United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, WEDNESDAY, SEPTEMBER 25, 2002 No. 123

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JACK REED, a Senator from the State of Rhode Island.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation and Lord of our lives, in each period of history, You have blessed us with great leaders who have exemplified love for You and dedication to our country. Today we celebrate such a man. Thank You for Senator STROM THURMOND.

By Your providential care, on May 25, 1997, he became the longest serving Senator in our Nation's history. Yet, it is not just the quantity, but also the quality of these years service motivate our admiration. So today we join with all Americans in thanking You for his outstanding service to the Senate, to his beloved South Carolina and to the Nation.

Thank You for the enrichment of our lives by this man. He has shown us the courage of firm convictions, the patriotism of love for this Nation, and true commitment to the Senate. We praise You for the personal ways he has inspired each of us. He is an affirmer who spurs us on with words of encouragement. Your Spirit of caring and concern for individuals shines through this remarkable man.

Gracious God, may Senator THURMOND know of our affirmation, feel our love, and be encouraged by Your blessing. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JACK REED led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 25, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JACK REED, a Senator from the State of Rhode Island, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. REED thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

SCHEDULE

Mr. REID. Mr. President, this morning there will be a period of morning business until 10:30 a.m., with the time equally divided between the two leaders or their designees. At 10:30 a.m., the Senate will vote on the Byrd amendment regarding firefighting and drought on the Interior Appropriations Act. If cloture is not invoked, there will be an immediate vote on cloture on the Lieberman substitute amendment to the Homeland Security Act. If cloture is not invoked on the Lieberman amendment, the Senate will remain on the Homeland Security Act, and Senator GRAMM will be recognized to offer an amendment.

Mr. President, I would also say the vote is scheduled at 10:30, and I have been asked by a number of Senators to keep it that way. There are important committee hearings going on and which need to go on. So if there is a request to extend the time, if I am not on the floor, I would hope the Presiding Officer would object in his capacity as a Senator from the State of Rhode Island because it is important to keep the time for the vote at 10:30.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, and the time to be equally divided between the two leaders or their designees.

The Senator from Minnesota.

Mr. DAYTON. Mr. President, I ask unanimous consent that I be permitted 15 minutes, if necessary, to complete my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE ECONOMIC SECURITY OF THE AMERICAN PEOPLE

Mr. DAYTON. Mr. President, as a member of the Senate Armed Services Committee, I have spent many hours in the last few weeks looking at matters of national security.

As the Presiding Officer knows—he is also a member of that committee—the hearings we have held, thanks to our outstanding chairman, Senator LEVIN of Michigan, have been invaluable. I also thank the administration for providing us with briefings and meetings to give us the best possible understanding of the situation we face.

I also serve as a member of the Governmental Affairs Committee. I have

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Printed on recycled paper.

spent the last couple months on the legislation creating the Department of Homeland Security. I pay tribute to the chairman of that committee, Senator LIEBERMAN, who is also the author of that legislation. I think it is tragic that legislation has been hung up here in the Senate for matters of political grandstanding rather than substantive disagreement.

But there has been very little attention paid on the Senate floor or in Washington recently to the economic security of the American people. Frankly, if this administration has its way, I think there will be no attention paid to economic security at all over the next 6 weeks. If you look at the condition of the economic security of this Nation, for most Americans, you can understand why the White House wants to do anything possible to change the subject.

Yesterday's papers, alone, had one day of economic news that would say we ought to put the economic security of this country on the highest level of alert, a code red, for disaster, disaster, disaster.

As the papers reported yesterday, the Nasdaq exchange fell to its lowest level in 6 years, 77 percent below its high in the year 2000; a 39-percent drop in this year alone.

The S&P 500 dropped near its 5-year low, 45 percent below its high just a couple years ago, and a 27-percent drop in this year alone.

The newspapers yesterday said the stocks were surging in July and August of this summer. There was hope, optimism for an economic recovery being underway. But what happened? War scare happened. The Dow Jones has dropped almost 1,400 points since August 22 of this year, a 14-percent drop in its entire value in just 1 month.

Why? Well, yesterday's Washington Times said: ''On concerns about the economy and a war.''

The Washington Post said: Uncertainty in the economy and a possible war in Iraq. The Times and the Post agree.

According to the chief strategist for Lehman Brothers, the stock market is now heading toward its third consecutive down year, which would be the first time since World War II—the first time in over half a century—that the stock market has dropped for 3 consecutive years.

That means the 401(k) account or the IRA or the private savings accounts of many Americans are worth half, or even less than half, of their value when President Bush took office.

Unfortunately, Mr. President and Members, it is more likely to get worse than better.

A Wall Street Journal headline yesterday said: ''Is Your Portfolio Ready for War?—Iraq Attack Could Slash S&P 500 by 10%.'' That is another 10 percent in addition to what has happened already.

Crude oil prices were reported yesterday as topping $30 a barrel, the highest level in 19 months. The number of Americans out of work in this country since February of 2001 has increased by 2,300,000 of our fellow citizens. Let me say that again. The number of Americans out of work in this Nation has gone up since February of 2001 by 2,300,000; and we can't get an extension of unemployment benefits passed in the Senate to protect those who have lost their jobs and are suffering the drastic financial consequences.

Unfortunately, it is not likely to get any better, because the leading economic indicators fell in August for the third straight month.

The Wall Street Journal said their consensus economic forecast for the last quarter of this calendar year—2002—has dropped 16 percent, and it also has been revised downward for the beginning of next year.

The chief economist for Wells Fargo Bank—a good Minnesotan, Mr. Suysoh said a war with Iraq could bring oil prices to over $40 a barrel and cause a major recession.

Some have said the administration decided to make the possibility of a war with Iraq the main topic this fall, because the economic condition of this country was so bad. Well, they have succeeded in making the war with Iraq the main topic, and they have succeeded in making the state of our Nation's economy even worse.

Those comments about orchestrating the timing are not mine. They are the words of the White House Chief of Staff, Mr. Andrew Card, reported on September 7 that the White House waited on its PR offensive about the possibility of war until after Labor Day. He said:

> From a marketing point of view, you don't introduce a new product in August.

That is one heck of a product. This Senator's judgment, as a member of the Senate Armed Services Committee, is that Mr. Card is being honest.

I have seen no new information and I am aware of no imminent threat to this country. The war scare that is going on now. The hurry-up-and-vote pressure on the Senate right now. The pressure to OK the first preemptive attack in this Nation's 213-year history. They are the first installment of a doctrine which the President announced in June, the right to a preemptive strike by the United States of America.

What would happen in this world if every other nation followed suit with a preemptive strike against a possible future threat? What about India and Pakistan, who both possess nuclear weapons? What about Israel and the Palestinians, China and Taiwan, or North Korea and South Korea?

Does anyone stop to think whether this doctrine of preemptive strike would make the world more or less secure?

Mr. Card, the White House Chief of Staff, is right. This new product has caused quite a PR sensation. It is taking over the headlines—it has replaced the stock market with Saddam Hussein. Talk about going from bad to worse. The trouble is that the stock market is also going from bad to worse.

The number of unemployed in America has gone from bad to worse. The economic outlook of this Nation has gone from bad to worse. The Federal budget forecast has gone from bad to worse. The economic security for most Americans has gone from bad to worse.

I can understand why the White House might not be aware of all this, because the contributions to the Republican political committees are at record highs.

Yesterday's headline again: ''GOP Committees See a 40-Percent Increase in Soft Money.'' Their bank accounts outweigh the Democrats by more than 2 to 1. Their contributors have good reasons to be grateful.

The Brookings Institute reports that the top 1 percent of American taxpayers—the wealthiest 1 percent of the people in this country—got 37 percent of last year's tax cut. They pay 26 percent of the taxes, and they got 37 percent of the tax cut. The average tax cut for the wealthiest 1 percent of the people in this Nation under last year's bill was over $45,000. The average pretax earnings of the top 1 percent is over $1.1 million, and they got an average tax cut of over $45,000.

