and urgently to reorganize the Federal Government. Vulnerabilities exist in our homeland security infrastructure and we should not squander a single day addressing them. An independent task force, chaired by former Senators Gary Hart and Warren Rudman, recently advised that ''America remains dangerously unprepared to prevent and respond to a catastrophic attack on U.S. soil.'' There is also new evidence that Osama bin Laden is alive and recently recorded an audio tape. We must act now to create this agency and to ensure that the United States Government is doing everything in its power to better protect its borders, coasts, cities, and towns.

The Transportation Security Agency continues to play a vital role in our domestic security policy under this legislation. At no time in our Nation's history has increased security for our transportation infrastructure been as critical, and I am confident that as part of this new department the TSA will perform up to task and help ease the fears many Americans have concerning the safety of our airports, trains, and ports.

The legislation also address the impending baggage screening deadline. Although the Congress mandated a December 31, 2002 deadline for screening all baggage at airports, deploying and installing the necessary devices for the over 400 airports has proved to be a monumental challenge and it is clear that many airports are unable to meet this requirement. I am pleased that this legislation includes a common sense provision to extend the deadline for the major airports and strictly monitor their progress in screening baggage. The extension through December 31, 2003 will also give the TSA more time to properly train and deploy the 22,000 federal baggage screeners necessary to staff the devices and oversee the screening process. Rushing this process in anticipation of the deadline would have seriously compromised the effectiveness of the enhanced security measures.

Also included in this legislation is a provision that will allow financially strapped airlines to purchase ''war risk'' insurance from the Government at a reasonable cost, alleviating some of the costs the industry has incurred after September 11. This provision is critically important, as many airlines have been forced to spend upwards of $100 million to insure their planes against war and the continued threat of terrorism. Tens of thousands of aviation workers have lost their jobs because of the financial crisis in the industry. It is my hope that Government issued insurance will help expedite the recovery of this important sector of our economy.

As Chairman of the Oceans, Atmosphere and Fisheries Subcommittee, which has jurisdiction over the Coast Guard, I want to make a few comments about the Coast Guard provisions in the legislation. The Coast Guard is comprised of approximately 36,000 military personnel, roughly the size of the New York City Police Department. Recently passed legislation will expand the Coast Guard to 45,500 military personnel by the end of this fiscal year. Expansion is important to homeland security when you consider that the Coast Guard must patrol and protect more than 1,000 harbor channels, and 25,000 miles of inland, intra coastal, and coastal waterways that serve more than 300 ports. The Coast Guard is also responsible for a number of non-homeland security missions such as search and rescue, maintaining aids to navigation, marine safety, marine environmental protection and fisheries law enforcement.

I am pleased that this legislation does not split up the Coast Guard. The Coast Guard is a multi-mission agency with personnel and assets that are capable of performing a variety of missions with little or no notice. The legislation preserves this flexibility by keeping the Coast Guard in tact. In addition the bill ensures that the Coast Guard receives the proper attention it deserves in the new Department by requiring the commandant of the Coast Guard to report directly to the new Secretary. The commandant has this authority within the Department of Transportation, clearly he should have the same authority in the Department of Homeland Security.

Since September 11, the Coast Guard has had to divert resources from its non-homeland security missions in order to beef up homeland security. I asked the General Accounting Office to document the change in Coast Guard missions since September 11 and to make recommendations on how best for the Coast Guard to operate under the ''new normalcy'' post September 11. The GAO just released its report and they note that many of the Coast Guard's core missions, including enforcement of fisheries and other environmental laws, are still not back to pre-September 11 levels. The GAO recommends that the Coast Guard develop a long-range strategic plan for achieving all of their missions, as well as a means to easily monitor progress in achieving these goals.

Many of us are concerned, that the traditional non-homeland security missions of the Coast Guard will suffer once the agency is transferred. In response to these concerns this bill contains safeguards that will ensure that non-homeland security missions will get done. I look forward to working with the Coast Guard to ensure these missions are getting done. Search and rescue, oil spill response and fisheries law enforcement are important and we cannot afford to ignore or under fund these missions.

This bill also includes a study on accelerating the Integrated Deepwater System, a long overdue modernization of Coast Guard ships and aircraft that operate off-shore in the deepwater environment. The Coast Guard is operating World War II-era cutters in the deepwater environment to perform environmental protection, national defense, and law enforcement missions. Coast Guard aircraft, which are operated in a maintenance intensive salt water environment, are reaching the end of their useful lives as well. Besides high operating costs, these assets are technologically and operationally obsolete. The Integrated Deepwater System will not only reduce operational and maintenance costs, but will significantly improve upon current command and control capabilities in the deepwater environment. I support this study. I look forward to reviewing the results of this study next year and if acceleration makes sense, supporting that well.

While I support much of what this legislation does and while I believe we should quickly move forward to create the Department, I have serious concerns with particular provisions of the bill. First, I am extremely disappointed that this legislation provides the administration with the authority to rewrite civil service laws without guaranteeing that Federal workers will receive fair treatment without regard to political affiliation, equal pay for equal work, and protection for whistleblowers. The hallmark of civil service is protection from political influence through laws designed to ensure the independent hiring, promotion, and firing of employees based exclusively on merit. And by allowing the administration to rewrite the civil service laws

without guaranteeing these protections and without meaningful labor union participation, we are putting these important protections at risk.

I am also troubled by a provision in this legislation that gives the President essentially unfettered discretion to forbid Department of Homeland Security employees to belong to unions if he determines that is necessary not only for the interest of national security but also to protect the Department's ability to protect homeland security. I do not object to working to reform how government operates, to make it easier to manage and more effective. But what has been proposed in this legislation is not an improvement in the system, it just takes rights away from workers.

One of the most troubling provisions in this legislation deals with protecting critical infrastructure information that is voluntarily submitted to the Department, a worthy goal and one that I strongly support. After all, companies will be unwilling to turn over information about possible vulnerabilities if doing so would make them subject to public disclosure or regulatory actions. To encourage companies to provide this valuable information to the Department, the legislation would exempt the information from public disclosure under the Freedom of Information Act. The reason for my concern, is that the definition of information is so broad that it could include any information that a company turns over to Department of Homeland Security. What this means is that information that is currently available to the public would be barred from release if it is labeled by the company as critical infrastructure. One can easily imagine a company turning over incriminating documents to the Government so that it would not be accessible by anyone else. I am discouraged by inclusion of this provision, because earlier in this debate we developed a compromise that more narrowly defined what information could be exempt from FOIA, one that protected critical infrastructure information without opening up a loophole for companies to avoid Government regulation and public disclosure.

I am concerned by how the Immigration and Naturalization Service will be treated in the new Department under this legislation. For years the INS has been badly in need of reform and it seemed that creating the Department of Homeland Security would provide an opportunity to make improvements in enforcement and provide better visa and processing services. Under the Lieberman proposal to create the Department of Homeland Security, there was an Under Secretary for Immigration Affairs who would act as a central authority to ensure a uniform immigration policy and provide effective coordination between the service and enforcement functions. The Republican legislation unfortunately does not include an elevated immigration function headed by one under secretary, and instead buries the immigration enforcement function within the ''Border and Transportation Security'' division and places the immigration services function with the Deputy Secretary of Homeland Security.

There is no easy split between border enforcement and services. For example, countering schemes for wrongful entry is not just a border challenge, it requires close coordination among all units within immigration responsibilities. Both functions rely on shared information and intelligence. I am afraid, that with two people interpreting immigration law and policy there are likely to be conflicting interpretations, a situation that could exacerbate the current coordination and communications problems that exist within INS.

I am extremely concerned that this legislation includes liability protections inserted by the House for manufacturers of anti-terrorism technology and childhood vaccines. The new provisions allow the Secretary to designate equipment and technology used by the Department as official ''anti-terrorism technology.'' In the event of a terrorist attack this designation will prevent injured parties from seeking compensation against manufacturers of such technology, even if a manufacturer exercised gross negligence in marketing its product. The same is true for manufacturers of childhood vaccines who will be exempt from liability if a child dies or sustains injury as a result of negligence stemming from the inclusion of a ''component or ingredient'' in any vaccine listed under the Vaccine Injury Table. This provision is absolutely unconscionable. We should not give manufacturers an incentive to experiment with questionable formulas or risky ingredients for vaccines which are intended to immunize children from disease. Likewise, we should not give manufacturers of anti-terrorism technologies any incentive to sell a product they know to be below par.

Another provision added by the House would remove Senate-approved legislation to bar Government contracts with corporations that have moved their headquarters offshore to avoid U.S. taxes. The Republicans say that this provision will unnecessarily interfere with our national security. Well, I believe that it also affects our national security when corporate use of tax havens and loopholes is at an all-time high. Various estimates show that this sort of tax evasion is costing the government tens of billions of dollars a year which means that tax burdens must be higher on law-abiding citizens and small businesses that pay by the rules. To remove this sound provision at the last minute is not only bad policy, it also insults the memory of Senator Wellstone, who worked so hard to ensure that this provision was passed.

Despite my concerns with particular provisions in this legislation, I do support the creation of the Department of Homeland Security and believe it is an important element in our efforts to protect the American people from terrorism.

Mr. CRAPO. Madam President, providing for homeland security and securing our Nation against the threat of terrorism must continue to be our foremost challenge. However, many of my Senate colleagues and I recognize the budgetary strains caused by the mounting expenditures of our limited resources—and the potential future costs—of responding to the multiple and varied threats of terrorism. Our State, county, and local agencies are struggling to fund the prevention and mitigation of every imaginable attack on our citizens and our critical infrastructure. Further, providing multi-million dollar allocations at the Federal level to prevent or mitigate all perceived threats to homeland security, or to respond to each terrorism incident, could in itself bankrupt our national economy.

The best management decisions at all levels of Government and industry on allocating scarce resources to the war on terrorism need an effective analytical approach to help understand the risks and to help improve the strategic and operational decisions to address those risks. Most current approaches to analyzing the ''terrorist threat'' are limited to addressing the vulnerability of—or what will happen to—critical infrastructure if it is attacked. These ''vulnerability analyses'' generally produce long lists of security-related deficiencies and equally long checklists of expensive things to do to correct the deficiencies, but they do not help communities appropriately allocate scarce resources, people, time, and money, in the context of an organization's strategic-level goals and objectives. A more robust approach is needed to support decision-making, one that can enable Government officials and private company executives to characterize the risks of rare, high-consequence events; to identify those that pose the greatest threats; and to best evaluate mitigation alternatives.

Mr. GRAHAM. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. GRAHAM. Recognizing the need for better decision support, the leaders of Miami-Dade County established late last year a team comprised of representatives from the departments of police, fire, emergency management, general services, computer and communications services, seaport, aviation, and administration. They were tasked to work in concert with a consultant and a national laboratory to develop a process for defining, identifying, and evaluating physical and cyberterrorism threats and vulnerabilities; developing a consistent basis for making meaningful comparisons among risks to county assets so that the most important risks can be addressed first; using the structure of the process to develop strategies and associated tactics for mitigating threats and vulnerabilities; and

prioritizing mitigation activities so that the biggest gains for the resources spent are implemented first, resulting in the fastest possible reduction in risk for the limited resources available, including not only dollar resources, but the key resources of people and time. The initial work of the team, a pilot project, has been successfully completed, and it has generated considerable interest both in Florida and in Washington.

Mr. DURBIN. Would Senator GRAHAM yield a minute of his time?

Mr. GRAHAM. Yes.

Mr. DURBIN. Argonne National Laboratory, The DecisionWorks, Inc., Idaho National Engineering and Environmental Laboratory, and Miami-Dade County would like to build upon the results of the pilot project to fully develop and to implement a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism. The development of this risk-based prioritization process would be based on the methodology and results of the successful pilot project, and the capability developed in the original pilot would be further enhanced by the physical security, cybersecurity, critical infrastructure, homeland security, decision analysis, and systems engineering expertise resident in the project team.

Specifically, the purpose of the proposed risk-based prioritization program for Homeland Security would be to develop and deliver a process for helping decision-makers in both the public and private sectors to assess the likelihood of a successful terrorist attack on critical infrastructure and other assets; to understand the safety, economic, and other consequences of a successful attack; to formulate and evaluate alternatives for reducing or mitigating the risk of a successful attack; and to select a portfolio of alternatives that prioritizes the allocation of scarce resources to meet the threat of terrorism. Using risk-based prioritization to manage non-traditional risks like terrorism would have four important benefits. It would provide an objective, defensible method for deciding how to allocate resources, people, time, and money, across all risks and organizational units. It would align resource allocations with an organization's strategic objectives and its willingness and capacity to accept risk. It would provide a way to evaluate the costs and benefits associated with various alternatives for mitigating risk, from physically removing the source of risk to actively retaining the risk internally. It would improve the quality and relevance of information available to managers at all levels of the organization.

Mr. CRAPO. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. CRAPO. The original amendment that Senator LIEBERMAN submitted to the underlying bill, H.R. 5005, to establish the Department of Homeland Security, contained a section that would have established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology. Recognizing the successes of this Miami-Dade County pilot project and the tremendous contribution that a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism, Senator DURBIN and I offered an amendment that would have enhanced and strengthened this risk assessment function. This amendment would have required the Department of Homeland Security to establish a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response. It also would have authorized $15 million in appropriations for Fiscal Year 2003, and such sums as necessary in subsequent years, for the development of the risk-based prioritization process. Unfortunately, the current version of the Homeland Security Act before the Senate does not contain our amendment.

Mr. DURBIN. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. DURBIN. Although our amendment was not included, clearly the risk-based prioritization process we have described has significantly benefitted the local community in which it has been tested. Would Senator THOMPSON concur that a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response should be given serious attention by the new Department of Homeland Security?

Mr. THOMPSON. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. THOMPSON. As ranking member on the Senate Governmental Affairs Committee, I appreciate your bringing this project to the committee's attention. I am confident that the Department of Homeland Security will give it fair consideration when reviewing grant applications in the coming years.

Mr. CRAPO. Senator DURBIN, Senator GRAHAM, and I thank the Senator for his consideration and support.

Mr. HATCH. Madam President, it has long been obvious that homeland security was the most critical issue facing our nation today. I am pleased and proud to speak today on the compromise that this body has struck to approve of this measure through landmark legislation. We are finally in a position to give the President the tools he needs to fight the war against terrorism with every resource that this great nation can muster. Our country will be safer because of the enormous hard work and patriotism shared by members on both sides of the aisle.

The final bipartisan compromise is something that we can all be proud of. It incorporates a crucial compromise on labor rights. I always have believed that the President must be given the ability to hire and retain the very best people to do the work of keeping our country safe. While the final version of the bill gives the President sufficient flexibility to effectively manage the employees in the new Department of Homeland Security, it also provides sufficient procedures to protect the rights of workers. This strikes, in my view, an appropriate balance.