I have to say that this administration does have an economic recovery plan. The trouble is it is limited to the wealthiest 1 percent of Americans. For the rest of America, we are in a real-life survival show. They lose their jobs. The losers lose their health insurance. They lose their retirement investments. And the winner of the show is someone like Jack Walsh, former chairman of General Electric. He has an annual pension of $9 million. I hope that was indexed to inflation.

General Electric shareholders, which include retirees whose portfolios, as I said earlier, dropped by 50 percent in the last 2 years, also pay for Mr. Walsh's car and driver and for his floor seats at the New York Knicks basketball games. They pay for his boxes at both the Boston Red Sox and New York Yankees baseball games. They pay his fees to four country clubs, and more.

I tell you, some corporate executives are no longer satisfied with golden parachutes. They take the whole airplane.

American taxpayers ought to be asking themselves: Why does this guy need a tax cut? Why did this administration insist on squandering over $2.2 trillion over the next 10 years on tax cuts where over one-third of the benefits go to the wealthiest 1 percent of the people in this country? It will cost the Federal Government $500 billion more over the next 10 years just on the higher interest payments on the Federal debt. That is $500 billion more in taxes to pay for fiscal irresponsibility. That provides nothing for homeland security. That provides nothing for special education; nothing for anything that benefits the people of America.

In 1 year, the non-Social Security budget of this country has gone from a 10-year forecast a $3.1 trillion surplus to a $700 billion deficit. That is an almost a $4 trillion drop in 1 year. Not even Arthur Andersen can hide that number.

Yesterday's paper reported that the Vice President is indignant about suggestions that this war scare, this ''warphoria'' has been timed for political benefits this fall.

I wouldn't be indignant. I would be outraged, if the White House Chief of Staff is correct in what he said—that the White House waited to introduce its ''new product'' until the fall of a midterm election. Only the people who were responsible for those decisions know why they made them.

But the American people will ultimately hold them responsible for those decisions. The war scare has wiped the economy off the headlines. It has also wiped any economic recovery for this country off the map. It has wiped many Americans' jobs out of existence, and wiped many Americans' prosperity from comfort to despair. If all of this is absolutely necessary, it is unfortunate. If it is not, it is unforgivable.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Thank you, Mr. President. I will be very brief. I was going to ask the Senator from Minnesota a question.

I will be brief because I know my colleague from Wyoming is waiting.

I wanted to first compliment him for his remarks and pose a thought and a question. I would be interested in what he has to say.

The President thinks strongly that Saddam Hussein must go, and go quickly. All of us are thinking about that and wrestling with that. I am not going to comment yes or no on that. The President should be spending time and effort focusing on it. It is a very important issue. I don't begrudge him for doing that. He is spending maybe half of his time on it. It seems to me the other half of his time is spent on going around the country campaigning—half his time on the war effort, and half his time going around the country campaigning for candidates, and the economy is not getting any of the President's attention.

As my friend from Minnesota has correctly laid out, it is going down, down, down. Every day there is a new headline. We have one in New York. The securities industry is going to lay off many more people at a time when we can't afford it. In every part of the country, you see this down, that down, and this down.

I make a plea to the President. Spend your time focusing on Saddam Hussein, but what about spending the rest of the time—instead of traveling around the country going to political events—focusing on the economy. We are a great Nation. We can do both. We can examine what we ought to do in Iraq. At the same time, we can start focusing on the economy and things such as getting people back to work, extending unemployment insurance, and lowering the cost of prescription drugs.

The President has been absent on every one of those issues. One doesn't exclude the other.

I ask my colleague: Does he agree with those sentiments? Am I not correct when we read that the President is spending one-half of the week going to different parts of the country simply campaigning, and that I haven't heard him pronounce a thing about the economy and what we are going to do about it in all too long a period of time? Then, when he says with sort of verbiage and nothing substantive, I do not know if they have a single plan.

I don't know if they have a single plan, even though they withdrew the tax cuts they proposed for the very wealthy. I ask my colleague, in light of his excellent remarks, would he agree with me that all Americans, Democrats and Republicans, Independents, want the President to come back home and spend some time focusing on the economy; that he can do both, we can do both, deal with the war issue and focus on the economy?

Mr. DAYTON. I absolutely agree with the Senior Senator from New York. What I find particularly disturbing is, as I know from experience in Minnesota, where the President has been to my State three times in the last year in the midst of my colleague's very difficult election campaign, the President has come in, raised a couple million dollars, and has charged part of the cost of this trip to the American taxpayers. He gives one 20-minute policy speech somewhere and then goes on to raise millions of dollars for campaigns, and the American taxpayer is paying the bill.

I agree with the Senator, the President ought to stay at home. He should focus on the economy, in addition to Iraq. And if he does travel for political reasons, the American taxpayer should not be paying the bill.

Mrs. BOXER. Will the Senator yield for a question?

Mr. SCHUMER. I am happy to yield to my friend from California.

Mrs. BOXER. I was astounded to see some of the recent news coming out on the economic front, the gap between the middle class and the wealthy, the gap between the rich and the poor, the fact we see in many categories the worst economy in 50 long years in terms of jobs lost in the private sector, in terms of the sluggish growth of the GDP, the number of foreclosures. It is stunning. One has to be concerned that this administration is giving this no attention whatsoever, which was my friend's point.

We look at a President who is spending half his time on foreign policy; that is fine. This Congress is going to help in that area because we have a lot of ideas on how to meet the threat Iraq poses. On our side of the aisle, there will be different opinions on how to meet that threat, which will show the strength of our democracy, and that this party is, in fact, a broad umbrella, which is healthy in the long run for the country.

The other half of the time seems to be spent on the road campaigning. I agree with my friend. Given the economic statistics—the stock market, we are looking at maybe a $4, $5 trillion loss, the worst in 50 years, and the fact pensions are down—does my friend believe we ought to perhaps come up with something specific to ask the President?

For example, he keeps calling us to talk about foreign policy. Why doesn't he call us to the White House to talk about this economy, to get the best ideas of Republican Presidents and Democratic Presidents? This isn't partisan. People are suffering out there, Republicans and Democrats, Independents, young and old, for different reasons. So would my friend think that might be a good way for this President to show he cares as much about the everyday issues our people are facing as he does about electing Republicans, and perhaps this would be a way to break through on this economy?

Consumer confidence is down. Perhaps that would give a spur to our people and bring us together just as we get together on foreign policy.

Mr. SCHUMER. I thank my colleague for her question and comments. She is right on the money. It is a great idea. We are called, our Democratic leadership, along with Republican leadership, to the White House on numerous occasions to discuss the war effort. That is good. That is how America should work, particularly when it comes to wartime. But in a sense we have an economic war here at home, as my good friend from California has enumerated: people losing income; people losing jobs; people worried about the future; pensions way down.

Why are we not being called to the White House for an economic summit on what to do there? I speak for all of us: We would be happy to meet the President halfway or a good part of the way in terms of doing things because the people are languishing. To ignore the economy and spend all this time running around the country campaigning is a dereliction of duty. He is not even up for election.

I thank my colleague for the question.

Ms. STABENOW. Will the Senator yield?

Mr. SCHUMER. I am happy to yield for the last time.

Mr. THOMAS. Could the Chair tell me what the system is this morning? Are we going to have one side have all the time?

The ACTING PRESIDENT pro tempore. The Senator from New York has the floor. There are 10 minutes allotted to each Senator. The Senator from New York has the floor.

Mr. THOMAS. How much time remains?

The ACTING PRESIDENT pro tempore. He has 1 minute remaining.

Mr. THOMAS. I thank the Chair.

Mr. SCHUMER. I yield the 1 minute to the Senator from Michigan.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I thank the Senator from New York.

Every economic indicator we want to go up is going down, and every one we want to go down is going up. The Senator and I have worked together on one of the most critical issues that affect Americans, their pocketbook and quality of life, which is access to prescription drugs. I share the concern that we do not see the focus on the economy and what needs to happen in the economy. The Schumer-McCain bill, now in the House of Representatives, which would lower prices for prescription drugs, is one very important piece of that economic puzzle. When we see that more people are lower income, their health care costs are rising, I appreciate his leadership on that issue.

Mr. SCHUMER. I thank the Senator for her leadership as well.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

SENATE AT A STANDSTILL

Mr. THOMAS. Mr. President, it is interesting. I wanted to visit a little bit about where we are on the floor and the fact we are not moving. We have been in the same place for 4 weeks.

I understand the frustration of the folks on the other side of the aisle. I recognize, too, that we are in the full swing of an election year. It is blame-game time, where we all stand up and blame the President for what is going on when there is no effort on the other side of the aisle to move off where we are and take up some of the issues we ought to be addressing.

We talk about prescription drugs. Prescription drugs is not on the floor because the leadership has not moved from where we are to make time to get it up here. I get a little exasperated, using all this time for political comments when there are no ideas of what to do coming from the other side of the floor.

Actually, that wasn't why I came here, but I have to tell you it is pretty frustrating to continue to hear that sort of thing—blaming the President when these folks have no idea what they want to do and no suggestions, no leadership coming from the Senate. What are we going to do about it?

What we have done is continue to work on two bills for about 4 weeks now. Homeland defense is one of the most important issues we have before us, and it has been stalled. Although we have differing views on how it ought to proceed, that is fine, that is part of the system here. We ought to take a vote on those views and move forward, but instead of that, we have had stalling on the other side, no chance to vote on amendments, simply wanting to always vote on cloture, which is what we are faced with today.

The unwillingness of the majority leadership to allow votes on certain amendments has created a standoff. We keep hearing about what else you want to talk about over there, but we won't move off where we are. It is pretty frustrating. It seems as though that is the political moment. We have to really get down to what it is.

The same thing is true of Interior appropriations. It has been on the floor for 4 weeks. Yet we can't seem to move it to get some of the things done. For those of us in the West, it is very important—public land fees and, so on, in which we are so involved. Maybe even more important than that, the more immediate issue, there is some drought relief in this bill. There is something on forest fire suppression. We can do those things. But have we moved? No.

We continue to stall and to have votes on cloture, which does not resolve the issue. All we need to do is have a vote on the amendments. If you don't like the amendments, have a vote to table them. That is where we ought to be. That is the system.

To get up and start spending all of our time blaming the President for an economic slowdown that began under the Clinton administration, according to all the people who are familiar and knowledgeable about it, is to be a little tiresome, when we have an opportunity to move forward. There are a lot of things we ought to be doing in the relatively short time we have left.

Obviously, homeland defense is one that has to be done.

We need to debate the Iraq resolution, which is going to take some time. We need a CR if we are going to adjourn on the 19th of October. We have an energy bill which we ought to move forward. We talked about pharmaceuticals and Medicare. We could have done something in our committee, but the majority leader pulled it out of the committee. We will not have time to accomplish these items as long as we remain on the pending bills.

It seems to me it would be very frustrating to want to spend the time blaming the President for the economy when the Senate is not doing what we can and moving forward.

I will not take any more time. We ought to look at what we are accomplishing instead of trying to put the blame on everybody else when we have not succeeded in doing what we ought to be doing. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I understand the distinguished Senator from Michigan would like 5 minutes so she can then assume the Chair. I will be happy to defer to her for 5 minutes, if I can then be recognized after her and have the attention of the body. I will be happy to accommodate her.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Michigan.

THE ECONOMY

Ms. STABENOW. Mr. President, I thank my friend for his courtesy this morning, and I appreciate the opportunity to speak for a few moments before assuming the Chair. I did want to follow up on the discussion this morning on the economy. A few minutes ago, I indicated that every economic indicator that should be going down is going up: job losses; health care costs; foreclosures; national debt; interest rate costs; Social Security trust fund raid. Every part of the economy we wish to be going up is going down: economic growth, down; business investment, down; the stock market, down; retirement accounts, down; consumer confidence; minimum wage.

We have a very disturbing situation. I wish to speak for a moment about one piece of the economy that is so critical in the quality of life of American families and American businesses which are struggling to pay the costs. Let me speak to one piece of the economic record of the last 18 months, and that is that workers' payments for health insurance is soaring.

We are seeing that the cost of insurance to cover a family has gone up 16 percent, and the cost of an individual has gone up 27 percent, over one-fourth increase in their costs. The costs are going up. Their savings are down, their investments are down, and at the same time, we are seeing the biggest part of the reason for that health care cost going up as a result of the cost of prescription drugs.

We are seeing overall prescription drugs going up over three times the rate of inflation. This is a critical part of the economic pie, the costs for consumers right now. It is not inconsequential. It is not like buying a new pair of tennis shoes or ''Gee, I would like to have a new coat.'' This is life-saving medicine, the difference between life and death, or whether a person goes into a nursing home or is able to live at home. I am very concerned about this. What is the response?

We in the Senate have been focused on Medicare prescription drug coverage and lowering prices for everyone. We have been successful in passing a bill that, in fact, lowers prices and creates more competition in the marketplace once a patent expires. But what is the response of the pharmaceutical industry within this context, with the struggles that are going on for families, businesses, and farmers across the country? What is their response right now? A new PR campaign, not putting the millions of dollars into lower prices and making prescription medications available, lowering the premiums for small businesses. They have gone on a huge PR campaign.

We are seeing ads that I find, I have to say, absolutely outrageous. One says: ''Pray for a Miracle.'' It uses the picture of a child who, obviously, is deathly ill. It says: ''Pray for a Miracle,'' because they say generic drugs will never cure him.

In the small print it says: ''They don't do research.'' Of course they do not do research. They do not do research. They do not have to do research. The idea of generic drugs is to take the formulas and the patents after the research has been done, after the American people have helped to pay for that research through NIH funding, tax deductions, and supporting the companies with a 20-year patent so they do not have competition in recovering their costs.

The whole point of generics is the American public made a deal that, once the 20 years is up, once those subsidies are up, they will have that formula available so generic companies can manufacture those drugs and lower the prices.

Instead of working with us to have a system that works both for brand name companies to develop these new brand name drugs and also for the American people to get the bargain they are supposed to get, which is lower prices, the companies are putting millions of dollars into a front senior citizen group, ads on the air, getting involved in elections and running ads scaring people that somehow if we let the system work as we created it over the years in a bipartisan way, if we let the system work, this child, who is obviously seriously ill, will somehow be hurt. I find that absolutely outrageous.

I am concerned in the context of this economy and the debate and the American people trying to figure out when they sit down in the morning what they are going to pay for—are they going to be able to afford the health care premium? Is that senior going to be able to afford their medicine? Are they going to be able to pay for the clothes kids need for school? Are they going to be able to do the other things they need for their family?

Instead of working with us, the companies have chosen an outrageous PR propaganda campaign. I urge them to work with us to do the right thing. I thank the Chair.

The PRESIDING OFFICER (Mr. EDWARDS). The time of the Senator has expired.

The Senator from Missouri is recognized.

INTERIOR APPROPRIATIONS

Mr. BOND. I thank the Chair.

Mr. President, I have been listening to some of my colleagues on the other side of the aisle saying the economic problems we have are somebody else's fault. They blame the President. Unfortunately, in this instance, the President cannot pass legislation. The President was successful in working with us to pass the beginning of tax relief which took effect in 2001, and most responsible economists I know suggest that helped lessen the impact of the downturn which began in 2000, beginning as early as the first quarter of 2000 and hitting its peak the end of 2000 and the beginning of 2001.

We could do some things in this body. We could pass some laws that would make a difference and help the economy get going. Frankly, one of the great frustrations I feel is we cannot get about the business that we are supposed to do on the Senate floor. If the majority leadership had allowed the Senate Energy Committee to work its will on an energy bill, the committee would have reported out a proposal to allow drilling on 2,000 acres in the barren northlands above the Arctic Circle in Alaska. That is called ANWR.

ANWR not only has the potential to replace the oil we must now buy from the malevolent, deadly dictator Saddam Hussein, ANWR could put up to three-quarters of a million people to work throughout the country, not just in the drilling and work in ANWR, but providing the materials, making the steel and turning it into equipment, pipelines, providing the infrastructure through the private sector that we need to bring that oil down from ANWR.