I also am pleased to note that the bill maximizes the new Department's ability to take advantage of the tremendous resources and expertise of America's private sector. It is perfectly clear that America's businesses will play a vital role in enhancing our nation's security. Private businesses, after all, own and operate most of our infrastructure, and provide most of the cutting edge technologies that will support our nation's defense efforts. The bill helps the private sector help our nation by crafting some reasonable protections from frivolous tort litigation, and such a measure will ultimately save lives.

This legislation incorporates my proposal to stiffen the criminal penalties for cyberterrorism and to provide law enforcement agencies with new tools to use in emergency situations involving immediate threats to our national security interests. The cyberterrorism section of the bill also provides statutory authorization for the Office of Science and Technology located within the National Institute of Justice of the Department of Justice. The bill strikes language, contained in earlier versions, that would have provided OST to be ''independent of the National Institute of Justice.'' Accordingly, I understand subtitle D to place operational authority over OST—as authorized by the bill—in the NIJ Director in the same manner and to the same extent that the NIJ Director currently exercises over OST—as it currently exists—and that the NIJ Director's authority over grants, cooperative agreements, and contracts for science and technology research and development, and the publications that disseminate the results of that research and development remain unchanged by this bill. Furthermore, I wish to make clear that I do not understand the administrative language in the bill that provides that certain publications decisions ''shall rest solely'' with the Director of the Office to affect the bill's overarching—and controlling—provision that expressly places the new Office ''under the general authority of the Assistant Attorney General.''

The bill likewise incorporates a drastic reorganization of the Immigration and Naturalization Service, abolishing the INS as it currently exists and separating the enforcement and service responsibilities within the new Department. This new structure recognizes

the importance of both functions, allows for coordination, and confers appropriate funding and management to both enforcement and services. This top-to-bottom reorganization of INS is something that numerous members of the Judiciary Committee have worked tirelessly with me to do and to do right. The Homeland Security Bill also includes a valuable provision that will significantly reduce the availability of explosives to certain prohibited persons, including terrorists and felons. Senator KOHL and I have worked hard on this provision, which will improve law enforcement's ability to track explosives purchases and help prevent the criminal use and accidental misuse of explosives materials.

I want to conclude by taking a moment to discuss the ban on the TIPS program that was inserted in the final version of the Homeland Security Bill. Let me make clear that none of us wants an Orwellian version of Big Brother watching over us at all times. I made my own concerns on this issue very clear to Attorney General Ashcroft during an oversight hearing a few months ago, as did other members of the Judiciary Committee. I was concerned, for example, that the Department would keep a historical database of such information, but the Attorney General assured the Committee that this would not occur. Since then, I have been gratified to learn that the Attorney General has taken our concerns to heart, implementing fundamental changes to the program that are designed to protect our privacies in a balanced manner. In fact, the Department of Justice now has committed to not include within the TIPS program any workers, such as postal or utility workers, whose work puts them in contact with homes and private property.

I think all of us can agree that some type of voluntary reporting program that permits but does not require concerned citizens to report information is appropriate. This is, of course, exactly what drives the highly successful results obtained by the popular TV program, ''America's Most Wanted.'' In fact, John Walsh, the host of that program, has publicly endorsed the concept of a TIPS program. Moreover, I fully support the Amber Alert Program, which was created in 1996 after a 9-year-old girl, Amber Hagerman, was kidnapped and murdered in Texas. This program is a voluntary partnership between law-enforcement and broadcasters to create a voluntary reporting program in child-abduction cases. The Amber Alert system recently led to the rescue of two teenage girls who were abducted in California; an anonymous tip from a motorist who responded to the program ultimately led to the girls' safe return. I am so convinced of this program's effectiveness that I recently co-sponsored legislation to create a national Amber Alert system.

In sum, we need to structure the TIPS program in a way that is responsible and effective. We do not want big government to enlist millions of Americans to snoop into the daily affairs of ordinary citizens. But, just as importantly, we need to provide an avenue for citizens to voluntarily alert law enforcement when they see things that cause them concern. It very well may be the case that the next 9/11 is averted because an accountant out walking his dog sees something unusual in his neighborhood park. We need to let that person know who he can call to report that information. As the Chairman-designate of the Judiciary Committee, I think that we will need to consider what type of voluntary reporting system would be acceptable to meet the real concerns posed by terrorist activity when we return for the 108th Congress.

We have debated this measure for many days now. I am delighted that we have finally—and successfully—come to the end of the road. By passing this legislation, we are taking a big step forward in helping to defend our nation from terrorism. I support the final compromise version of the Homeland Security Bill and hope that all of my colleagues will do the same.

Mr. GRASSLEY. Madam President, I rise today to support the Homeland Security Act of 2002, but must register my disappointment with the scope of this bill's ban on granting Federal contracts to corporate inverters.

In October of this year, Senator BAUCUS and I introduced the Reclaiming Expatriated Contracts and Profits, RECAP, Act to address the issue of inverting corporations that are awarded contracts by the Federal Government. Inverting corporations set up a folder in a foreign filing cabinet or a mail box overseas and call that their new foreign ''headquarters.'' This allows companies to escape millions of dollars of federal taxes every year. In April of this year, Senator BAUCUS and I introduced the Reversing the Expatriation of Profits Offshore, REPO, Act to shut down these phony corporate inversions. Today, our REPO bill has still not been enacted by the Senate.

You would think that the ''greed-grab'' of corporate inversions would satisfy most companies, but unfortunately it is not enough. After these corporations invert and save millions in taxes, they then come back into the United States to obtain juicy contracts with the Federal Government. They create phony foreign headquarters to escape taxes and then use other peoples' taxes to turn a profit.

Chairman BAUCUS and I offered our bipartisan RECAP bill as a complement to our earlier REPO bill on corporate inversions. For future corporate inversions, our RECAP bill will bar the inverting company from receiving Federal contracts. For the inversions that have already gotten out before the REPO bill can be enacted, our RECAP bill will make them send back their ill-gotten tax savings by forcing them to lower their bids in order to obtain Government contracts.

Unfortunately, the Government contracting ban in the Homeland Security Act of 2002 only applies prospectively to a narrow band of inversions where 80 percent of the shareholders are the same before and after the inversion. The homeland security ban bill does not address the broader range inversion transactions involving less than 80 percent of the shareholders. It also does not touch inverters that have gotten out under the wire. This omission allows companies which have already inverted to avoid millions in U.S. taxes while easily reducing their taxable profits from Federal contracts by creating phony deductions through their inversion structures. This failure to address inverted companies gives them an unfair cost advantage over competing Federal contractors that choose to stay and pay in the U.S.A.

So let me be clear. The Government contracting ban in the homeland security bill is merely a down payment on this issue, and it isn't good enough for me. The Homeland Security ban isn't half a loaf—it's barely two slices of bread. So to everyone developing or contemplating one of these inversion deals, you proceed at your own peril. We will continue to pursue corporate expatriation abuse, and the abusers who seek fat Government contracts while skirting their U.S. tax obligations. I will continue this issue in the 108th Congress and beyond. I look forward to enlisting the support of my colleagues with the Committee on Governmental Affairs as we march forward to shut down this abuse in all its forms.

Mr. BIDEN. Madam President, like many important decisions in the Senate, we are today faced with something of a Hobson's choice. I agree that the consolidation of agencies currently responsible for securing the homeland will, if done right, result in greater security for the Nation and I support establishing a Department of Homeland Security. But, in my view, it would be better for us if we were implementing this massive government reorganization more gradually. We are shifting close to 200,000 workers under the new homeland security umbrella in this bill, and it would make more sense to do so in stages. Here we are trying to do too much at once and, if history is any guide, we will be back at this department many, many times in the years to come with amendments designed to fix what we enacted in haste this year.

What we are left with is the choice of doing nothing, or taking the next best option of passing this bill and launching a new Federal agency. After careful thought, I come to the conclusion that passing this flawed bill is better than doing nothing. Consider our current structure. Today, homeland security responsibilities are spread among over 100 different government agencies. The structure of the Treasury Department provides a good example of the problem. That agency houses the U.S. Customs Service, an agency tasked with

monitoring the shipping containers that come into our country. Keeping the Customs Service in the agency concerned primarily with fiscal matters makes little sense when Customs' primary mission should know be safeguarding those imports. Or consider the Coast Guard, an agency in charge of patrolling our borders. The Coast Guard currently reports to the Secretary of Transportation. The Immigration and Naturalization Service is tasked with enforcing our immigration laws and securing our borders, yet its director reports to the Nation's chief law enforcement officer, the Attorney General. These examples are just the beginning. The need for reorganization is clear.

Modern management principles teach that the agencies and functions of government should be grouped together based on their major purposes and missions, and the bill before us accomplishes that goal. Once it is fully implemented, the Department of Homeland Security will be the one Federal agency with the responsibility of securing our borders, safeguarding our transportation systems, and defending our critical infrastructures. One agency will be charged with synthesizing and analyzing intelligence related to homeland security. One agency will be responsible for equipping and training the police officers, firefighters, and emergency medical technicians who are often the first to respond to a terrorist incident.

These are constructive organizational changes, ones that I am hopeful will help us better defend the country against attack. But should we be rushing their implementation without thoughtful consideration? During debate on this measure I voted in favor of an amendment offered by Senator BYRD that would have required the Congress and the Administration to work together to develop a staged implementation of the new homeland security agency, an implementation far more deliberate than the one we consider today. I am sorry Senator BYRD's amendment was not adopted.

Without Senator BYRD's approach, I fear we are doing things in reverse and I predict we will have to revisit this new Department's structure several times before we get it right. The government reorganization most similar to the one we consider today provides a guide. In 1947, we enacted the National Security Act and created the Department of Defense, the Central Intelligence Agency and the National Security Council. That approach still had to be revisited several more times, in 1949, 1953, 1958, and 1986, to perfect the structure.

Given the choice we now face, between the current state of homeland security disorganization and this bill's approach, I am forced to vote in favor of the bill. I do so with the understanding that vigorous congressional oversight of the new agency will be critical to insure it is not only accomplishing its primary mission of protecting our Nation but also to guarantee that the vast new authorities we give to the President here are not abused.

I will be watching to see if the administration abuses its authority over workers in this new Department. We must be wary of the potential politicization of our workforce. The employees of the new Department must be highly dedicated professionals, free from political pressure. We must be certain that the most expert and experienced employees are free to speak their minds and to act quickly and aggressively to defend our national security. They must not be looking over their shoulders, concerned about the ins and outs of Washington politics. They must be safe from the kinds of influence that could cause them to slant their analysis or trim their opinions to fit what is popular. I will be watchful that the employees of the new Department are free from the threat of political retaliation, and secure in their jobs so that they can perform their important tasks to the highest professional standards.

I support the creation of a Department of Homeland Security, and I will vote in favor of this bill today. The increased coordination and communication that may result from the new governing structures created in this bill could, if properly implemented, provide the Nation with vastly improved security. But because of the speed with which we considered this proposal, the rapid, sweeping reorganization it immediately envisions, and the prospect for abuse in several of its provisions, I fear this bill will need to be revisited several times and its implementation will need to be closely monitored by Congress if we hope to get it right. I will be closely watching the new agency's creation, and I hope each of my colleagues does the same.

Mr. DASCHLE. Madam President, we are finally about to vote on a bill to create a new Homeland Security Department. Many Senators worked long and hard to get us to this point. But one man was indispensable. He is the chairman of the Senate Government Affairs Committee, JOE LIEBERMAN. Under his leadership, the Government Affairs Committee held its first hearing on homeland security 10 days after September 11. It was at that hearing that former Senators Warren Rudman and Gary Hart, the co-chairs of a bipartisan blue-ribbon commission, shared their recommendation that the Government should create a permanent, cabinet-level Department to protect the American people from terrorism. Three weeks later, on the one-month anniversary of September 11, Senator LIEBERMAN announced his plan to create such a department. He had the vision to see what needed to be done and the patience and flexibility to work through disagreements and come up with workable, bipartisan alternatives. He also had the courage to stand his ground for months while the President threatened to veto any Homeland Security bill. I also want to thank Democrats on the Governmental Affairs Committee for standing with Chairman LIEBERMAN.

There are some who would like to rewrite the history of this effort. They want the American people to believe that Democratic opposition is the reason it has taken this long for Congress to pass a Homeland Security bill. That is simply not so. Creating a Homeland Security Department was a Democratic idea to begin with. It was disturbing to see that truth twisted in the recent campaigns. There are some who are threatening publicly to try to exploit homeland security again for partisan political advantage in the Louisiana Senate race next month. For the sake of our Nation, I hope they do not. Our war is with terrorism, not each other.

In the months since Senator LIEBERMAN introduced his bill, we have heard countless chilling reasons why a Homeland Security Department is needed. We have heard about dots that were not connected, intelligence reports that weren't shared and urgent warnings that were not heeded. I will vote for this bill because I believe a Homeland Security Department is right and necessary. I have thought so for more than a year. But we need to be honest with the American people about what this means.

I am very concerned about what I fear are false hopes and false assurances being given by some of those who came late to this cause.

Many of the same people who claimed just a few months ago that creating a Department of Homeland Security would detract from the war on terrorism now seem to want the American people to believe that creating this Department will solve the war on terrorism. They seem to want people to believe that, once we pass this bill, there is nothing else that needs to be done—no other changes that need to be made—to prevent another September 11. This is worse than wishful thinking. It is dangerous thinking. And it is not true.

Reorganizing parts of our Government in order to better connect the dots is only part of the solution. A much greater and far more comprehensive effort is still needed to protect America from terrorism. That effort will be difficult, it will be complicated, it will be costly. To pretend otherwise is a disservice to the American people.

Our public health system is still dangerously under-prepared for the possibility of future biological or chemical attacks. Our borders are still not secure as they need to be. Neither are our seaports; we still search only 2 percent of the roughly 6 million containers that are unloaded every year at America's ports. The U.S. has 150,000 miles of train track plus rail yards, bridges, tunnels, and switches that are all still vulnerable to terrorist attacks. This bill does not provide the resources to

secure them. Our food supply—domestic and imported—remains highly vulnerable to biological attacks. This bill does not change that fact.

A study last year by the Army Surgeon General warned that a terrorist attack on a toxic chemical plant in a densely populated area could kill 2.4 million people. There are more than 120 such plants in America. Even after we pass this bill, those plants will remain vulnerable to terrorist attacks. The Department of Energy estimates that there are 603 tons of weapons-grade material inside the former Soviet republics—enough to build 41,000 nuclear weapons. So far, only about a third of this material has been properly secured. This bill alone won't keep that deadly material out of the hands of terrorists who want to use it to build ''dirty bombs.'' Last year, the President's budget cut the programs that safeguard weapons of mass destruction. Fortunately, the Senate reversed that decision. It is urgent that we continue to work with Russia and with other nations to shut down the nuclear black market. In addition, we know that there were intelligence failures leading up to September 11. Yet, unlike the bill introduced by Senator LIEBERMAN and passed by the Governmental Affairs Committee, this bill leaves most critical intelligence functions outside of the Homeland Security Department. We need to do a much better job of coordinating intelligence efforts regarding terrorism—or critical pieces of information will continue to fall between cracks.