I am still hoping we can get ANWR in the energy bill, a tremendous boost for the economy. Where else do we need a boost for the economy? In large construction projects. There are construction projects shut down all around the country because they cannot get insurance against terrorism.

Terrorism risk insurance was dealt with in the Banking Committee on a bipartisan basis. I understand they reported out a good bill to provide that the Federal Government would be a backstop, on a sharing basis, for the reinsurance of terrorism risk.

The majority leadership took it away. We cannot get a terrorism risk insurance bill through this body because the majority leadership has changed it into something that provides great new opportunities to sue the victims of terrorist attacks for punitive damages. Punitive damages are not a way to build the economy. Those are two pieces of legislation we could have gotten finished to help the economy get going. Making the tax cut permanent would be a third way of doing it.

I came to the floor to express what I believe is a great sense of frustration by all of us. The Senate is stuck in neutral.

I have only been in the Senate 16 years, and by some standards that is a pretty short time. We honored our distinguished senior colleague from South Carolina yesterday, and we know of the record of great service of others in this body, but in the short time I have been here I have never seen this body so dysfunctional. It is time we talked about why we are dysfunctional. What is happening? What has gone wrong? Why are we here? Quite simply, it is because some do not want to let us vote. This is the basic motivation and it is cloaked with all the talk about cloture and filibuster, but we are still on an Interior bill amendment which was offered 3 weeks ago. We are stuck because the majority leadership does not want us to vote on that amendment.

There is plenty of time to vote, but for some reason some are apparently afraid to vote. It is no more complicated than that. If we vote, we could get to the remaining amendments, pass the bill, and move on in the next day or two. If the majority does not like it, they could move to table it and we could have a vote; might win, might lose. We could at least have a vote.

I have worked a long time on appropriations bills. I have worked very diligently with the Senator from Maryland, the excellent chairman of the VA/HUD Committee. We have a bill we would like to present to the Senate because it deals with some very important things for veterans, for housing, for the environment, for economic development in our communities, for science, for space, for emergency management. We are ready and willing, and there are nine other bills that are ready, but when we spend more than 3 weeks on one appropriations bill, we are not going anywhere. We cannot get there until the Senate does what it is paid to do, which is to vote up or down, win or lose, and let the will of the Senate prevail.

Some are suggesting—and this, I believe, is truly outrageous—the sponsors of the amendment should pull the amendment so some do not have to cast a difficult vote. Yes, this is a political season and it is tough, but that is what we get paid to do. We have cast 223 votes this year, and I do not believe another one will make or break or overburden any of us.

The Senator from South Carolina and the Senator from West Virginia each have cast over 15,000 votes. They have shown they are not afraid to make hard decisions, and the hard decisions they have made have not taken them away. The sponsors of the Craig-Domenici amendment have had people die in their States. They have had millions of acres of trees, including old-growth trees, habitat, and wildlife, ruined by fire. Houses have burned. A sound and responsible solution has been put forward based on good science and sound forestry management. The Senate should have the courtesy, if not the common sense, to vote on it.

How poorly are we willing to treat the Senators from these Western States? I believe these Senators and their constituencies deserve a vote. If Senators want to vote against them, vote against them. They will have to explain it if they vote for them or if they vote against them.

Senator CRAIG does not have an opportunity to slip this provision into a conference report, so he is doing what the Senate should allow him to do and what we are paid to do, which is to offer amendments and have an up-or-down vote. Maybe they want a commitment to drop the amendment in a conference report. Why can't we vote?

There are a lot of reasons why appropriations bills are difficult to resolve,

but this should not be one of them. This is not a question of how much money we have available. We should have voted 3 weeks ago. We could have completed four or more bills in this time, but we are at a stalemate.

Given the choices, this should be an easy call. Should the sponsors be asked to ignore their burning States, the danger of horrific, catastrophic forest fires, and set their amendments aside, or should the people who are preventing a vote decide they should let the Senate do what we are here to do, what our constitutional responsibility is to do, which is to make decisions on hard choices and then vote?

We have been in session for over 3 weeks, since Labor Day, and we have cast a whooping 16 votes. Six of these votes were unanimous. So we have cast 10 votes on contentious issues, which is less than 1 vote per day. That is not exactly heavy lifting. This time of year, we could probably do two, three, or even four votes a day and not work up a sweat, but we are not able to do that. We cast 5 unanimous votes, and we cast a unanimous vote on procedure in 16 days, which leaves 10 votes.

Some are saying maybe we ought to come in on Saturdays. Unless we are permitted to vote, what good is that going to do? If we cannot vote on Wednesday, what makes my colleagues think we could vote on Saturday, unless the objection to voting was lifted?

I do not want to shut off any debate, but when the debate is over, we should vote. If anyone has anything to add after 3½ weeks of debate, then I think they may have missed their opportunity.

I have spoken a couple of times. Obviously I have not moved many souls or they would all be stampeding to say, let's restore sound forestry management. Maybe they were not listening, maybe I was not persuasive, but I have had my shot. I think it is time we get on with it.

I compliment the Senator from South Dakota for figuring out a way to protect his State. What he did was sound forestry management. I simply want to see other people who live around the forests have the same opportunity as the people in South Dakota, which is to be free from the danger of catastrophic forest fires.

I have farmers who want farm aid. South Dakota has an interest, I am sure. I voted on farm aid. It was not germane or relevant to the bill, but I voted for it. Why can't the Senators whose States are on fire have a vote on something that is directly relevant to the Interior bill before us? I have not heard one substantive, rational explanation as to why Senators whose States are on fire should not be entitled to vote, even a negative vote.

I say to our distinguished leadership, explain to the people of the Western States that are on fire why they do not deserve a vote. The amendment is pending. Let's vote up or down; table it or not. South Dakota got special protection. Are Colorado, California, Montana, or Utah any less important than South Dakota? I think not.

Have the national interest groups gotten so powerful—and let me say, when we are talking national interest groups, I will let everyone in on a secret. It is the Sierra Club. Have the national interest groups and the Sierra Club gotten so powerful they can prevent Senators from standing up for the safety of people in their own States?

I note that the groups that oppose this amendment are very important and powerful, but until now I did not think they were powerful enough to shut down the Senate. I understand why the authors of the amendment would not want to pull their amendment because their States are on fire and in danger of being on fire. Given all the important matters funded in Interior, given that $5.9 billion in drought assistance for fire suppression money, I do not understand why we cannot vote. Substantively or politically, what is more important than assistance to prevent fires and assistance for drought-stricken ranchers? It is clear to those who follow the Senate, there is bad politics for some who may not want to vote.

I appreciate some activists do not want this passed—that is their right—but we are not obliged to skip votes because an outside group does not want to see a vote on it. They have their right to voice their opposition on the amendment, but they should not have the power to stop the Senate from voting. That is a shame. This matter should be resolved in the way it should be resolved, with a vote; move to table and vote up or down. I think Senator CRAIG's effort to prevent forest fires is worth the Senate's time.

We have lots of forests the size of New Jersey. Firefighters and innocent citizens in South Dakota are protected. But Idaho, New Mexico, Montana, and Missouri should be, too.

I plead with those objecting to voting to permit us to do what the people have sent us here to do.

Before I conclude, I call to the attention of my colleagues in the Senate an editorial from yesterday's Wall Street Journal. It says the Democratic leadership is:

> . . . now blaming Republicans for stalling the appropriations bill. In fact, the bill would clear quickly if he'd just hold a vote on the Craig amendment. But the Majority Leader knows a vote would force his party either to side with Mr. Craig (thereby alienating greens), or repudiate forest cleanup (thereby alienating voters this fall). We think it was a famous Democrat, JFK, who once said that to govern is to choose.

I ask unanimous consent that this article from the Wall Street Journal be printed in the RECORD.

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

DASCHLE'S BURNING SENATORS

If you want to know why Senate Majority Leader Tom Daschle can't get a spending bill for the Interior Department passed this year, look no further than his home state's Black Hills.

Those South Dakota mountains are at the center of a growing political debate over forest fires. All summer Senator Tim Johnson, also a South Dakota Democrat, had been taking heat from the state's rural communities for allowing green groups to stymie forest cleanup, a recipe for fires. So in July, to give Mr. Johnson a boost in his tight reelection fight against Republican John Thune, Mr. Daschle slipped a rider into a bill exempting his state from the very environmental regulations he'd long championed.

It took about a nanosecond for Western Senators, their own states in flames, to seize on this flip-flop and demand equal treatment. Idaho Republican Larry Craig offered an amendment to the Interior bill that would enact much of President Bush's new fire plan, as well as a South Dakota-style legal exemption for 10 million at-risk acres of forestland. Mr. Daschle—now trying to get back in green good graces—has tried twice to close Senate debate without considering Mr. Craig's amendment, and has lost both times.

And no wonder. This year's fires, and Mr. Daschle's rider, have become an enormous political liability for Western Democrats. They've had to explain to angry constituents why Chainsaw Tom was allowed to save his state's forests, while theirs were left to burn. And, with 6.5 million acres in ashes and more than 25 people dead this year, none of them want to oppose Mr. Craig's much-needed forest cleanup plan. California's Dianne Feinstein and Oregon's Ron Wyden, both Democrats, had even been trying to work out a compromise with Mr. Craig.

Mr. Daschle is now blaming Republicans for stalling the appropriations bill. In fact, the bill would clear quickly if he'd just hold a vote on the Craig amendment. But the Majority Leader knows a vote would force his party either to side with Mr. Craig (thereby alienating greens), or repudiate forest cleanup (alienating voters this fall). We think it was a famous Democrat, JFK, who once said that to govern is to choose.

Mr. BOND. I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Montana.

FIREFIGHTING FUNDS

Mr. BURNS. Madam President, I rise today to address this third vote on cloture on the Byrd amendment directing the replenishing of firefighting funds for the Departments of Agriculture and Interior.

This vote really hinges on our desire to get drought relief to the West.

In my opinion, that is not what this debate is about. Drought relief has already been agreed to almost unanimously by this body. In other words, there were 69 votes for it. There is strong support in the Senate. I am a strong supporter for that relief.

What is happening here is the majority is saying it is our way, or the highway. America's farmers and ranchers know that is not the way we do business, or get business done. Solving problems takes compromise. I worked with the majority to get the ball rolling. I worked with the administration to get the ball rolling. We worked with the administration and the other side—not only the other side—for release last

week of money for livestock producers in drought-stricken areas. But now we see no compromise for realistic solutions. Every American has watched our forests burning every night on television. Yet the other side is reluctant to do anything about it—they have no conscience.

It does not change any law. It allows us to manage forest lands for the prevention of the disasters that we have had since 1998.

Come to my State and talk to the farmers and ranchers who have had drought for 4 years. Then, turn around and talk with people who love those forests. They have seen the forests burn for the last 4 years. And then tell me we should not have a vote in order to clean them up.

Have people lost their senses? They do not understand what happens in this biological world when we grow a renewable product—a renewable product. Have we had nothing in our schools that teach us?

I am like the old preacher who walked by a ranch one day. It was a nice Sunday morning. He said: Nice looking ranch you have got here.

The old rancher says: Yes, it is. You should have seen it while the Lord had it to himself.

We have people in this ecosystem.

These little groups, I might add, that have very little dirt under their fingernails—very little—are telling us to leave it alone, and Mother Nature will take care of it. The American people have seen that kind of management for the last 25 years. They have seen the results of it. It burned.

What is being denied here is a vote. We are being denied a vote on an issue that, sort of tongue in cheek, burns in the hearts of Americans. They don't like this. They do not want to see their forests go up in flames and have a renewable resource wasted when it can be prevented. That is what it is about.

We will reject cloture until the majority is willing to work on a compromise that will actually make a difference to Americans.

I want to associate myself with the words of our assistant leader on our side. Cloture is a terrible arrow in the quiver during these times on appropriations bills. It seems as though when we struck the deal for South Dakota less than 3 or 4 months ago, it was the right thing to do. It exempted all the laws.

Do we have a double standard here? Should those of us in other States who represent public lands which produce a renewable product not be afforded the same standard? We are not even asking for that much change. We are not exempting any law. We are not exempting anything.

What we are saying is make your case. Invoke a double standard, and then premise the argument that this is a vote against drought aid for American agriculture? It is absolutely absurd.

Any clear-thinking American who has watched the deterioration of our forests and who has seen the results can stand there, and who in this body can look them in the eye and say, well, that is the way it is?

I will tell you how many votes they will get against their proposal. I have heard maybe three or four will come down and give the reasons they are opposed to it to justify their vote, and to answer some of the questions we have.

It is not right. It is not only not right, but it is not fair.

I have real people living in my State, too, just like everywhere else. But the unwillingness to give us a vote, which is our right and a constitutional need to get the House of Representatives and the President a vote to actually pass laws, has brought us to a standstill in this body.

It is not right. It is not fair.

Mr. NICKLES. Will the Senator yield?

Mr. BURNS. I am happy to yield.

Mr. NICKLES. You mentioned drought aid. Am I not correct that drought aid cannot pass unless the bill passes?

Mr. BURNS. That is correct.

Mr. NICKLES. If one wanted to get drought aid to farmers, would it make sense, since that has been agreed to in the underlying bill, to have a vote on the Craig amendment, and it could be an up-or-down vote or a motion to table, dispose of the Craig amendment one way or another, and pass the bill?

Mr. BURNS. And move on. That is correct.

Mr. NICKLES. And every Member on this side of the aisle is willing to do that. No one on this side of the aisle is filibustering this bill.

Mr. BURNS. That is right. No preconditions. No either/or. If we are really serious about it, give us a vote. That is what we are fighting for, the privilege of voting. That is all. Defeat us if your conscience allows. But give us a vote.

I yield the floor.

Mr. REID. Mr. President, I ask unanimous consent for 1 additional minute on each side. Our side is up.

The PRESIDING OFFICER (Mr. FEINGOLD). Without objection, it is so ordered.

Mr. REID. I have listened to my friend from Montana and my dear friend from Oklahoma. You cannot change the Senate rules. They can say all they want that they are not filibustering this bill. This is the fourth week we are on the bill. If they want to get disaster aid to the farmers, they should allow us to go forward on this legislation. We can offer their amendment on other matters, if they really care about the farmers; 79 Senators said they did. Those people are waiting for relief as we speak. They should go ahead and allow us to pass this bill. In the meantime, the farmers get nothing.

It is not as if we are not fighting fires. There is $800 million that Senator BYRD and Senator STEVENS put in this bill for fighting fires. It is a question of their wanting to do away with judicial review, which we are unwilling to do.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. If people want to pass this bill, the way to pass the bill is to do it the way Senator REID and I used to manage the bill, and that is to vote. We get paid to vote.

For whatever reason, some people are afraid to vote on the Craig amendment. If we get on the bill, maybe someone will move to table the Craig amendment. We need to vote. The Senators from Montana, North Dakota, Colorado, Oklahoma, Texas, and other States that have fires are entitled to have forest management improvements just like South Dakota. What the Craig amendment is asking for is not as much as South Dakota received.

We are entitled to a vote. You can file cloture all you want, but we are going to have a vote. We are going to have a vote. To file cloture, so we do not even get a vote on the Craig amendment, will not happen. If cloture is invoked, we can still offer the amendment, so we are getting nowhere fast. We are not going to finish this bill until we get a vote.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5093, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5093) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

Pending:

Byrd amendment No. 4472 in the nature of a substitute.

Byrd amendment No. 4480 (to amendment No. 4472), to provide funds to repay accounts from which funds were borrowed for emergency wildfire suppression.

Craig/Domenici amendment No. 4518 (to amendment No. 4480), to reduce hazardous fuels on our national forests.

Byrd/Stevens amendment No. 4532 (to amendment No. 4472), to provide for critical emergency supplemental appropriations.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Byrd amendment No. 4480, as amended, to H.R. 5093, the Department of Interior Appropriations bill, 2003.