Nearly as troubling as what was left out of this bill is what was added to it at the eleventh hour. The American people should know that this is not the same Homeland Security bill that Congress was debating before the election. It was re-written in secret after the election. It has been stripped of a number of bipartisan, workable solutions that had been worked out on difficult problems. It has also been used as a Trojan horse for special interest giveaways that have little or nothing to do with making America safer from terrorism.

We offered an amendment to strip out seven of these last-minute changes—changes that have not been debated publicly. But the White House lobbied hard to keep them, and the White House won. As a result, this Homeland Security bill now rewards US companies that use Carribean tax havens to avoid paying their fair share of taxes by allowing those companies to compete for Government contracts with the Department of Homeland Security. It says to those companies: Even if you refuse to help pay for the war on terrorism, you can still profit from it. What does that say about this administration's commitment to corporate responsibility? You tell me. Better yet, tell the American people.

This bill now guts a critical part of the aviation security bill the Senate passed last year by a vote of 100 to nothing. It does so by providing special immunity for private companies that perform passenger and baggage screening at airports. It is likely to slow enactment of other new emergency transportation security rules that the Transportation Security Administration has said are essential to protect air and rail passengers, as well.

In the name of protecting Americans, this bill actually eliminates some legal protections for ordinary Americans. It grants legal immunity to countless private companies. All the Federal Government has to do is designate a company's product an ''anti-terrorism technology'' and the company can't be sued—even if it acts in ways that are grossly negligent. This bill also provides special legal protections to the maker of a mercury-based, vaccine additive that has been alleged to harm children. For parents who are involved in class-action lawsuits against the makers of that additive, this bill slams the courthouse door in their face.

This bill abandons the bipartisan effort to make workplace rules in the new Department more flexible without trampling worker protections and making workers more vulnerable to partisan political pressure. History has already shown that no one—no one—sacrificed more on September 11th than did public workers. I believe history will also show that using September 11 to justify taking away public employees' basic rights is a mistake. I regret deeply that it is part of this bill.

This bill also undermines the Federal Freedom of Information Act and community right-to-know laws. It says that any information a company offers voluntarily to the Homeland Security Department—or any information a company gives to another government entity, which is then turned over to the Homeland Security Department—is classified. And it makes releasing such information a criminal offense. You don't have to worry about shredding damaging documents anymore. If a company wants to hide information from the public, all it has to do is give the information to the Federal Government and releasing it becomes a criminal offense. This is not necessary. The Freedom of Information Act already allows exceptions for national security reasons. We will not make America safer by denying people critical information or throwing conscientious whistle-blowers in prison.

Finally, this bill authorizes the creation of a university-based homeland security research center. That sounds like a good idea. But this bill is now written in such a way that only one university in all of America is eligible to compete for the research center: Texas A&M.

We shouldn't have to be here, working on this bill, on November 19. It has been nearly 14 months since Senator LIEBERMAN first proposed creating a Department of Homeland Security. The Senate could have passed a strong Homeland Security bill, and President Bush could have signed it into law, long before the election. Democrats tried five times to break the Republican filibuster on homeland security. The reason we couldn't break the filibuster is because Republican leaders wanted to use homeland security as an election issue. They wanted to be able to blame Democrats for the impasse they created, and question the patriotism of good and decent people. As I said, for the sake of the American people and their security, I hope we have seen the last of those tactics.

I will vote for this bill because there is no doubt that we need to create a Department of Homeland Security. But we must be honest with the American people. Passing this bill does not solve the problem of terrorism on American soil. Creating a new Department of Homeland Security is only one part of the solution. A much greater and far more comprehensive effort is still needed to prevent future terrorist attacks. That effort will be difficult, it will be complicated, it will be costly. We should not pretend otherwise.

Last year, after September 11, this Senate put aside partisan differences and acted quickly to protect America from terrorism. It is deeply regrettable that much of that unity seems to have been lost, or sacrificed for partisan advantage, in the closing months of this Congress. We are capable of better. The American people deserved better. And I hope that in the next Congress, we will give them better.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Madam President, it is a happy twist of fate that the Senator from Pennsylvania is on the floor as I rise to support final passage of this legislation, which would create the unified and accountable Department of Homeland Security that the American people urgently need to protect them.

It is a happy twist of fate because the legislative journey that brings us to the eve of adoption of this critically important legislation began on October 11, 2001, more than a year ago, but clearly a month after September 11, 2001, when I was privileged, along with Senator SPECTER, to introduce the first legislation that would authorize the creation of this Department. I thank him for joining me on that occasion and for working with us right through the road we have traveled, which has been long and taken twists and turns we never could have foreseen. We have even run into a few potholes along the way.

The important point is we are about to reach the destination, and we are going to reach it together—in a broad, bipartisan statement of support for this critically necessary new Department.

Giving credit where it is due, the journey actually began before October 11 and September 11, more than 18 months ago, when the visionary Commission on National Security in the

21st Century, led by our former colleagues Gary Hart and Warren Rudman, warned us of our vulnerabilities to terrorism with a painful prescience, and urged the creation of exactly the kind of new consolidated federal department to fight terrorism that we are about to adopt.

As I say, we have reached our destination, and that, I believe, is testament to the power of the basic idea underlying this legislation. It is also a reflection that our history changed on September 11, our vulnerabilities were exploited by our terrorist enemies, and we can never let that happen again. Those vulnerabilities remain, notwithstanding the improvements that have been made over the last year.

We recognize that protecting ourselves from terrorism will take an unprecedented commitment of people and resources. Building this Department will involve no shortage of problems, as any massive undertaking of this kind would—but we, after this initial act of creation, must be ready to improve, to support, and ultimately to protect the American people with this Department. We have no choice.

Obviously, as I have said earlier today and at other times in the debate on the bill, the measure before us is not perfect. No legislation ever is. There are parts of the legislation before us that I think are not only unrelated to homeland security and unnecessary, but unwise and unfair. Of course, we made an attempt to eliminate those provisions with the motion to strike that came very close to passing earlier today. But this is the legislative process here on Earth, not a perfect process such as that which might exist in a heavenly location. We do not always get what we want here.

Hopefully, though, through compromise, steadfastness, and hard work, the American people will get what they need. And that, I think, is what is happening with the adoption of this bill, which will occur in just a few hours.

We must remember also—to say what is clear—that this bill will be written in the law books. It is not written in stone. If we need to make changes down the road, we can and we will.

Nonetheless, all of those caveats, conditions, and concerns about certain elements of the legislation notwithstanding, we are about to be part of an historic accomplishment. It is the largest reorganization of the Federal Government since 1947, probably the most complex Federal reorganization in history, but that is what our present circumstances require to sustain our security.

When we pass this bill, we in Congress must then not turn away but turn our attention toward overseeing the Department, with a clear vision and commitment. We must provide the necessary resources, which we still have not done, not just to this Department but to all of those throughout America, the Federal, county, State, and local governments who will partner with us to protect the security of the American people.

Early next year, we will have to confirm the Department's leaders and begin to review its strategies and objectives. I look forward to playing an active oversight role under the new leadership of the new chairman of the Governmental Affairs Committee, Senator COLLINS of Maine, and in the Senate at large. Part of that oversight role must be taking great care to make sure this administration and future administrations use the authorities this bill gives them in a constructive and constitutional manner.

The important thing to say is we are ending this journey mostly together, certainly with a strong bipartisan vote. Though we have made the twists and turns and had the obstacles along the way I have referred to, the fact is, once we end this part of the journey, we begin the next phase. On that phase, I hope and believe nonpartisanship will be the rule, not the exception. I hope and believe that we will oversee and support the historic new effort to achieve homeland security in our new circumstances with as little partisanship as has been demonstrated by those of us who have been privileged to work as members of the Senate Armed Services Committee, where there are disagreements, but rarely are they partisan.

That, I hope and believe, will characterize our work in support of the new Department of Homeland Security.

I want to speak to some of the conditions this legislation will correct. As I said earlier, we have made some progress over the past 14 months in trying to close the vulnerabilities September 11 revealed. The Office of Homeland Security has been created. The FBI and CIA have begun the process of reform. FEMA has focused more resources on countering terrorism. Smallpox vaccines are stockpiled around the country. We have begun efforts to link Federal law enforcement authorities to State and local police and to give community first responders some of the guidance, if not yet the resources, they so critically need. But the fact is we remain fundamentally and unacceptably disorganized, and that is why we need to restructure in exactly the way this legislation will require.

Today, there are a lot of people and agencies in the government whose responsibilities include homeland security. Their duties often overlap. Everyone is in charge of their own domain and, therefore, no one is in charge of the overall homeland security effort.

A year ago, we came to understand tragically, painfully, that the status quo was untenable. We knew we had these gaps in preparedness, but in the aftermath of September 11, there was no agreement on how to move forward. Our Governmental Affairs Committee held 18 hearings, and over time we grew more convinced our weaknesses were so profound they cried out for fundamental reorganization.

We saw border patrol agencies that seemed unable to communicate with each other, let alone to stop dangerous goods and people from entering the United States of America.

We saw intelligence agencies, despite strong signals about a potential terrorist attack of the type we sustained on September 11, failing to put those pieces together.

We saw first responders around the country spread thinner than ever.

And we saw deviously creative terrorists acquiring and applying technology to advance their own ends—but an American government that had not yet sought to marshal the most innovative people, our people, in the history of the world to meet this life-or-death challenge.

We did not like what we saw.

So we worked hard to better organize it, to make it more efficient, to make it more focused, to create a bill that would empower a Secretary with budget authority to get the agencies involved in homeland security to work together. That is what led to our introduction of the bill with Senator SPECTER and others, including Senator CLELAND, and ultimately to report the bill out of the Governmental Affairs Committee in May.

I don't think we can count the ups and downs since then. The finished product we are prepared to vote on today is, notwithstanding the concerns I have expressed, a great leap forward for the security of the American people. It is a great achievement to have reached agreement on a governmental reorganization of this magnitude.

This is, after all, a very turf-conscious town, one in which we often speak volumes about the need for change, but just as often, probably more often, fail to deliver change. This bill will deliver change.

Former Senators Hart and Rudman, who ably led that commission I referred to, this year were asked again to head an independent task force created by the Council on Foreign Relations. The final report of the task force, released October 24, 2002, was entitled titled ''America Still Unprepared—America Still in Danger.'' I read from the conclusion.

> Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the 21st century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives immediately may well be the most important thing we can do to sustain our cherished freedoms for future generations.

That is exactly what we will do when we adopt this legislation in a few hours.

And pursuing America's homeland security imperatives is not only critically important for future generations of Americans; let us also realize that, as we adopt and create this new Department, we set a powerful example for the nations of the world. Terrorists threaten innocent lives everywhere. When we demonstrate that we are willing and able to earn both security and more freedom, we will show free nations that they can preserve their way of life without living in fear of terror. And, equally important, we will demonstrate to those nations remaining in the world whose people are not free that they can embrace freedom and tolerance and democracy without compromising their safety.

There are few more important signals we can send by our example to the nations of the world.

In 1919, Henry Cabot Lodge said famously: ''If the United States fails, the best hopes of mankind fail with it.''

I add today, when the United States succeeds, the best hopes of mankind succeed with it. When we succeed in protecting our homeland security and preserving our freedom, we will show the way to nations throughout the world.

This evening we say to the people of America: have confidence, your government is organizing itself to protect your security. We need not accept another September 11 type terrorist attack as inevitable. It is not.

We are the strongest nation in the world. If we marshal our strength as this new Department can, no future terrorist attack such as September 11 will ever occur again.

Finally, I give credit and thanks to the Members of the Senate Governmental Affairs Committee, and to the majority staff for their passion, precision, and persistence. They were tireless, working day and night, through recesses, weekends, and holidays, and they have every right to be proud of this product of their labor: a new Department that will better protect the American people for generations. The names of the staff members, from both the Committee and from my personal staff, are:

Holly Idelson, Mike Alexander, Larry Novey, Susan Propper, Kevin Landy, Josh Greenman, Bill Bonvillian, Michelle McMurry, Kiersten Todt Coon, Joyce Rechtschaffen, Laurie Rubenstein, Leslie Phillips, Fred Downey, Adrian Erckenbrack, Yul Kwon, Thomas Holloman, Donny Williams, Janet Burrell, Darla Cassell, Wendy Wang, Megan Finlayson, and Adam Sedgewick.

I thank them all for their commitment.

I would also like to thank the numerous staff for other members who have been so helpful throughout the process. On the Governmental Affairs Committee, so many staff played an important role in this bill. On Senator DURBIN's Staff, Marianne Upton and Sue Hardesty. On Senator AKAKA's staff, Rick Kessler, Nanci Langley, Sherri Stephan and Jennifer Tyree. On Senator LEVIN's staff, Laura Stuber. On Senator CLELAND's staff, Donni Turner. On Senator CARNAHAN's staff, Sandy Fried. On Senator CARPER's staff, John Kilvington. On Senator DAYTON's staff, Bob Hall. Senator DASCHLE's staff also has contributed greatly to the enactment of this legislation; I'd like to thank in particular Andrea LaRue.

From the Office of Legislative Counsel, I'd like to thank Tony Coe and Matthew McGhie for their assistance and guidance.

I thank Senator THOMPSON, who is leaving the Senate soon—tonight, presumably—for the pleasure of his company on this journey, and the contributions he made to the historical accomplishment this legislation represents.

I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from West Virginia has 60 minutes.

Mr. BYRD. Mr. President, I understand the Senator from Kansas, Mr. BROWNBACK, wishes some time.

Mr. BROWNBACK. Mr. President, if the Senator would yield, yes, I would like 5 minutes, if that is possible, to speak on the homeland security bill.

Mr. BYRD. The Senator gets his time from whom?

Mr. BROWNBACK. From Senator THOMPSON. I believe he has some time remaining.

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes remaining.

Mr. BROWNBACK. I seek 5 of those 7 minutes.

Mr. BYRD. I promised to yield 5 minutes of my time to Mr. JEFFORDS, after which I would yield for whatever time the Senator from Kansas desires, after which, then, I will speak.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, Mark Twain once said. ''Always do right—this will gratify some people and astonish the rest.'' I rise today to explain why I believe voting against this bill is the right thing to do.

Of the may reasons to vote against the bill, I will focus on three—the bill's treatment of the Federal Emergency Management Agency, the bill's treatment of the Freedom of Information Act, and the process used to create this new Department.

With the passage of this Homeland Security legislation, we will destroy the Federal Emergency Management Agency, losing years of progress toward a well-coordinated Federal response to disasters.