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton,

Jeff Bingaman, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Byrd amendment No. 4480 to H.R. 5093, the Interior appropriations bill, shall be brought to a close? The yeas and nays are required under rule XXII, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The yeas and nays resulted—yeas 51, nays 47, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—51

Akaka	Dayton	Leahy
Allard	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Miller
Boxer	Feinstein	Murray
Breaux	Graham	Nelson (FL)
Byrd	Harkin	Nelson (NE)
Campbell	Hollings	Reed
Cantwell	Inouye	Reid
Carnahan	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Stabenow
Conrad	Kohl	Wellstone
Corzine	Landrieu	Wyden

NAYS—47

Allen	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith (NH)
Chafee	Hatch	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Craig	Inhofe	Stevens
Crapo	Kyl	Thomas
Daschle	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Murkowski	

NOT VOTING—2

Helms	Torricelli

The PRESIDING OFFICER. On this vote, the yeas are 51. The nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. BYRD. Mr. President, can we have order?

The PRESIDING OFFICER. The Senate will come to order. The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Byrd amendment No. 4480, as amended.

The PRESIDING OFFICER. The Senator has that right. The motion is entered.

HOMELAND SECURITY ACT OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 5005, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Lieberman amendment No. 4471, in the nature of a substitute.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, the Homeland Security bill.

Debbie Stabenow, Harry Reid, Charles Schumer, Evan Bayh, Mark Dayton, Jeff Sessions, John Edwards, Jim Jeffords, Joseph Lieberman, Bill Nelson of Florida, Blanche L. Lincoln, Byron L. Dorgan, Jack Reed, Patrick Leahy, Robert C. Byrd, Mary Landrieu, Max Baucus.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Lieberman amendment No. 4471 to H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from New Jersey (Mr. TORRICELLI) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—49

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Edwards	Mikulski
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Carper	Jeffords	Sarbanes
Chafee	Johnson	Schumer
Cleland	Kennedy	Stabenow
Clinton	Kerry	Wellstone
Conrad	Kohl	Wyden
Corzine	Landrieu	
Dayton	Leahy	

NAYS—49

Allard	Bunning	Craig
Allen	Burns	Crapo
Bennett	Campbell	Daschle
Bond	Cochran	DeWine
Brownback	Collins	Domenici
Ensign	Kyl	Smith (NH)
Enzi	Lott	Smith (OR)
Fitzgerald	Lugar	Snowe
Frist	McCain	Specter
Gramm	McConnell	Stevens
Grassley	Miller	Thomas
Gregg	Murkowski	Thompson
Hagel	Nickles	Thurmond
Hatch	Roberts	Voinovich
Hutchinson	Santorum	Warner
Hutchison	Sessions	
Inhofe	Shelby	

NOT VOTING—2

Helms	Torricelli

The PRESIDING OFFICER (Mr. NELSON of Nebraska). On this vote, the yeas are 49, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. DASCHLE. Mr. President, I enter a motion to reconsider the vote by which cloture has not been invoked on the Lieberman substitute amendment No. 4471 to H.R. 5005, the homeland security legislation.

The PRESIDING OFFICER. The motion is entered.

Mr. DASCHLE. I thank the Chair.

AMENDMENT NO. 4738

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours of debate on the Gramm amendment, with the time to be equally divided between the Senator from Texas and the Senator from Connecticut or their designees.

The Senator from Texas.

Mr. GRAMM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Texas, Mr. GRAMM, for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, and Mr. HAGEL, proposes an amendment numbered 4738.

Mr. GRAMM. I ask unanimous consent the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the amendment is printed in today's RECORD under ''Amendments Submitted.''

The PRESIDING OFFICER. Who yields time?

The majority leader.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I wanted to take a few minutes of leader time this morning, before we get into the debate on the amendment offered by the Senator from Texas, to talk about a concern that I have wanted to avoid talking about for weeks. I am very saddened by the fact that we have debated homeland security now for 4 weeks. I have noted on several occasions that there is no reason, on a bipartisan basis, this body cannot work

together to overcome our differences and to pass a meaningful and substantive bill dealing with homeland security.

Some have suggested that the delay has been politically motivated, and I have said: I am not willing to believe that. In fact, yesterday I said: We intend to give the President the benefit of the doubt.

Over the course of the last several weeks, as we have debated national security, the issue of war in Iraq has become more and more prominent. And again, as I go back to my experience in 1991 and 1992, during a similar period—the fall and winter prior and after an election—I expressed the concern that our politics in this climate could easily create a politicized environment and, in so doing, diminish, minimize, degrade the debate on an issue as grave as war.

No one here needs to be reminded of the consequences of war. No one here should have to be admonished about politicizing the debate about war. But, Mr. President, increasingly, over the course of the last several weeks, reports have surfaced which have led me to believe that indeed there are those who would politicize this war.

I was given a report about a recommendation made by Matthew Dowd, the pollster for the White House and the Republican National Committee. He told a victory dinner not long ago—I quote—''The No. 1 driver for our base motivationally is this war.''

Dowd said war could be beneficial to the GOP in the 2002 elections. And then I quote: ''When an issue dominates the landscape like this one will dominate the landscape, I think through this election and probably for a long time to come, it puts Republicans on a very good footing.''

I thought: Well, perhaps that is a pollster. Perhaps pollsters are paid to say what is best regardless of what other considerations ought to be made. Pollsters are paid to tell you about the politics of issues. And were it left with pollsters, perhaps I would not be as concerned.

But then I read that Andy Card was asked: Well, why did this issue come before Washington and the country now? Why are we debating it in September? Where were we last year? Where were we last spring? And Mr. Card's answer was: ''From a marketing point of view, you don't introduce new products in August.''

New products? War?

And then I listen to reports of the Vice President. The Vice President comes to fundraisers, as he did just recently in Kansas. The headline written in the paper the next day about the speech he gave to that fundraiser was: CHENEY talks about war: electing Taff would aid war effort.

And then we find a diskette discovered in Lafayette Park, a computer diskette that was lost somewhere between a Republican strategy meeting in the White House and the White House.

Advice was given by Karl Rove, and the quote on the disk was: ''Focus on war.''

I guess, right from the beginning, I thought: Well, first it was pollsters, and then it was White House staff, and then it was the Vice President. And all along I was asked: Are you concerned about whether or not this war is politicized? And my answer, on every occasion, was: Yes. And then the followup question is: Is the White House politicizing the war? And I said: Without question, I can't bring myself to believe that it is. I can't believe any President or any administration would politicize the war. But then I read in the paper this morning, now even the President—the President is quoted in the Washington Post this morning as saying that the Democratic-controlled Senate is ''not interested in the security of the American people.''

Not interested in the security of the American people?

You tell Senator INOUYE he is not interested in the security of the American people. You tell those who fought in Vietnam and in World War II they are not interested in the security of the American people.

That is outrageous—outrageous.

The President ought to apologize to Senator INOUYE and every veteran who has fought in every war who is a Democrat in the Senate. He ought to apologize to the American people.

That is wrong. We ought not politicize this war. We ought not politicize the rhetoric about war and life and death.

I was in Normandy just last year. I have been in national cemeteries all over this country. And I have never seen anything but stars—the Star of David and crosses on those markers. I have never seen ''Republican'' and ''Democrat.''

This has to end, Mr. President. We have to get on with the business of our country. We have to rise to a higher level.

Our Founding Fathers would be embarrassed by what they are seeing going on right now.

We have to do better than this. Our standard of deportment ought to be better. Those who died gave their lives for better than what we are giving now.

So, Mr. President, it is not too late to end this politicization. It is not too late to forget the pollsters, forget the campaign fundraisers, forget making accusations about how interested in national security Democrats are; and let's get this job done right.

Let's rise to the occasion. That is what the American people are expecting. And we ought to give them no less.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I commend the distinguished Democratic leader for the position he has taken here today. I commend him for the restraint he has shown in his remarks.