As it now exists, FEMA is a lean, flexible agency receiving bipartisan praise as one of the most effective agencies in government. But it hasn't always been that way.

Throughout the 1980s, FEMA's focus on Cold War civil defense preparedness left the Agency ill-prepared to respond to natural disasters.

The Congressional chorus of critics decried the Agency's misguided focus and reached a crescendo after bungled responses to Hurricane Hugo in 1989 and Hurricane Andrew in 1992.

One of FEMA's leading Congressional critics, then-Representative Tom Ridge said in 1988, ''I was convinced that somewhere along the way, the Federal Emergency Management Agency had lost its sense of mission.''

Over the last decade, refocusing the agency's mission and priorities on natural disasters has left the agency well-equipped to respond to all types of disasters. FEMA's stellar response to September 11th provided this.

I cannot understand why, after years of frustration and failure, we would jeopardize the Federal government's effective response to natural disasters by dissolving FEMA into this monolithic Homeland Security Department.

I fear that FEMA will no longer be able to adequately respond to hurricanes, fires, floods, and earthquakes, begging the question, who will?

Also of great concern to me are the new Freedom of Information Act exemptions contained in the latest substitute.

Unfortunately, the current Homeland Security proposal chokes the public's access to information under the Freedom of Information Act. I ask, are we headed toward an Orwellian society with an all-knowing, secretive big brother reigning over an unknowing public?

The bill defines information so broadly that almost anything disclosed by a company to the Department of Homeland Security could be considered secret and kept from the public. Although I believe the current law contains an adequate national security exemption, in the spirit of compromise I supported the carefully crafted bipartisan Senate language contained in both the Lieberman substitute and the Gramm-Miller substitute. The current bill ignores this compromise.

The process by which we received this substitute seems eerily similar to the way the White House sprung its original proposal on Congress some time ago. Late last week we received a bill that had magically grown from 35 pages to an unwieldy 484 pages. There was no compromise in arriving at the current substitute, only a mandate to pass the substitute or be branded as weak on homeland security or, worse yet, unpatriotic.

Still more troubling, the current bill places little emphasis on correcting what went wrong on September 11, or addressing future threats. Correcting intelligence failures should be our prime concern. Instead, this bill recklessly reshuffles the bureaucratic deck.

Furthermore, as my colleague Senator CORZINE stated earlier this week, this bill does not address other vitally important issues such as security at facilities that store or use dangerous chemicals. Without provisions to address yet another gaping hole in our

Nation's security, why are we now being more deliberate in our approach?

In closing, I feel it is irresponsible to divert precious limited resources from our fight against terrorism to create a dysfunctional new bureaucracy that will only serve to give the American people a false—false sense of security. I will vote against this bill because it does nothing to address the massive intelligence failure that led up to the September 11 attacks, it dismantles the highly effectively Federal Emergency Management Agency, and creates dangerous new exemptions to the Freedom of Information Act that threaten the fundamental democratic principle of a well-informed citizenry.

I am sorry for having to take this position, but I believe so deeply in what I have said that I must do it.

I am pleased to have been able to express myself, and I thank the Senator from West Virginia, my faithful friend.

Mr. REID. Will the Senator from West Virginia allow me to direct a statement, through the Chair, to the Senator.

The PRESIDING OFFICER. The Senator from Kansas has the floor.

Mr. REID. I am sorry, the Senator from Kansas.

Mr. BROWNBACK. I am happy to yield to the Senator from Nevada.

Mr. REID. I want to say, because the opportunity may not be right at a subsequent time, how much I appreciate the days the Senator from West Virginia has spent on the floor on this issue. Because of my having responsibility to help move legislation along here, sometimes I was concerned it was taking so much time. But in hindsight, this legislation we are going to soon pass—it will pass sometime tonight—is better legislation. And while it may not be—484 pages may not be better, the knowledge of the American people of this legislation is so much better than if we had passed this as people wanted on September 11.

So I want to commend and applaud the Senator from West Virginia for educating the Senate and the American public about what is in this bill and what is not in this bill. As I said, this legislation will pass. But as a result of what the Senator has done over these many months about this legislation, everyone is going to be looking at what is taking place in this new agency that would not have taken place but for the persistence of the Senator from West Virginia. The American public owe you a tremendous debt of gratitude for your knowledge about legislation and, most of all, for understanding what the Constitution is all about and the role, in that Constitution, of the legislative branch of Government.

Mr. BYRD. Mr. President, if I may just respond: First of all, I thank the distinguished Senator, who is the majority whip in this body. I deeply appreciate what he has said. I appreciate very much what he has said.

May I say, in turn, that the American people don't owe me anything. But I will say this, that the American people are listening. And with respect to the resolution dealing with a war with Iraq, the American people were listening. The American people heard what we said. As a result of speeches—I made two or three speeches in that instance—as a result of those two or three speeches that I made, my office received 21,000 telephone calls, and my office received over 50,000 e-mails.

That is an indication that there is somebody out there listening, somebody cares, somebody is paying attention. That is gratifying to me. So somebody heard. And I don't pay all that much attention to the polls. I don't think they ask the right questions. What are the right questions? I don't know what the right questions are. But those polls reflect responses to questions. And whether they are the right questions or the questions that ought to be asked, I cannot say.

But I can say the American people do listen. And somebody has to fulfill the duty Woodrow Wilson was speaking about when he said the informing function of the legislative branch is as important, if not more so, than the legislative function.

I thank the Senator. I am well paid.

When Plato was about to pass away from this earthly sphere, he said:

> I thank the Gods that I was born a man.

He said:

> I thank the Gods that I was born a Greek.

And he said:

> I am grateful to the Gods for the fact that I live—I live in the same era in which Sophocles lived.

So, I am thankful to God, and to my angel mother and my father, and to the people of West Virginia, for the fact that I have had this great privilege to work in this body, now, for 44 years and I have been able to contribute. God gives me my faculties almost as they were 50 years ago, except for my feet. I was always told the first place will be your feet; your feet and legs will give way. I am finding that to be pretty true. But I thank heaven that I was able to be here, to say what I have been able to say about the resolution dealing with Iraq and the homeland security legislation.

I think we have performed a service. I said what I thought. I am on no man's payroll. I am on the people's payroll. And I wear no man's collar but my own. That may be kind of a small collar.

But, anyhow, I do what I think. I could leave here any moment and get just as big a check as I get as being a Senator because I have paid in the system, now, 50 years this coming January 3.

I am doing what I want to do. I don't have to do this. I probably ought to be home with my wife. We will be married, in another 6 months, 66 years, if the Good Lord lets me live.

But I do think the Senator from Nevada, has made a tremendous contribution himself. He has listened to what we had to say, to what PAUL SARBANES and I and the distinguished Senator from Vermont, Mr. JEFFORDS, and others have said. We have warned about this measure. We have not been in agreement with the administration in connection with this homeland security agency. We think we have legislated too fast. We think we have been in too big a hurry. We think we have paid too much attention to the polls, and that we ought to have taken more time in this body.

It is said to be the greatest deliberative body in the history of the world. It hasn't been very deliberative in this case. But I am glad that, although the intent was to pass this bill in a hurry—I was told down at White House, I say to the distinguished Senator from Maryland, Mr. SARBANES—I went down there at the invitation of the President. I am not invited very often down there. But on this occasion the President invited me down. He said:

> I have got to go to St. Louis. I can only be here a few minutes.

So we had a picture taken. All the cameras came in and took pictures. Then he sat down and said: I have this package here. I thank the congressional leaders for their input into this package.

I scratched my head. What input is he talking about? I knew the congressional leaders had not had one ounce of input into it—not one.

This thing was patched together down in the bowels of the White House by four eminent public servants—not quite perhaps up to the caliber of Thomas Jefferson and Benjamin Franklin. Who else was on that committee that wrote the Declaration of Independence? Robert Livingston. And who else? There was John Adams, and one more: Roger Sherman. So they weren't quite up to that caliber.

But this bill was the egg that was hatched down at the White House. I can just picture them walking around there with their shadows on the walls of the subterranean caverns, walking around with lanterns or candles. And they hatched this great idea down there all of a sudden to get ahead of this Mack truck that was coming down upon them fast in the appropriations bills which provided that the Director of Homeland Security would have to be confirmed by the Senate. The purpose of that was, as Senator STEVENS and I intended, Mr. Director, when the Senate confirms you, you will come before the Senate Appropriations Committee.

So much for that.

The thing that is being missed probably most in this deliberation is the fact that the Appropriations Committee and the Senate and the Congress have appropriated moneys for homeland security that will make the country far more safe than will this piece of legislation. It is going to take a year or 2 years for this legislation to be implemented and to get this thing going. In the meantime, the people who are now out there on the borders, who are protecting the nuclear facilities of

the country, the food lines, and the clean water are the same people who will be here a year or two from now when this agency is supposed to be full blown.

But the President has a year in which to send up his plan as to how this organization is to be implemented. Imagine that—a year. He has a year. In the meantime, I am afraid that the people who are out there now at midday and midnight working to secure the safety of the American people will be distracted. They are going to be worrying about where their offices are going to be; What is going to be the label over my office? Where will my typewriter be? Where is the telephone going to be? What is going to be the vision and the objective of this new agency?

These people are going to be distracted. I am afraid that is what gives the terrorist a good opportunity to work havoc in some way.

I thank the distinguished Senator from Nevada for his kind words. I also thank the distinguished Senator from Vermont who summed up in a few words, in 5 minutes, what I could say in 30 minutes, the very good reasons that we should oppose this bill. I admire him for that. I admire him for his courage, his pluck, and for his good sense. He has made my speech for me. I can just sit down. I thank the Senator from Vermont.

I thank the distinguished Senator from Kansas for his unlimited patience and for his consideration and always for his good humor.

I yield while he speaks.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. BROWNBACK. Thank you, Mr. President. I thank the distinguished Senator from West Virginia for allowing me to take time previously allocated on the floor to speak.

I want to make a couple of comments about homeland security, and in particular about the INS.

I have been privileged to serve for the last couple of years as ranking member on the Immigration Subcommittee of the Judiciary Committee. Immigration is a subject on which we have focused.

We passed two major pieces of legislation already in this Congress dealing with immigration issues—trying to strengthen our borders and trying to give the enforcement agencies some better information, and also better information for the INS and the State Department about terrorists abroad before they get here. There are two good pieces of legislation that we passed.

What we are attempting to do in this bill is to restructure the INS. The reason I want to talk about the INS is that it is a troubled agency, by anybody's definition—whether you are pro-immigration or anti-immigration. I hear everybody complaining about the INS. It just does not function well from any perspective that you look at. It may be an impossible task. Some people may look at it as just impossible. We have too many people seeking entry into the country each year. The number varies. There are over 250 million entries into the country each year by people who are legally seeking entry into the country. And 1 person may come in and out 10 times. That is 10 entries. But still, you are talking about a large number of entries by people, who are not U.S. citizens, into this country each year, making this a difficult job. It is a troubled agency. It is not functioning well. We need to change it. A lot of that is put in the bill.

I am pleased about some of the ideas that I and several others put forward that are incorporated into the INS restructuring that is in the homeland security bill. There is a clear distinction between the enforcement and services functions at the INS. We recognize the importance of keeping immigration enforcement and services in the same department. Some people wanted to split them. I think that would work poorly. I think you need to have the same functions together. They are there. There are clear distinctions between the enforcement and services functions, which clearly need to be delineated, but they need to work together. Those are two positive features of this reorganization.

I must be frank as well. I think there is some failing that we want corrected in the INS restructuring portion of this homeland security bill. I am concerned that the new Department be true and coordinated well—both in the enforcement and services functions. It looks to me as if some of the restructuring may not have good lines of clear distinction in organization and functioning in the enforcement services functions the way it is set up.

I am concerned about the services component of the Department of Homeland Security being effectively coordinated with the enforcement. I am troubled about how this is set up. I have communicated those concerns to Governor Ridge, and I am hopeful that those concerns are going to be taken seriously.

I think we need strong leadership at the head of the immigration services office. It has to be a strong leader. That is a function of who is picked—not a function of how it is structured. But if we weaken that services component of it, and if we don't have somebody who has knowledge, stature, and ability to communicate this going forward, I think we are going to be left with a continuing troubled agency.

I think the leadership has to have the ear of the Secretary of the new Department. Part of my concern is this is built to the side—not built into the positive agency—to the side of the Secretary. If you do not have a strong voice there, if they do not have the ear of the Secretary, I think we are going to have some real problems in this immigration portion.

We want strong and effective immigration enforcement. We don't want the invaluable services of citizenship, family, and business petitions, asylum, and the many public service components of immigration to be forgotten. We don't want that. We want a strong enforcement, and we want to provide homeland security. But we also are a nation of immigrants. We need to take people who are legally here and build this society.

We want strong security. We should never compromise our values or lose sight of the immigration benefits to our culture or to our economy. It is critical that we monitor the development of this new Department to ensure the immigration services component receive the attention and resources it deserves.

I have shared these concerns with Governor Ridge. I am comforted by the fact that he is aware of those facts.

One of the other aspects I want to make note of is the issue of the immigration courts. I want to quickly commend this legislation for keeping the Executive Office for Immigration Review within the Department of Justice. It didn't move over homeland security. I think permitting the Attorney General to retain control of the immigration court system is going to be positive.

I think those are some problems we need to revisit. We should do so in the future.

It is time we pass the homeland security legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, we have come to the end of a long, long road. For nearly 5 months, this Chamber has engaged in discussions about homeland security. But for nearly as long a time as that, this Congress has not engaged in seeing to it that there is actual funding to make our people any safer from the threat of another horrific terrorist attack. It has been over 4 months—over 4 months—since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God created all of creation. He created the universe. He created the Earth. He created man in 7 days, in the Book of Genesis. The greatest scientific treatise that has ever been written can be found in that first chapter of Genesis. Go to it. Those of you who are scientists, look over that one, the first chapter of Genesis. Do you have any problem with the chronological order in which the creation was made possible, as set forth in that chapter? No. The scientists won't have any objection to that chronological order, not any. I have four physicists in my own family, and they agree with that, that chronological order.

So 6 days, and God rested on the Sabbath.

How long has it taken for us to pass a regular appropriations bill? The last regular appropriations bill came out of the House 4 months ago. It has been over 4 months since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God would not have gotten very far in the creation of this universe, would He, if it had taken Him that long at that pace?

We have talked a lot about homeland security. We have plenty of talk. We just open our mouths, and it just rolls out—rolls out. So talk is cheap.

But we have done very little. We have not given the cities and municipalities, the police, the firemen, the hospital workers, the first responders who are on the front line, we have not given these people one red cent—I will say, one copper cent—not one, to help them keep us safer from the madmen within our midst—in 4 months. Now, get that.

Nothing was said about that during the campaign. The President went all over this country—from the Pacific to the Atlantic, to the Canadian border, to the Gulf of Mexico—talking about this great bill here, this magnificent product of human genius in the bowels of the White House. Not one word was said about these appropriations that have been passed by the Senate and the House that have been on the President's desk—$5.1 billion, in one instance, made available to the President for homeland security. All that was needed was the President to flourish the pen, attach his signature, and designate that money as an emergency. The Congress has already done it. He said no.

So homeland security has gone wanting. That money has been there—$2.5 billion for homeland security. That is two and a half dollars for every minute since Jesus Christ was born, two and a half dollars for every minute.

So it has been a little over a year and 2 months now since America was jolted from its tranquility by the noise, the smoke, the flames of two exploding commercial airlines as they smashed into the Twin Towers in New York City. Yet in these intervening months—except for the initial help that we provided to New York and to Washington to aid in closing the hemorrhaging wounds of economic disruption and human devastation caused by the terrorist attacks—not enough has changed here at home.

It is true that we have chased bin Laden across the landscape of Afghanistan. We have spent over $20 billion chasing him around in Afghanistan. And now we don't actually know where he has been chased to. We have chased bin Laden across the landscape of Afghanistan and probably cleansed that nation of the training camps for terrorists, for now.

We have made some progress, I am sure, in some disruption of the al-Qaida network worldwide, but no one in this Chamber, and no one in this city, can look the American people in the eye and say to them: ''Today you are much safer here at home than you were 14 months ago.'' I can't do it.

This Government continues to send out first one alert and then another. Practically the whole litany of top people in this administration has been out there at one time or another saying: Something may happen here tomorrow. Something may happen here within the next week. So the Nation has been put on alert after alert. So I ask the question: Are you better off than you were a year ago?

Because of reckless disregard for the reality of the threat to our domestic security, this administration and many in this Congress have taken part in an irresponsible exercise in political chicanery.

The White House has pressured its Republican colleagues in the Congress—and some of the Democrats as well—to reject billions of dollars in money which could have added to the tangible safety of the American people.

This White House has stopped—stopped—this year's normal funding process in its tracks. I have never seen such action before. This White House has stopped this year's normal funding process in its tracks. This year—since 1976, when the beginning of the fiscal year was changed from July 1 to October 1—only two appropriations bills have passed the Congress and been sent to the White House—only two. That is the most dismal record since 1976; the most dismal record, only two bills. What a lousy record.

But this Senate Appropriations Committee reported out all 13 appropriations bills to the Senate no later than July—the best record in years. And yet only two bills have been signed by the President. Why? Because this administration, down there in the White House—we all know who is in the White House—has told the Republican leadership in the other body: Don't let any more appropriations bills pass.

This White House has stopped this year's normal funding process in its tracks and even turned back funds for homeland security in emergency spending bills that could have shored up existing mechanisms to prevent or respond to another devastating blow by fanatics who hate the United States.

They do not hate the United States because of its freedoms. The President says they hate us because of our freedoms. I do not believe that. I think they hate us because of our arrogance.

They have done this plain disservice to the people. They have done this plain disservice to the people in order to gain some perceived political advantage in a congressional election year, and in order to be able to say that they were holding down spending.

So they kept 11 of the appropriations bills from coming down to the White House. But you watch this administration after the turn of the new year. You will never see such fast operating on appropriations bills as we will see then. We have done our work on these bills. But for the most part they have not been sent to the White House because the administration said: We don't want them.

The administration told the Republican leadership in the other body: We don't want them. Hold them up.

But once this new leadership takes over in January, you watch how quickly they will say: Now send those bills on down. We want to show the American people how fast we can appropriate money, how fast we can move appropriations bills—when all the while the ''we'' they are thinking about is the ''we'' that has held up those appropriations bills and not let them come to the White House.

In order to avoid criticism of the too meager dollars for homeland security, this White House suddenly did an about-face and embraced the concept of a Department of Homeland Security. Don't send us your appropriations for homeland security. Send that bill up there because that is a great political hat trick. Send us the bill on homeland security. Make the people think they are going to have more security in their schools and their homes and their businesses and on their farms.

So the people are being offered a bureaucratic behemoth complete with fancy top-heavy directorates, officious new titles, and noble sounding missions instead of real tools to help protect them from death and destruction. How utterly irresponsible. How utterly callous. How cavalier.

With this debate about homeland security, politics in Washington has reached the apogee of utter cynicism and the perigee of candor. No one is telling our people the plain, unvarnished truth. It is simply this: This Department is a bureaucratic behemoth cooked up by political advisors to the President to satisfy several inside Washington agendas.

One, it is intended to protect the President from criticism and fault should another attack occur.

Two, it is intended to eliminate large numbers of dedicated, trained, experienced, loyal, patriotic Federal workers so that lucrative contracts for their services may be awarded to favored private entities. Watch. Watch and see.

Three, it would be used to channel Federal research moneys and grants to big corporate contributors without the usual Federal procurement standards that ensure fair competition and best value for the tax dollar.

Four, it will foster easier spying and information gathering on ordinary citizens which may be used in ways which could have nothing whatsoever to do with homeland security. And now with this new bill, with the blue ribbon that will be tied around it, the fancy trimmings that will be around that bill when it goes down to the White House and then to be invited—how wonderful, how glorious that will be, to be invited. I haven't been down there in so long. It is called the Rose Garden—into that Rose Garden, just to be there in the presence of the chief executive, the Commander in Chief, when he signs this bill into law, this new bill which showed up only last week on the doorstep of the Senate, how wonderful that will be, how utterly wonderful that will be.

Insult has been added to injury by provisions that further exploit the already shamefully exploited issue of homeland security with pork for certain States and certain businesses. My, my, my, how low we have sunk.

Senators seem to be unaware or unconcerned about the transfer of power that will take place under this bill. Some of the Senators who have walked down to that table and who have voted aye on this bill and who voted no on amendments that have been offered to improve it, they will have room, they will have time to remember. They will have time to remember how they were stampeded into voting without asking questions.

The most glaring example can be found in title XV of the bill which requires the President to submit a reorganization plan to the Congress which would outline how he plans to transfer to the new Department 28 agencies and offices authorized by the Congress. The authority granted to the President under this title is very broad. The President can reorganize, streamline, or consolidate the 28 agencies and offices being transferred.

The President can determine which functions of the agencies being transferred will be moved to the new Department and which will be left behind. The President can determine how the functions transferred to the new Department will be delegated among the officers within the new Department. The President can set any effective date he wants for transferring these agencies within a 12-month transition period. The President can change his plan at any time before the plan takes effect.

The only requirement placed on the President is that heavy charter, that great burdensome charge; namely, that he inform the Congress of his plans before those plans take effect. My, what a heavy burden. The Congress does not have the opportunity to approve or disapprove of the President's plan. We have no mechanism by which to object to the President's plan. The Congress is locked out by our own doing, forced to watch from the sidelines as the administration implements this new Department.

What a great Senate this is, in this hour of God. The Senate, I have to say, has let the people down. The Senate has grown timid. It has lost its nerve. I cannot for the life of me understand why the Congress would cut itself out of the loop like that. Congress is authorizing the President to reorganize, consolidate, or streamline any one of the 28 agencies and offices being moved to the new Department and to delegate functions among the officers however he wishes. And the only requirement placed on the President, as I say, is that he humble himself enough just to let the Congress know what he plans to do.

After we pass this bill, the Congress will have abdicated its role in the implementation of the new Department. We might as well just dive under the bed and say: Here goes nothing.

I find this to be unacceptable and unwise. Other Senators should agree.

Last September I offered an amendment that would have allowed the Congress to stay involved and to help provide for a more orderly, efficient, effective transition of agencies to this new Department. The Congress would have had a mechanism in place to guard against abuses of this authority that we are granting to the President, if my amendment had been adopted.

The distinguished Senator from Minnesota, presently sitting in the chair, voted for my amendment. But the Senate rejected my amendment—incidentally, the Senator who sits in the chair had, I will say, a kinsman who signed the Constitution of the United States. How many signers were there? Thirty-nine. He was one of the signers; his name was Jonathan Dayton. How old was he? He was the youngest member of the convention, the youngest, younger than Charles Pinckney. I believe Charles Pinckney was the next youngest. Dayton was the youngest, 24 years old, I believe, 25 or 26—24, I believe—choosing instead to trust the administration to handle the implementation of the new Department without congressional input.

That decision, in my view, was a disservice to our States and the people who sent us here to look out for them. With passage of the new House bill, we have in effect washed our hands of any further ability to affect decisions regarding the way the Department is organized or the functions that it will perform.

The Nation will have this unfortunate creature, this behemoth bureaucratic bag of tricks, this huge Department of Homeland Security, and it will hulk across the landscape of this city, touting its noble mission, shining up its new seal, and eagerly gobbling up tax dollars for all manner of things, some of which will have very little to do with protecting or saving the lives of the American people.

Maybe in 5 years or so it will sort out its mission and shift around its desks enough to actually make some real contribution to the safety of our people. I sincerely hope so. But if the latest tape from bin Laden is to be believed, we won't have time for all of that.

If the latest threat assessment from the FBI can be believed, we will experience something catastrophic before that new Department even finishes firing all of the Federal workers it wants to get rid of.

What does it take to wake us up? What does it take to make the gamesmanship cease? When will we stop the political mud wrestling and begin to wrestle with the most potentially destructive force ever to challenge this Nation?

Let us hope that when the gavel bangs to close down this session of Congress, it will awaken us to all of the dreadful consequences of continued posturing and inaction.

I know that this administration, with its newfound majorities in both Houses of Congress, will quickly pass the remaining 2003 bills, which will provide at least some modicum of real security for our people as soon as Congress reconvenes in January of the new year. They will want to claim that they can get things done.

Although I deplore the motivation and the gamesmanship behind such tactics, I wish them well and pledge my help. It is long past time for us to finally do our best to prevent another deadly strike by those who hate us and wish us ill. Terrorism is no plaything. Political service is no game. Political office is no place for warring children.

The oath of office which we take is no empty pledge to be subjugated to the tactics of election year chicanery perpetrated on a good and trusting people.

Yesterday, a Federal appeals court upheld broad, new powers given to the Justice Department to investigate and prosecute people suspected of terrorism. The ruling of the special appeals court, which was created by Congress to oversee secret Government actions involving national security, will make it easier for the Justice Department to spy on U.S. citizens by circumventing traditional constitutional protections. This court decision gives the executive branch a green light to run roughshod over the civil liberties of innocent Americans in the name of national security.

The Justice Department argued that the expanded authority it is claiming is nothing more than what Congress authorized in last year's USA Patriot Act, in which Congress tore down the protective walls that had previously separated foreign intelligence and domestic law enforcement activities. A three-judge appeals panel agreed with the Justice Department, concluding that the new antiterrorism law did have the effect of weakening procedures that safeguard our civil liberties.

The Justice Department now wields dangerous, new power to conduct secret surveillance on American citizens for potential criminal prosecutions. This expanded power is a license for abuse, and Senators should be concerned about the consequences for our constitutional system.

But any of us who wants to point his finger at the administration for overreaching its authority should also place that blame squarely on himself or herself, because it was the actions of this Senate that set the wheels in motion.

As the Washington Post points out in an editorial entitled ''Chipping Away at Liberty'' from this morning's paper:

> The fault for the problem . . . lies not with the court, but with Congress, for the carelessness and haste with which it passed the USA Patriot Act in the wake of the September 11 attacks, and for its unwillingness to push back against Bush administration excesses.

The editorial goes on to explain that this new authority grants the Government one more sphere in which it gets

to unilaterally choose the rules under which it will pursue the war on terrorism. . . .Which parts of this system need to be reigned in is a profoundly difficult question, one that Congress seems depressingly uninterested in asking. This is a war, the administration has said, without a foreseeable end, so the legal regime that handles these cases may become a permanent feature of American justice. Such a regime should be enacted deliberately, after careful inquiry by legislators—an inquiry that has so far scarcely begun.

Mr. President, this Senate passed the USA Patriot Act in October of 2001 by a vote of 98 to 1. I voted for it. Ninety-eight Senators, including myself, this Senator from West Virginia, voted for the bill. Perhaps many of us now realize that we may indeed have acted too hastily to hand over this unchecked power to the executive branch.

During the debate on that bill, one Senator stood up and pleaded with us to take the time to consider the legislation more carefully before we unleashed such a dangerous and uncontrolled threat to our civil liberties. Senator FEINGOLD stood alone in the path of that Mack truck that was barreling through the Senate, warning that many of us would come to regret our decision to stand out of the way and cheer on the rumbling big rig.

I believe that Senator FEINGOLD was right to caution the Senate during that debate. I believe we did pass the Patriot Act too hastily. As the media continue to uncover more stories about the lengths to which this administration will go to shroud its actions in secrecy, I hope other Senators will also come to the conclusion that these issues deserve more attention from this Congress.

During this debate on homeland security, I have tried to convince the Senate to slow down and look closely at this legislation before giving the executive branch such a broad grant of virtually unchecked authority. I have tried to draw attention to some of the problems in this bill in the short time that we have had to examine it. I have tried to persuade Senators not to give into the political pressures that have loomed over our consideration of this bill before and after this year's election.

So I hope that Senators will heed the warnings and vote against this bill, although I do not really believe that will happen. I have seen the handwriting on the wall, and I know that this bill has the votes to pass. But I hope that those Senators who worry that we are acting too hastily will have the courage to vote against the bill.

There will be a lot of work to be done in the next Congress to clean up the mess we will make by enacting this homeland security legislation. Congress will have already cut itself out of the loop with regard to the implementation of this new Department. It will be incumbent upon individual Members of the Senate to attempt to shed light on the administration's actions whenever possible. It will be the responsibility of individual Members to fight to defend the constitutional powers of Congress and the constitutional protections of our personal privacy and civil liberties.

There will be a lot left to do in the name of homeland security during the next Congress. I hope each Senator will remember that when he or she votes on this bill, and I hope the Senators do not treat this vote as something to put behind them. When Senators cast their votes on final passage of this homeland security legislation, I hope that they will understand and think about what that vote will mean a year from now when their voters ask them: Where were you when the Senate approved this bill?

I urge those Senators who are troubled by this legislation, as I am, to vote with me against the bill. I know where I will be when the Senate votes to hand over this power, and my people will know that I did what I could to put the brakes on this process. I hope that other Senators will also send a message to the people they represent about where they stand by voting against the final passage of the homeland security bill.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. DURBIN). There are 12 minutes remaining.

Mr. BYRD. I reserve that time.

FAREWELL TO SENATOR FRED THOMPSON

Mr. President, with the closing of the 107th Congress, the Senate will be saying farewell to a very talented and successful and effective colleague, a Senator who in a relatively short period of time has made important contributions to this Chamber and to our country.