I, too, was astounded upon reading this story in the Washington Post this morning. It reads as follows in part:

> As he seeks to boost Republican candidates in the midterm elections, President Bush is increasing his emphasis on terrorism and national security, shedding his previous determination to demonstrate his concern about the flagging economy.
>
> Four times in the past two days, Bush has suggested that democrats do not care about national security, saying on Monday that the Democratic-controlled Senate is ''not interested in the security of the American people.'' His remarks, intensifying a theme he introduced last month, were quickly seconded and disseminated by House Majority Whip Tom DeLay (R–Tex.).
>
> At a fundraiser for GOP House candidate Adam Taff in Kansas Monday, Vice President Cheney said security would be bolstered if Taff were to defeat Rep. Dennis Moore (D–Kan.). ''Cheney talks about Iraq at congressional fundraiser/Electing Taff would aid war effort,'' read the headline in the Topeka Capital-Journal.

Mr. President, are we to believe this? Are we to believe that this President said what I have just quoted? This is the President who was going to change the tone in Washington.

I am terribly disappointed. We are entering an election. War clouds loom over this country. Yet the President would say the Democratic-controlled Senate is ''not interested in the security of the American people.''

What about MAX CLELAND? Is he interested in the security of the American people? What about DANNY INOUYE? Is he interested in the security of the American people?

I am disgusted by the tenor of the war debate that has seemingly overtaken this capital city. Here is the President of the Senate, the Vice President of the United States, out campaigning. The President is campaigning using war talk to win the election. The Vice President of the United States is barnstorming for Republican candidates. There, in at least one instance, he was telling voters that electing Republicans would aid the war effort.

Is the President determined to make his party—that great party of Abraham Lincoln—the war party? What would Abraham Lincoln have to say if he were here?

This war strategy seems to have been hatched by political strategists intent on winning the midterm election at any cost, even if that cost places this Nation on the brink of battle and the Nation's sons and daughters there on that brink. It is despicable. The distinguished majority leader used the word ''outrageous.'' He is exactly right. It is despicable that any President would attempt to use the serious matter of impending war as a tool in a campaign war.

I am not going to continue to be silent. The blood of our sons and daughters, our soldiers, sailors, and airmen,

has far more value than a few votes in a ballot box.

There is nothing more sobering than a decision to go to war, but the administration has turned the decision into a bumper sticker election theme. That is what I felt I saw in the beginning of this war on terrorism. It was being used politically also. It is clear now. It is out in the open. There it is.

For the President to suggest the Senate is not interested in the security of the American people is outrageous. It is insulting. It is wrong, wrong, wrong. To suggest that one is unpatriotic simply because one is affiliated with a certain party and may oppose a war that may have horrendous consequences is irresponsible—irresponsible. It is the worst kind of political opportunism.

I have been in this Congress 50 years. I have never seen a President of the United States or a Vice President of the United States stoop to such low level. It is your blood, your sons and daughters. Those who are looking at the Senate through the electronic lenses, it is your blood, your treasure.

For the first time in the history of the Republic, the Nation is considering a preemptive strike against a sovereign state. I will not be silenced. I have no brief for Iraq, but I am not going to be silenced. I will not give the benefit of the doubt to the President. I will give the benefit of the doubt to the Constitution. I will give the benefit of the doubt to the American people who will soon be called upon, if this President has his way, to give their sons and daughters, the blood of this country.

I do not defend the Iraqi regime. I do not justify its actions. But I also do not want to commit our sons and daughters to battle without a thorough understanding and a thorough debate. You silence me, if you can. There are others in this body who are going to speak up for their people.

This administration is making the war their battle cry. That is their bumper sticker politics. They are putting it front and center. They don't want to talk about domestic issues. They don't want to talk about those things. So they choose to make the war center stage. OK.

''Lay on, McDuff. And damn'd be him that first cries, ''Hold, enough!'''

My people in West Virginia expect me to speak out. If the Lord lets me live, I shall do that.

I also do not want to commit our sons and daughters to battle without a thorough understanding of the motivations, the strategies, the repercussions of that battle.

America fights wars, but America does not begin wars. This is my battle cry. This is yours. Each of you has sworn to support and defend the Constitution of the United States against all enemies foreign and domestic. There it is. That doesn't give this President, that doesn't give this Nation, a right to launch an unprovoked attack on a sovereign nation. America fights wars, but America does not start wars.

The American people have serious questions. The Nation's allies have serious questions. Members of this body have serious questions. These must be answered before going to war, and it is not now, nor was it ever, unpatriotic to ask questions.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired. The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that Senator INOUYE have 5 minutes of my leader time.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, I certainly do not object to any time Senator INOUYE wants, but we have come to debate an amendment on the homeland security bill, and I would like to have an opportunity to speak on it. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Senator INOUYE.

Mr. INOUYE. Mr. President, the gentleman who resides at 1600 Pennsylvania Avenue is the President of the United States of America, and although the Constitution does not specifically state it, his most important chore is to keep our people united, to keep our Nation united.

Accordingly, this morning I am saddened by the reports of my leader, the majority leader, and my leader, Senator BYRD of West Virginia, because it appears that our administration and our President are making statements that only serve to divide our people.

I have been honored to serve as chairman of the Defense Appropriations Subcommittee. Four weeks ago, this subcommittee reported a bill unanimously. It is a Democratically controlled subcommittee, but it reported a measure unanimously. It went to the full committee, chaired by the Senator from West Virginia, and the committee reported that measure unanimously. It was reported to this floor, and by an almost unanimous vote—three Members had questions—it passed the Senate. That was 4 weeks ago. That was carried out by a Democratically controlled Senate.

There are a few footnotes in history that I think we should recall. I listened to all the talk shows on Sunday. I am a good listener. I very seldom speak on the floor. One statement was made that some of us in the early 1990s questioned the war in the Persian Gulf. I was one of those. This spokesperson said: They questioned the war because they said a lot of body bags would be returning, and just a few returned. But we should recall that the war ended at the border of Iraq. If we had gone into Baghdad, we would have had many body bags, unless the United States had decided to do the most inhuman thing and wipe out Baghdad—men, women, and children.

Some have now suggested: The war in Afghanistan has resulted in 100 casualties. That is not a war.

There is another footnote in history that we should recall. In that ancient war we engaged in 60 years ago, World War II, in the U.S. Army, 95 percent of the men in uniform had no spouses; there were no children. Five percent had spouses and children. In my regiment, 4 percent had spouses and children; 96 percent were young men, 18, 19, 20. We were ready. We had no strings attached.

Today, in the U.S. Army, over 77 percent of our men and women have spouses; they have children. We should be concerned about their sensitivities.

It is not easy going into combat. No one enters battle planning to become a hero. You just happen to be in the wrong place at the wrong time. If you stepped one foot to the right, the bullet would have missed you.

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senator may have 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, there are those who plan war, and there are those who engage in war. As we have always said in the subcommittee and in the Appropriations Committee, in order to avoid war, we should be prepared for war. We voted for a bill to spend over $356 billion. Does that suggest we are not concerned about the security of our people? And when we passed it unanimously—bipartisan, united—does that suggest we are not concerned about the security of this country?

I am concerned about the security of this country. I am concerned about what history will say about this Nation 50 years from now. Did we brutalize people or did we carry on ourselves as a civilized people? As my leader from West Virginia stated, to attack a nation that has not attacked us will go down in history as something of which we should not be proud.

Mr. President, I can assure you that this Democratically controlled Senate, and especially the Defense Appropriations Subcommittee, will support the President of the United States because that man is my President also. Certainly, I did not vote for him, but he is my President, and it grieves me when my President makes statements that divide this Nation.

I can assure you this is not a time for Democrats and Republicans to say I have more medals than you, and I have lost more limbs than you, and we have shed more blood than you. This is not the time for that. This is a time in which we should be working together, debating this issue. As the Senator from West Virginia said, it is American to question the President. It is American to debate the issues. I stand before you as a proud member of the Democratically controlled Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. KERRY. Will the Senator from Texas yield?

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Texas has been recognized. The Senator controls 1 hour.

Mr. KERRY. Madam President, I ask if the Senator from Texas will allow me to speak about 5 minutes before he begins.

Mr. GRAMM. Madam President, the pending business is homeland security. I came over to offer an amendment with the Senator from Georgia. The majority leader has made a statement. The distinguished President pro tempore of the Senate has made a statement.