Senator FRED THOMPSON has accomplished so much that it is difficult to realize he has only been here since 1995. As a Senator, he has served on the Senate Finance Committee, the Senate Select Committee on Intelligence, and the National Security Working Group. In 1997, he became chairman of the Committee on Governmental Affairs where he conducted a number of important and controversial investigations.

As a national lawmaker, Senator FRED THOMPSON has played an important role in developing this Nation's trade policies, including pushing for an export control policy to protect our country's national security and proposing legislation to curb the proliferation of weapons of mass destruction. He has been an active and important advocate for campaign finance reform. He has authored legislation to protect Government computers from outside infiltration. He has been a major force for regulatory reform.

As chairman of the Governmental Affairs Committee, he helped lead the fight to reduce waste, fraud, and abuse in Government, and along with Senator FRIST, Senator THOMPSON secured funding to establish a School of Government at the University of Tennessee named in honor of University of Tennessee graduate and one of my favorite Senators of all time, Senator Howard Baker.

He is one of my favorite Senators of all time. He is a statesman. He is not just a politician. He is a statesman. If it had not been for Howard Baker, for his statesmanship, the Senate would never have approved the Panama Canal treaties. It would never have done it. It required a two-thirds vote, and all the polls showed the Senate was swimming upstream. The majority of the people were against those treaties. But Howard Baker stepped to the plate, at a political sacrifice to himself, and stood for those treaties.

I was majority leader of the Senate at that time. Howard Baker was the minority leader. I could not have gotten those treaties approved but for the strong support of Howard Baker. It was kind of the same way for Howard Baker as his father-in-law, Everett Dirksen. If Everett Dirksen had not stepped to the plate, the Senate would never have passed the 1964 Civil Rights Act. It was Everett Dirksen who joined with Mike Mansfield and that legislation was passed.

I should point out that Senator THOMPSON has not always been successful in his efforts. At times, his has been a lonely voice and a lonely vote against popular measures that went against his sense of federalism and his concern that the National Government was encroaching upon the rights of the States. Even when I opposed him on some of these issues, I admired the strength of his convictions.

I will miss him and his courage, and so will the people of Tennessee. In 1996, the people of Tennessee cast more votes for him than for any previous candidate for any office in the history of the State. Now how about that? That is pretty remarkable.

In addition to his many legislative accomplishments, perhaps the reason Senator THOMPSON seems to have been with us for a longer period of time than is reflected by his actual years as Senator is that he is so associated in the public mind with politics.

In 1973, when I was the majority whip in the Senate, FRED THOMPSON served as minority counsel on the Senate Select Committee on Presidential Campaign Activities, known as the Watergate Committee. He was a very effective staff person. I can remember his work.

Many people have also seen him on the silver screen portraying a CIA chief, an FBI Director, a White House Chief of Staff. I am not about to ask which of these roles best prepared him for his real-life role as a Senator.

This has truly been a remarkable career for the son of a used car salesman who worked his way through law school while raising a family. I applaud FRED THOMPSON, and I congratulate him. We will miss Senator THOMPSON.

I have watched him during this short time when he has been in the Senate. I

have admired him. I admire his bearing, his manner of talking, moving about the Senate and doing his work. He is not a show horse here in the Senate, but he has been a workhorse. I do not know of any enemies he has made in this Senate on either side of the aisle.

We will miss him. I understand he will be resuming an acting career. I can only say that the Senate's loss is Hollywood's gain. All of us look forward to seeing him as he resumes his earlier career as a fine actor. I do not watch TV much, and I have not been to a movie in the 50 years I have been in Congress. I have not been to a movie, not one. I have watched some good movies on television. Alistair Cooke, for example, used to have good movies. If I know FRED THOMPSON is going to play, I will make a point to go and see him.

RETIREMENT OF SENATOR PHIL GRAMM

Mr. President, seldom in all my years in the Senate have I encountered a Senator for whom my feelings and attitudes have covered such a wide spectrum as they have for Senator PHIL GRAMM. They have ranged from intense opposition, as they did in our battles over the Gramm-Rudman legislation, to close cooperation as we worked together during his 6 years on the Appropriations Committee.

Always prepared, always thoughtful, he was always ready to speak on any subject at the drop of a hat. PHIL GRAMM was always ready to talk and, oh, was he ready to talk. I quickly learned he can talk about anything, everything, and do so intelligently, and always with a good humor, in the best of good humor.

It was during our years together on the Appropriations Committee that I learned of his respect for the Senate and its role in our democratic Republic. He once referred to his work in the Senate as doing the Lord's work. He has often referred to it as doing the Lord's work. I liked that. I wish I had said that first.

He has also demonstrated an understanding that fundamental power of Congress is the power of the purse. For that, I applaud Senator GRAMM, and I thank him.

In addition to our work together on the Appropriations Committee, we have worked together on important national legislation, including the highway reauthorization bill, TEA–21. I saw that he has a remarkable talent for grassroots organizing.

I watched him here today as he moved around the Chamber. I knew what he was doing. He was talking with some of these Democratic Senators. I knew what he was talking with them about. Someone said: That Senator, you see Senator GRAMM, that Democratic Senator will vote against the amendment by Mr. DASCHLE and Mr. LIEBERMAN. I knew what he was doing, but I respected that.

During a difficult struggle on that highway bill, TEA–21, PHIL and I met with representatives from a number of organizations interested in highway construction. I believe my friend from New Mexico was in on some of those meetings.

Mr. DOMENICI. I was opposed.

Mr. BYRD. He was opposed. When the Senator from New Mexico is opposed, I pay even more attention to him. Anyhow, after each meeting, our friends would walk away with plans for spreading the good word in favor of our plan, charged up with a pep talk by PHIL GRAMM. He also has a talent, a great talent, for negotiating. Even when he wins a negotiation and you have lost everything, he can make you feel like you prevailed and he lost everything. Suddenly, on the way home you will pinch yourself and say, wait a minute, that is not quite the way it was.

So this is PHIL GRAMM, a biting, partisan bulldog one minute, and a gentle, cuddly puppy the next. At times, it is difficult to decide if you should jump back in fright or reach out and pet him.

He is one of those rare Members of Congress who has had a powerful impact not only upon this institution but on our country and its policies. Just last year, the National Review pointed out that no Member of Congress—not Jack Kemp, not Newt Gingrich, not Bob Dole—played a more decisive role in launching the Reagan agenda.

PHIL GRAMM is perhaps this country's most consistent and strongest promoter of smaller taxes and smaller government. The legislation he has authored, sponsored and promoted, from Gramm-Latta to Gramm-Rudman, to the Bush tax cuts, give the lie to Emerson's observation that a ''foolish consistency is the hobgoblin'' of little minds. It is also the hobgoblin of big minds.

PHIL GRAMM definitely has a big mind. I have learned so much from him. I certainly learned a lot about his ''mamma.'' Among other things, I learned she receives Social Security, that she carries a gun, and she knows how to use it. That is what PHIL says.

I certainly learned more than I ever wanted to know about Dicky Flatt, the hard-working print shop owner in Mexia, TX, and how the Government keeps taking away his money to spend on someone else.

I learned do not mess with PHIL GRAMM. He has an intellect second to none. He has a tenaciousness and he has a razor tongue second to none. But throughout it all, let me assure my colleagues that my disagreements have never lessened my respect and my admiration for the man and Senator. He was always straightforward and fair and always sincerely dedicated to the cause he was espousing or supporting, and that no doubt was because his positions on the most important issues facing our Nation were always deeply thought out and heartfelt convictions; not simply political calculations. That is why I came to respect his integrity, his wisdom, and his courage.

In his book, ''Profiles in Courage,'' Senator John F. Kennedy wrote:

> Surely in the United States of America, where brother once fought brother, we did not judge a man's bravery under fire by examining the banner under which he fought.

Senator GRAMM and I have fought under different banners, but we have always fought under and for the same flag. Whatever he did, whatever he said, whatever he promoted, it came from his deep, undeviating love of the United States of America. While he is always ready to tell you what is wrong with our country, he will never hesitate to tell you what is right with it. We will miss him.

There he is. I did not realize that while I was talking about the man, he was sitting here listening, but I can say to the Senate that on more than one occasion, Senator PHIL GRAMM has come to my office on difficult matters, in which I may have had some interest, as in mountaintop mining or the highway bill, whatever it was, and in many instances he has proposed a compromise which enabled us to get over a mountain, get over a hump, and get on with the business.

I appreciate the contributions he has made to legislation in this body. I do not know of any Senator who has been a more knowledgeable and able legislator. The Senator has exemplified reverence for the Constitution, respect for the Senate, and an unbounded love for his country.

While he will no longer be my colleague, PHIL GRAMM will always be my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader.

Mr. DASCHLE. Mr. President, what is the order?

The PRESIDING OFFICER. The majority leader has 5 minutes. The minority retains 2 minutes of time.

Mr. DASCHLE. Mr. President, I will have more to say about our departing colleagues tomorrow, but let me share as well my admiration for our colleague Senator GRAMM. He is a hardened legislative adversary, but I have a great deal of respect for his ability and the manner with which he conducts himself on the floor. I have fond memories of the many years we have served together.

I recall so vividly our first days together riding a bus as freshmen Congressman in 1979. So we wish him well. As I said, I will have much more to say about him and about our colleagues tomorrow.

I wanted to come to the floor simply to express what I have said on several occasions. It is with some misgivings that I will cast my vote tonight in favor of the creation of this Department. I do so, fearful we have not done the kind of work on this legislation I wish we could have. I do so even though language has been inserted in the bill I think we are going to regret, but I do so recognizing we have to start rebuilding our infrastructure, reorganizing our Government, recognizing

more consequentially the threat that is now posed by terrorism within our borders as well as without. I intend to support this legislation with every expectation that this is the first in a long series of steps which must be taken to better prepare our country and our Government. I have no doubt we will be back next year addressing many of the shortcomings we will be incorporating in this legislation tonight.

This bill still needs work. This Department needs work. But as much work as it needs, not to have done anything in recognition of the tremendous challenges we face as a country is something I could not accept either. So I will support it, recognizing as well that it is critical for us to provide the funding—and there is no funding. In fact, if I have any regret about what we are doing tonight, it is that we are not passing the requisite resources needed to get started in an earnest and successful way. We are going to have to wait until next year. The more we wait, the harder it will be. The more we wait, the more complicated our mission. The more we wait, the more underfunded will be our effort in so many other ways.

I regret we are not willing to commit the resources that match the infrastructure we will be authorizing tonight.

Finally, let me say there are many people who deserve recognition and thanks. I acknowledge especially the leadership of Senator JOE LIEBERMAN, the chair of the Governmental Affairs Committee. He and others on the committee have done an outstanding job getting us to this point, whether or not you agree with all of the components of the bill. I congratulate Senator THOMPSON as the ranking member. They worked oftentimes together, and where they could not work together, they worked in a way that was not disagreeable.

I thank the whole Governmental Affairs Committee for the work they did in getting us to this point over the many months they have been involved.

Let me say I also thank Senator BYRD. He and I may come down on different sides tonight, but he has done the Senate and the country a real service. I have admired him for many reasons for many years. But his powerful advocacy of his position, the extraordinary effort he has made to enlighten us, to educate us, to sensitize us, and to ensure that we are fully aware of all of the concerns he has about the creation of this Department is something for which we all ought to express our deep indebtedness to him. I thank him for what he has done in adding to the debate, acknowledging as he has the inevitability of our consideration and ultimately the passage of this legislation tonight. There are many others, including Senator HARRY REID, our extraordinary deputy Democratic leader, all the work he has done to allow this opportunity to complete our work tonight.

As I said, we will be in session tomorrow and we will have much more to say about many of these issues, reflecting back, but I close simply by thanking our colleagues for the work they have done. I hope we can complete our work and pass this legislation tonight.

I also ask, following the first vote, all subsequent votes be limited to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding we have 2 minutes remaining.

The PRESIDING OFFICER. Two minutes.

Mr. GRAMM. I could hardly say what I feel in my heart in 2 minutes. Too often, as people leave the Senate, they talk about things they are unhappy about. I want people to know I am not discouraged; I am not disillusioned; I am not disappointed. I am proud and I am honored. I am proud to have had an opportunity to serve the greatest country in the history of the world. I am proud to have served with extraordinary men and women. I think we are so close to them and what they have done here that it is hard to put it all in perspective. But someday when I am sitting in a nursing home talking to my grandchildren, I think I will have that perspective right and there will be names such as Senator BYRD, Senator DOMENICI, and others that will flow from my lips as men I was honored to know and to love.

I thank the people of Texas for giving me an opportunity to serve. I conclude by reading a remark by, of all people, Aaron Burr. Senator BYRD is familiar with it. It is wonderful and I want to conclude by reading it. Aaron Burr was leaving the Senate, and he concluded with these remarks:

> . . . this house is a sanctuary and a citadel of law, of order, of liberty—and it is here—it is here—in this exalted—refuge, here, if anywhere will resistance be made to the storms of popular phrenzy and the silent arts of corruption:—And if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue of the Usurper, which God avert, its expiring agonies will be witnessed on this floor.

I am honored to have served here. I am honored to have served with those who will be sure, in their efforts, in their work, that the Constitution never expires.

I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. GRAMM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—90

Allard	Dodd	Lugar
Allen	Domenici	McCain
Barkley	Dorgan	McConnell
Baucus	Durbin	Mikulski
Bayh	Edwards	Miller
Bennett	Ensign	Murray
Biden	Enzi	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Bond	Fitzgerald	Nickles
Boxer	Frist	Reed
Breaux	Graham	Reid
Brownback	Gramm	Roberts
Bunning	Grassley	Rockefeller
Burns	Gregg	Santorum
Campbell	Hagel	Schumer
Cantwell	Harkin	Sessions
Carnahan	Hatch	Shelby
Carper	Helms	Smith (NH)
Chafee	Hutchinson	Smith (OR)
Cleland	Hutchison	Snowe
Clinton	Inhofe	Specter
Cochran	Johnson	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Corzine	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Leahy	Torricelli
Daschle	Lieberman	Voinovich
Dayton	Lincoln	Warner
DeWine	Lott	Wyden

NAYS—9

Akaka	Hollings	Kennedy
Byrd	Inouye	Levin
Feingold	Jeffords	Sarbanes

NOT VOTING—1

Murkowski

The bill (H.R. 5005), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5005) entitled ''An Act to establish the Department of Homeland Security, and for other purposes.'', do pass with the following *amendment:*

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.

Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
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SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

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

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

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''State'' means any State of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term ''terrorism'' means any activity that—

(A) involves an act that—

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

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

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

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

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of ''United States'' for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

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

(A) prevent terrorist attacks within the United States;

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

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

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

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

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

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

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

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

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

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

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

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

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

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

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

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

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

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

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

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

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

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

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

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

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

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

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

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

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

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

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

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

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

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

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

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

(7) To administer the Homeland Security Advisory System, including—

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

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

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

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

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

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

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

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

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

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

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

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

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

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

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

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

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

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

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

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

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and''.

SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

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

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

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

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

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

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

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

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

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

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

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''Critical Infrastructure Information Act of 2002''.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term ''covered Federal agency'' means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

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

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

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

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

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

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

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

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the

growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)(A), by inserting ''or'' at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

''(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.''.

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting ''or 2511(2)(i)'' after ''2511(3)''.

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''or disseminates by electronic means'' after ''or other publication''; and

(2) by inserting ''knowing the content of the advertisement and'' before ''knowing or having reason to know''.

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting ''except as provided in paragraph (5),'' before ''a fine under this title'';

(3) in paragraph (4)(C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

''(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.''.

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting '', statutory authorization'' after ''subpoena''.

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting '', statutory authorization,'' after ''court order'' the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(C) an immediate threat to a national security interest; or

''(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;''.

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain'';

(B) in paragraph (1)(A), by striking ''one year'' and inserting ''5 years'';

(C) in paragraph (1)(B), by striking ''two years'' and inserting ''10 years''; and

(D) by striking paragraph (2) and inserting the following:

''(2) in any other case—

''(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.''.

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the ''Office'').

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers

and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term ''law enforcement technology'' includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as ''Centers'') and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting ''coordinate and'' before ''provide''.

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting '', including cost effectiveness where practical,'' before ''of projects''; and

(2) by striking ''and'' after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

''(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.''.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

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

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

''(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

''(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

''(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

''(A) AUTHORITY TO ISSUE DECLARATION.—

''(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

''(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

''(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

''(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

''(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

''(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

''(ii)(I) the individual was within a category of individuals covered by the declaration; or

''(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

''(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

''(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

''(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

''(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

''(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

''(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

''(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

''(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

''(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

''(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

''(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

''(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

''(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

''(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

''(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

''(ii) the United States shall not be liable based on the acts or omissions of such person; and

''(iii) the Attorney General shall not be obligated to defend such action.

''(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

''(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

''(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

''(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

''(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

''(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

''(ii) specified in a declaration under paragraph (2).

''(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

''(i) a manufacturer or distributor of such countermeasure;

''(ii) a health care entity under whose auspices such countermeasure was administered;

''(iii) a qualified person who administered such countermeasure; or

''(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

''(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.''.

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term ''homeland security research'' means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

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

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

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

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

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

(xiv) Demonstrated expertise in border transportation and security.

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

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

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

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any ''work for others'' basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the ''Advisory Committee''). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

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

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

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

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

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

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

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

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

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

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

(j) TERMINATION.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the ''Homeland Security Institute'' (in this section referred to as the ''Institute'').

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the

vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

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

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded research and development centers.

(e) USE OF CENTERS.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

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

(g) TERMINATION.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

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

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

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

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

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

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

''Commissioner of Customs, Department of the Treasury''

and inserting

''Commissioner of Customs, Department of Homeland Security.''.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any

other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term ''customs revenue function'' means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term ''customs revenue services'' means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) CONTINUING REPORTS.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(2) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(3) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

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

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

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

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

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

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

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

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

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

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

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

''(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

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

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

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

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

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 425 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

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

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

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

''(2) DEADLINE.—

''(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

''(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

''(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

''(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

''(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

''(ii) the need to ensure that such installations and modifications are effective; and

''(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

''(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

''(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

''(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

''(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

''(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.''.

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

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

(A) by striking subparagraph (G);

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

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

''(A) The Secretary of Homeland Security, or the Secretary's designee.''.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security''.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title

49, United States Code, is amended by adding at the end the following:

''(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.''.

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

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

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

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

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

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

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

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

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

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

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

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

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

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

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the ''Bureau of Border Security''.

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

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

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

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

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

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

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

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

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

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

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

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

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

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

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

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

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall

submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

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

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

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

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

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

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

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

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

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

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

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

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

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

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

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

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

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

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

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

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

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

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

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

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

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

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

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the

criteria for referral of inquiries to local offices of the Ombudsman;

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

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

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

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

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

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

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

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

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

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

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

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

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

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

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

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

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking ''not later than one year after the date of enactment of this Act;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

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

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

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

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

(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives

and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Secretary in—

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

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

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

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

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

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

(D) implementing the placement determinations;

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

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

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

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

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

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

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

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

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

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

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

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

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

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

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

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

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

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

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

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

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

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

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

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

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

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

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

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

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

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

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 441 takes effect.

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

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

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

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

As used in the preceding sentence, the ''appropriate committees of Congress'' are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

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

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

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

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

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

whichever occurs first;

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

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

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

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

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

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

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

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

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

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

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

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

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term ''covered entity'' has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

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

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed ''FIRESAT''.

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

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 506. DEFINITION.

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a ''Johnny Micheal Spann Patriot Trust''.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled ''Statistical Yearbook of the Immigration and Naturalization Service'' prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

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

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) REPORT.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.''.

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term ''nontraditional Government contractor'' has the same meaning as the term ''nontraditional defense contractor'' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

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

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ''or'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; or''; and

(C) by adding at the end the following:

''(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.''.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

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

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

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

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

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

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

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

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as I partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to

prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.

''9701. Establishment of human resources management system.

"§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

''(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

''(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

''(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

''(C) IMPLEMENTATION.—

''(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

''(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

''(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

''(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

''(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

''(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

''(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

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

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

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

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

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) WAIVER.—If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) RULE OF CONSTRUCTION.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the ''Support Anti-terrorism by Fostering Effective Technologies Act of 2002'' or the ''SAFETY Act''.

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal

and non-Federal government customers (''Seller'') shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term ''qualified anti-terrorism technology'' means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term ''insurance carrier'' means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term ''liability insurance'' means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term ''non-Federal Government customers'' means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

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

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

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

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1706(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority

as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

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

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

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

(B) Joint training exercises of first responders.

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

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

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

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

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

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

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the ''Posse Comitatus Act''), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the ''Insurrection Act''), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event

of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

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

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

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

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

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

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

''(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

''(II) an estimate of the current service levels of homeland security spending;

''(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

''(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

''(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

''(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

''(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

''(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.''.

(b) REPEAL OF DUPLICATIVE REPORTS.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

''(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.''.

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) SHORT TITLE.—This subtitle may be cited as the ''Homeland Security Information Sharing Act''.

(b) FINDINGS.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ''homeland security information'' means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ''intelligence community'' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''State and local personnel'' means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ''; or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ''or of a foreign government'' after ''(including personnel of a state or subdivision of a state'';

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: ''or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation'';

(ii) in subclause (IV)—

(I) by inserting ''or foreign'' after ''may disclose a violation of State'';

(II) by inserting ''or of a foreign government'' after ''to an appropriate official of a State or subdivision of a State''; and

(III) by striking ''or'' at the end;

(iii) by striking the period at the end of subclause (V) and inserting ''; or''; and

(iv) by adding at the end the following:

''(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(C) in subparagraph (C)(iii)—

(i) by striking ''Federal'';

(ii) by inserting ''or clause (i)(VI)'' after ''clause (i)(V)''; and

(iii) by adding at the end the following: ''Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

''(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

''(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: ''Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking ''section 2517(6)'' and inserting ''paragraphs (6) and (8) of section 2517 of title 18, United States Code,''; and

(2) by inserting ''and (VI)'' after ''Rule 6(e)(3)(C)(i)(V)''.

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the ''Homeland Security Council'' (in this title referred to as the ''Council'').

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the ''Federal Information Security Management Act of 2002''.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

"SUBCHAPTER II—INFORMATION SECURITY

"§ 3531. Purposes

''The purposes of this subchapter are to—

''(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

''(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

''(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

''(4) provide a mechanism for improved oversight of Federal agency information security programs;

''(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures

important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

''(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.''.

''§ 3532. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

''(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

''(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

''(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

''(C) availability, which means ensuring timely and reliable access to and use of information; and

''(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

''(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

''(A) involves intelligence activities;

''(B) involves cryptologic activities related to national security;

''(C) involves command and control of military forces;

''(D) involves equipment that is an integral part of a weapon or weapons system; or

''(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

''(3) the term 'information technology' has the meaning given that term in section 11101 of title 40; and

''(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

''(A) computers and computer networks;

''(B) ancillary equipment;

''(C) software, firmware, and related procedures;

''(D) services, including support services; and

''(E) related resources.''.

''§ 3533. Authority and functions of the Director

''(a) The Director shall oversee agency information security policies and practices, by—

''(1) promulgating information security standards under section 11331 of title 40;

''(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

''(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(A) information collected or maintained by or on behalf of an agency; or

''(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

''(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

''(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

''(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

''(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

''(A) a summary of the findings of evaluations required by section 3535;

''(B) significant deficiencies in agency information security practices;

''(C) planned remedial action to address such deficiencies; and

''(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).''.

''(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

''§ 3534. Federal agency responsibilities

''(a) The head of each agency shall—

''(1) be responsible for—

''(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(i) information collected or maintained by or on behalf of the agency; and

''(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

''(i) information security standards promulgated by the Director under section 11331 of title 40; and

''(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

''(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

''(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

''(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

''(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

''(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

''(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

''(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

''(A) designating a senior agency information security officer who shall—

''(i) carry out the Chief Information Officer's responsibilities under this section;

''(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

''(iii) have information security duties as that official's primary duty; and

''(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

''(B) developing and maintaining an agencywide information security program as required by subsection (b);

''(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

''(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

''(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

''(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

''(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

''(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

''(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

''(2) policies and procedures that—

''(A) are based on the risk assessments required by paragraph (1);

''(B) cost-effectively reduce information security risks to an acceptable level;

''(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

''(D) ensure compliance with—

''(i) the requirements of this subchapter;

''(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

''(iii) minimally acceptable system configuration requirements, as determined by the agency; and

''(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

''(3) subordinate plans for providing adequate information security for networks, facilities, and

systems or groups of information systems, as appropriate;

''(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

''(A) information security risks associated with their activities; and

''(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

''(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

''(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

''(B) may include testing relied on in a evaluation under section 3535;

''(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

''(7) procedures for detecting, reporting, and responding to security incidents, including—

''(A) mitigating risks associated with such incidents before substantial damage is done; and

''(B) notifying and consulting with, as appropriate—

''(i) law enforcement agencies and relevant Offices of Inspector General;

''(ii) an office designated by the President for any incident involving a national security system; and

''(iii) any other agency or office, in accordance with law or as directed by the President; and

''(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

''(c) Each agency shall—

''(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

''(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

''(A) annual agency budgets;

''(B) information resources management under subchapter 1 of this chapter;

''(C) information technology management under subtitle III of title 40;

''(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

''(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

''(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

''(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

''(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

''(A) as a material weakness in reporting under section 3512 of title 31; and

''(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

''(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

''(A) the time periods, and

''(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

''(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

''(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

''§ 3535. Annual independent evaluation

''(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

''(2) Each evaluation by an agency under this section shall include—

''(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

''(B) an assessment (made on the basis of the results of the testing) of compliance with—

''(i) the requirements of this subchapter; and

''(ii) related information security policies, procedures, standards, and guidelines; and

''(C) separate presentations, as appropriate, regarding information security relating to national security systems.

''(b) Subject to subsection (c)—

''(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

''(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

''(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

''(1) only by an entity designated by the agency head; and

''(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(d) The evaluation required by this section—

''(1) shall be performed in accordance with generally accepted government auditing standards; and

''(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

''(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

''(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

''(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

''(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

''(h) The Comptroller General shall periodically evaluate and report to Congress on—

''(1) the adequacy and effectiveness of agency information security policies and practices; and

''(2) implementation of the requirements of this subchapter.

''§ 3536. National security systems

''The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

''(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

''(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

''(3) complies with the requirements of this subchapter.

''§ 3537. Authorization of appropriations

''There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

''§ 3538. Effect on existing law

''Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.''.

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading ''SUBCHAPTER II'' are amended to read as follows:

''3531. Purposes.
''3532. Definitions.
''3533. Authority and functions of the Director.
''3534. Federal agency responsibilities.
''3535. Annual independent evaluation.
''3536. National security systems.
''3537. Authorization of appropriations.
''3538. Effect on existing law.''.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking ''(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)'' and inserting ''(b) OBJECTIVES OF THE PROGRAM.—'';

(ii) in subsection 2224(b), by striking ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.''; and

(iii) in subsection 2224(c), by inserting '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure''.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

''§ 11331. Responsibilities for Federal information systems standards

''(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

''(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

''(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

''(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

''(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

''(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

''(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

''(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

''(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

''(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

''(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

''(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

''(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

''11331. Responsibilities for Federal information systems standards.''.

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

''(a) The Institute shall—

''(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

''(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

''(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

''(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

''(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

''(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

''(B) guidelines recommending the types of information and information systems to be included in each such category; and

''(C) minimum information security requirements for information and information systems in each such category;

''(2) a definition of and guidelines concerning detection and handling of information security incidents; and

''(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

''(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

''(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

''(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

''(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

''(2) provide the public with an opportunity to comment on proposed standards and guidelines;

''(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

''(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

''(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

''(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

''(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

''(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

''(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

''(d) The Institute shall—

''(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

''(2) provide assistance to agencies regarding—

''(A) compliance with the standards and guidelines developed under subsection (a);

''(B) detecting and handling information security incidents; and

''(C) information security policies, procedures, and practices;

''(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

''(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

''(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

''(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

''(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

''(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

''(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

''(e) As used in this section—

''(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

''(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

''(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

''(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

''(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.''.

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking ''Computer System Security and Privacy Advisory Board'' and inserting ''Information Security and Privacy Advisory Board'';

(2) in subsection (a)(1), by striking ''computer or telecommunications'' and inserting ''information technology'';

(3) in subsection (a)(2)—

(A) by striking ''computer or telecommunications technology'' and inserting ''information technology''; and

(B) by striking ''computer or telecommunications equipment'' and inserting ''information technology'';

(4) in subsection (a)(3)—

(A) by striking ''computer systems'' and inserting ''information system''; and

(B) by striking ''computer systems security'' and inserting ''information security'';

(5) in subsection (b)(1) by striking ''computer systems security'' and inserting ''information security'';

(6) in subsection (b) by striking paragraph (2) and inserting the following:

''(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and'';

(7) in subsection (b)(3) by inserting ''annually'' after ''report'';

(8) by inserting after subsection (e) the following new subsection:

''(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.'';

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

''(h) As used in this section, the terms ''information system'' and ''information technology'' have the meanings given in section 20.''.

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL COMPUTER SYSTEM SECURITY TRAINING AND PLAN.—

(1) REPEAL.—Section 11332 of title 40, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, as amended by striking the item relating to section 11332.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''sections 11331 and 11332(b) and (c) of title 40'' and inserting ''section 11331 of title 40 and subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

''(c) INVENTORY OF INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

''(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

''(3) Such inventory shall be—

''(A) updated at least annually;

''(B) made available to the Comptroller General; and

''(C) used to support information resources management, including—

''(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

''(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

''(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

''(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

''(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

''(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.''.

(3) Section 3506(g) of such title is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''section 11332 of title 40'' and inserting ''subchapter II of this chapter''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the ''Bureau'').

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the ''Director''). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''; and

(2) in section 9(a)(1)(L)(i), by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Tax and Trade Bureau''.

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking ''(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms'' and inserting ''by manufacturers of tobacco products to the Tax and Trade Bureau''.

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking ''the Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,''.

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

''(k) 'Attorney General' means the Attorney General of the United States.'';

(2) in section 846(a), by striking ''the Attorney General and the Federal Bureau of Investigation, together with the Secretary'' and inserting ''the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives''; and

(3) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking ''Secretary'' and inserting ''Attorney General'';

(2) in section 921(a)(4), by striking ''Secretary of the Treasury'' and inserting ''Attorney General'';

(3) in section 921(a), by striking paragraph (18) and inserting the following:

''(18) The term 'Attorney General' means the Attorney General of the United States'';

(4) in section 922(p)(5)(A), by striking ''after consultation with the Secretary'' and inserting ''after consultation with the Attorney General'';

(5) in section 923(l), by striking ''Secretary of the Treasury'' and inserting ''Attorney General''; and

(6) by striking ''Secretary'' each place it appears, except before ''of the Army'' in section 921(a)(4) and before ''of Defense'' in section 922(p)(5)(A), and inserting the term ''Attorney General''.

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

''(a) The Attorney General—

''(1) shall enforce the provisions of this chapter; and

''(2) has the authority to issue regulations to carry out the provisions of this chapter.''.

(h) Section 1952(c) of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

''(5) the term 'Attorney General' means the Attorney General of the United States''; and

(2) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking ''or the Bureau of Alcohol, Tobacco and Firearms'' and inserting '', the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,''.

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking ''SECRETARY.—Except'' and inserting ''SECRETARY.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

''(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

''(i) Chapter 53.

''(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

''(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.''.

(l) Section 2006(2) of title 28, United States Code, is amended by inserting '', the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,'' after ''the Secretary of the Treasury''.

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives'';

(2) in subsection (a), by striking ''Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking ''or the Bureau'' and inserting ''or either Bureau'';

(B) in paragraph (2)—

(i) by striking ''or the Bureau'' and inserting ''or either Bureau''; and

(ii) by striking ''and the Director of the Bureau'' and inserting ''the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(C) in paragraph (3), by striking ''or the Bureau'' and inserting ''or either Bureau''.

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''.

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking ''Secretary of the Treasury'' each place it appears and inserting ''Attorney General''; and

(2) in subparagraph (3)(B), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting ''or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General'' after ''section 80304 of this title.''; and

(2) by inserting '', the Attorney General,'' after ''by the Secretary''.

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking ''(b) and (c)'' and inserting ''(b), (c), and (d)'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

''(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).''.

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

''§ 3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as

any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

''(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

''(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

''(A) the seizure, summary and judicial forfeiture, and condemnation of property;

''(B) the disposition of such property;

''(C) the remission or mitigation of such forfeiture; and

''(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

''(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.''.

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the ''Safe Explosives Act''.

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

''(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.''; and

(2) by adding at the end the following:

''(r) 'Alien' means any person who is not a citizen or national of the United States.

''(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.''.

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking ''and'' at the end;

(2) by striking subsection (a)(3) and inserting the following:

''(3) other than a licensee or permittee knowingly—

''(A) to transport, ship, cause to be transported, or receive any explosive materials; or

''(B) to distribute explosive materials to any person other than a licensee or permittee; or

''(4) who is a holder of a limited permit—

''(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

''(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder.''; and

(3) by striking subsection (b) and inserting the following:

''(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

''(1) a licensee;

''(2) a holder of a user permit; or

''(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.''.

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting ''or limited permit'' after ''user permit''; and

(B) by inserting before the period at the end the following: '', including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person'';

(2) in the second sentence, by striking ''$200 for each'' and inserting ''$50 for a limited permit and $200 for any other''; and

(3) by striking the third sentence and inserting ''Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.''.

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);'';

(2) in paragraph (4)—

(A) by inserting ''(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that'' before ''the applicant''; and

(B) by adding at the end the following:

''(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and'';

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

''(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.''.

(e) APPLICATION APPROVAL.—Section 843(c) of title 18, United States Code, is amended by striking ''forty-five days'' and inserting ''90 days for licenses and permits,''.

(f) INSPECTION AUTHORITY.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking ''permittees'' and inserting ''holders of user permits''; and

(B) by inserting ''licensees and permittees'' before ''shall submit'';

(2) in the second sentence, by striking ''permittee'' the first time it appears and inserting ''holder of a user permit''; and

(3) by adding at the end the following: ''The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) POSTING OF PERMITS.—Section 843(g) of title 18, United States Code, is amended by inserting ''user'' before ''permits''.

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

''(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

''(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

''(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

''(i) confirms the determination;

''(ii) explains the grounds for the determination;

''(iii) provides information on how the disability may be relieved; and

''(iv) explains how the determination may be appealed.''.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''or who has been committed to a mental institution;''; and

(3) by adding at the end the following:

''(7) is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(8) has been discharged from the armed forces under dishonorable conditions;

''(9) having been a citizen of the United States, has renounced the citizenship of that person.''.

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking ''or'' at the end; and

(2) by inserting after paragraph (4) the following:

''(5) who is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(6) who has been discharged from the armed forces under dishonorable conditions;

''(7) who, having been a citizen of the United States, has renounced the citizenship of that person''; and

(3) by inserting ''or affecting'' before ''interstate'' each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(i) FURNISHING OF SAMPLES.—

''(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

''(A) samples of such explosive materials or ammonium nitrate;

''(B) information on chemical composition of those products; and

''(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

''(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.''.

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word ''shall'' the following: ''or any institution or organization receiving Federal financial assistance,''.

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

''(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

''(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

''(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.''.

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

''(p) THEFT REPORTING REQUIREMENT.—

''(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

''(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.''.

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary of Transportation'';

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting ''AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—'';

(B) in the first sentence by striking ''the 180-day period following the date of enactment of this Act, the Secretary of Transportation'' and inserting ''the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary''; and

(C) in the last sentence by striking ''this paragraph'' and inserting ''this subsection''.

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

''(f) EXTENSION OF POLICIES.—

''(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

''(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

''(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

''(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.''.

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking ''(b)'' and inserting ''(c)''.

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

"§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Agency Chief Human Capital Officers ..... 1401".

SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

"§ 3319. Alternative ranking and selection procedures

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to

the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

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

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

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

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

''(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

''(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

''(B) holds a position in or under an agency which is described in paragraph (2).

''(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

''(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

''(B) An agency's certification under this subsection shall be for a period of 2 calendar years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

''(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

''(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).''.

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting ''or as otherwise provided under subsection (d),'' after ''under law,''.

(2) Section 5307(c) of such title is amended by striking ''this section,'' and inserting ''this section (subject to subsection (d)),''.

Subtitle D—Academic Training

SEC. 1331. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the

costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism Act''.

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

''(b) PROCEDURAL REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

''(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

''(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

''(A) The type of firearm to be used by a Federal flight deck officer.

''(B) The type of ammunition to be used by a Federal flight deck officer.

''(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

''(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

''(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

''(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

''(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

''(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

''(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

''(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

''(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

''(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

''(M) Any other issues that the Under Secretary considers necessary.

''(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

''(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

''(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

''(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

''(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

''(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

''(2) TRAINING.—

''(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

''(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

''(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

''(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

''(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

''(C) TRAINING IN USE OF FIREARMS.—

''(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

''(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

''(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

''(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

''(A) the pilot is employed by an air carrier;

''(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

''(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

''(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

''(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

''(f) AUTHORITY TO CARRY FIREARMS.—

''(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

''(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

''(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

''(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

''(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

''(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

''(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

''(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

''(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

''(k) APPLICABILITY.—

''(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

''(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

''44921. Federal flight deck officer program.''.

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking ''The Administrator'' and inserting the following:

''(1) IN GENERAL.—The Under Secretary'';

(2) by adding at the end the following:

''(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

''(A) require both classroom and effective hands-on situational training in the following elements of self defense:

''(i) recognizing suspicious activities and determining the seriousness of an occurrence;

''(ii) deterring a passenger who might present a problem;

''(iii) crew communication and coordination;

''(iv) the proper commands to give to passengers and attackers;

''(v) methods to subdue and restrain an attacker;

''(vi) use of available items aboard the aircraft for self-defense;

''(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

''(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

''(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

''(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

''(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

''(C) establish the required number of hours of training and the qualifications for the training instructors;

''(D) establish the intervals, number of hours, and elements of recurrent training;

''(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

''(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

''(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

''(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

''(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge.''; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

''(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.''.

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

''(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.''.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking ''Secretary'' the first and third places it appears and inserting ''Under Secretary''; and

(2) in paragraph (2) by striking ''Secretary'' each place it appears and inserting ''Under Secretary''.

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term ''agency'' includes any entity, organizational unit, program, or function.

(2) The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term ''completed administrative action'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants,

and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''and the Administrator of the Federal Aviation Administration each'' after ''for Security''; and

(B) by striking ''criminal violence and aircraft piracy'' and inserting ''criminal violence, aircraft piracy, and terrorism and to ensure security''; and

(2) in subsection (b)(1)—

(A) by striking '', the Under Secretary'' and inserting ''and the establishment of a Department of Homeland Security, the Secretary of Transportation'';

(B) by striking ''carrying out'' and all that follows through ''if the Under Secretary'' and inserting ''ensuring security under this title if the Secretary of Transportation''; and

(C) in subparagraph (C) by striking ''the safety of passengers in transportation'' and inserting ''transportation safety''.

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

''(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

''(A) be an unwarranted invasion of personal privacy;

''(B) reveal a trade secret or privileged or confidential commercial or financial information; or

''(C) be detrimental to the security of transportation.

''(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

''(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.''.

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).''.

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking ''citizen of the United States'' and inserting ''citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))''.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears; and

(2) by striking ''; and'' each place it appears in paragraph (1) and inserting '';'';

SEC. 1702. EXECUTIVE SCHEDULE.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting ''Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(2) in section 5313, by inserting ''Deputy Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(3) in section 5314, by inserting ''Under Secretaries, Department of Homeland Security.'', ''Director of the Bureau of Citizenship and Immigration Services.'' as new items after ''Affairs.'' the third place it appears;

(4) in section 5315, by inserting ''Assistant Secretaries, Department of Homeland Security.'', ''General Counsel, Department of Homeland Security.'', ''Officer for Civil Rights and Civil Liberties, Department of Homeland Security.'', ''Chief Financial Officer, Department of Homeland Security.'', ''Chief Information Officer, Department of Homeland Security.'', and ''Inspector General, Department of Homeland Security.'' as new items after ''Affairs.'' the first place it appears; and

(5) in section 5315, by striking ''Commissioner of Immigration and Naturalization, Department of Justice.''.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) IN GENERAL.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking ''of the Treasury'', each place it appears and inserting ''of Homeland Security''.

(2) Section 208 of title 3, United States Code, is amended by striking ''of Treasury'' each place it appears and inserting ''of Homeland Security''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888,

946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(2) Section 801(1) of such title is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(3) Section 983(d)(2)(B) of such title is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(4) Section 2665(b) of such title is amended by striking ''Department of Transportation'' and inserting ''Department in which the Coast Guard is operating''.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking ''Secretaries of the Army, Air Force, and Transportation'' both places it appears and inserting ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security''; and

(B) in subsection (b), by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(6) Section 7361(b) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(7) Section 12522(c) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking ''of Transportation'' and inserting ''of Homeland Security''; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking ''of Transportation'' and inserting ''of Homeland Security''.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking ''after consultation with the Secretary of Transportation''.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking ''of Transportation'' in the fourth paragraph and inserting ''of Homeland Security'';

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking ''Secretaries of Army, Navy, Air Force, or Transportation'' and inserting ''Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,''; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting ''and'' after the semicolon at the end of paragraph (1);

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

''§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

''(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

''(b) OFFICERS AND AGENTS.—

''(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

''(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

''(A) enforce Federal laws and regulations for the protection of persons and property;

''(B) carry firearms;

''(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

''(D) serve warrants and subpoenas issued under the authority of the United States; and

''(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

''(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

''(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

''(d) DETAILS.—

''(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail

officers and agents designated under this section for the protection of the property and persons on the property.

''(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

''(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

''(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

''(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

''(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

''(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

''(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) preclude or limit the authority of any Federal law enforcement agency; or

''(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.''.

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

''1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.''.

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting ''for a period not to exceed 90 days'' after ''effective''; and

(2) in section 114(l)(2)(B), by inserting ''ratified or'' after ''unless''.

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking ''Secretary of Transportation'' in the first sentence of subsection (a) and inserting ''Secretary concerned'';

(2) by striking ''Secretary'' each place it appears (except the first sentence of subsection (a)) and inserting ''Secretary concerned'';

(3) by striking ''Secretary's duties under chapters 203–213 of this title'' in subsection (d) and inserting ''duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)'';

(4) by striking ''chapter.'' in subsection (f) and inserting ''chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).''; and

(5) by adding at the end the following new subsection:

''(g) DEFINITIONS.—In this section—

''(1) the term 'safety' includes security; and

''(2) the term 'Secretary concerned' means—

''(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

''(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.''.

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after ''1970.'' the following: ''When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.''.

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting ''and laws, regulations, and orders related to railroad security'' after ''safety'' in the first sentence;

(2) by inserting ''or security'' after ''safety'' each place it appears after the first sentence; and

(3) by striking ''Transportation'' in the second sentence and inserting ''Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),''.

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking ''transportation'' the first place it appears in subsection (b)(1) and inserting ''transportation, including security,'';

(2) by striking ''aspects'' in subsection (b)(1)(B) and inserting ''aspects, including security,''; and

(3) by adding at the end the following:

''(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.''.

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking ''chapter or a regulation prescribed under this chapter'' in subsection (a)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security'';

(2) by striking ''chapter or a regulation prescribed under this chapter.'' in subsection (a)(2) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.''; and

(3) by striking ''chapter or a regulation prescribed under this chapter,'' in subsection (b)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,''.

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the Office of Homeland Security,'' after ''National Security Council,''.

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

''(14) Other Federal officials the Council considers appropriate.''.

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking ''under its label any vaccine set forth in the Vaccine Injury Table'' and inserting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine''; and

(2) in the second sentence, by inserting ''including any component or ingredient of any such vaccine'' before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.''.

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

''(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''.

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

Mr. SANTORUM. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.