Our distinguished and beloved colleague from Hawaii has made a statement, and we are here to debate a war which we have an opportunity to do something about now. We are here to debate an issue where we have an opportunity to prevent anybody's blood from being spilled by having an effective homeland security program, and I want to exercise my right to speak on that issue.

I want to be brief on the subject, but accusing a President of starting a war for political reasons is a pretty serious accusation. This Senate, on several occasions, has passed resolutions that in the strongest terms called on the President, if he so decided, to use force against Iraq.

The United Nations has passed resolution after resolution that Saddam Hussein has rejected. So the idea that somehow this is a new problem and has suddenly been created out of whole cloth as we face the election simply will not bear up to scrutiny.

Secondly, there has been a confusion between two wars, and I think this is a very important issue. In listening to all of those quotes, most of what has been said has had to do with a force resolution which we are not debating today, which we will be debating next week or the week after.

As Jefferson said so long ago, good men with the same facts are prone to disagree. Based on our history in dealing with Saddam Hussein, based on the threat he poses, based on the new information on that threat which was made available by the British Intelligence Service and by the Prime Minister in today's paper, I reach a totally different conclusion than many of my Democrat colleagues in that I believe the President should be supported, and I believe a resolution of that support should pass in the Senate.

As clearly as I can say, I think internationalism is important, I think the United Nations has a role, but when we are talking about the lives and safety of Americans, I am not going to turn those lives and that safety over to the U.N.

As much as I love our allies, especially the British, I am not going to turn those lives and that safety over to our allies either. When we are talking about American lives, the buck stops with us. No matter what the United Nations decides, we are never, ever, under any circumstances, going to delegate to the United Nations the protection of American lives.

Hopefully, the United Nations is going to come to their senses and support the President, but the idea that we ought to change this resolution, when we do debate it, to say we should work within the U.N. I am not willing to put American lives at risk based on what the U.N. may or may not do.

A final point, in response to the debate we just had, we have a commingling of two different wars. The first war is with Iraq, and we are going to debate that in 2 weeks. Everybody will have a chance to state their position. I wanted to make mine clear today. The second war, however, is the war on terrorism. That is the war we are fighting today. That is the debate we are having today.

When we started this debate as to giving the President the power to protect America from the horror we saw on September 11, it never crossed my mind we would end up with a Senate that was almost perfectly divided, where Republicans were on one side and Democrats, in the preponderance, were on the other.

There is one exception, apparently, on each side at the moment. I have not looked into people's hearts. We have not had a vote. I do not know where people are down to the individual Senator, but it certainly appears at the moment that we find ourselves in the extraordinary circumstance that we are almost perfectly divided along party lines over the issue of giving the President the power he has asked for to defend the American homeland and to defend our people.

Maybe this should not be a partisan issue, but if one defines a partisan issue as an issue that ends up being split along party lines then by that definition the debate we are engaged in right now, has become divided along partisan lines. The point I want to be sure people understand is the last statement quoted by the President was not about Iraq. It was about defending the American homeland.

Why has this become a political issue? I do not believe Iraq is going to be a political issue, despite the fact some of our colleagues today have expressed reservations about Iraq. I believe in the end the President is going to get a much stronger vote on a force resolution on Iraq today than we got in 1991. In the end, I do not believe Iraq is going to be a partisan political issue.

Why has homeland security divided the Senate right down the middle along partisan lines? The reason is, it involves a very tough choice. Government is about making tough choices. When one gets outside the civics class, it is not about black and white, right and wrong. It is about tough choices. It is about give and take. It is about giving up some things to have others. In fact, this whole idea that everything can be broken down into all positive and all negative completely misrepresents the reality of the world.

There seems to be no objection to taking all of these Government agencies and putting them into one agency. So far as I know, 100 Senators are willing to do that. But remarkably, roughly half the Members of the Senate seem intent on taking away emergency powers the President had on September 11, but that would be taken away by the Lieberman bill that is before us.

I wonder how many Americans who are listening to this debate understand the proposal made by Senator LIEBERMAN, on behalf of the vast majority of Democrats, would actually weaken the President's ability to use national security powers to protect America. I do not think people understand that.

Our Nation has been attacked. Thousands of our citizens have been killed. The lives of countless thousands have been altered forever. We are debating homeland security. We have a proposal before the Senate that says we want to take powers away from President Bush, powers that President Clinton had, that Bush 41 had, that President Reagan had, that President Carter had, and powers they used.

Now, why are we debating such a proposal? How could it possibly make any sense that we were perfectly content to give every President since President Carter the ability to declare a national emergency and set aside business as usual in the Federal bureaucracy to respond to an emergency? But suddenly, as we are creating this Department, the majority proposes we take these powers away from President Bush.

In other words, we will put everybody in the Department, but the price the President would have to pay is less ability to use emergency powers than four of his predecessors have had. The President has rejected that. Does anyone blame him? Can anybody believe that any President, especially this President, would sit idly by while the Congress takes away powers that his four predecessors had?

I don't think anybody would think that is realistic. Why are we doing it? Why is the Senate almost evenly divided along partisan lines on this issue? The reason is, we are down to a tough choice. The tough choice is the following: To give the President the power to put the right person in the right place at the right time to do the right job in protecting lives, we have to change the way the Government operates. But there are powerful political interests that are opposed to making that change. And there are people who are committed to that system, the system we call the civil service system.

I remind my colleagues we have had study after study after study, studies headed by Paul Volcker, appointed by President Clinton to be head of the Federal Reserve bank. We have had studies by Lee Hamilton, a Democrat in the House, and Warren Rudman, our

beloved colleague from the Senate. In study after study concerning national security, they have concluded the following, and this is the Volcker Commission: ''The current system is slow. It is legally trammeled and intellectually confused. It is impossible to explain to potential candidates. It is almost certainly not fulfilling the spirit of our mandate to hire the most meritorious candidates.''

That is not President Bush talking. That is not Senator GRAMM talking. That is Paul Volcker talking. The Rudman-Hamilton bipartisan commission on national security concluded that we needed an agile, flexible personnel system. And then they wrote: ''Today's civil service has become a drag on our national security. The morass of rules, regulation, and bureaucracy prevent the Government from hiring and retaining the workforce that is required to combat the threats of the future.''

What the President has proposed is that he have the ability to streamline the process, and when it comes to a choice between national security and the status quo in the Government system, the status quo must yield. When it comes down to union work rules, business as usual, or the life and safety of our citizens, the President says that the system has to yield. Civil service rights are important, but they are not as important as the right of Americans to life and freedom. When our people's lives are at stake, business as usual in Washington has to yield.

The substitute that Senator MILLER and I have offered prohibits the ability to discriminate on the basis of race, color, creed, national origin, and arbitrary and capricious factors, but allows the President the flexibility to hire without waiting 6 months, to fire without waiting 18 months, to eliminate a system where 99 percent of Government employees get pay raises whether they received good evaluations or not.

I am not saying one side is right and one side is wrong. Obviously, I believe the President is right, and I believe my Democrat colleagues, other than Senator MILLER—and maybe some I don't know about—are wrong. Obviously, I believe that or I would not be standing up here. My opinion does not make their position morally inferior to my position. The division is about what is more important.

That is what the division is about. You have powerful concerns on both sides. You have the concern of national security and you have the concern of Government employees, one of the most powerful political constituencies in America.

I am not saying they are wrong and we are right. I am saying we disagree and we disagree almost perfectly along party lines and we have to make a choice. You cannot be for the primacy of existing work rules of the Federal Government and be for the primacy of national security. You have to make a decision.

I have made my choice. My choice is, when Government work rules impede the protection of American lives, they have to yield. That is my choice. Many of my colleagues appear to have made a different choice.

What are we talking about when we are talking about changing union work rules? I have heard over and over and over again that we are eliminating merit and unions.

First, the substitute Senator MILLER and I have introduced is a substitute which strictly constrains the President to make decisions based on merit, and it limits it strictly to those areas where lives are at stake. I will give some concrete examples. In 1987, the Customs Service at Logan Airport in Boston tried to change the inspection facility to make it safer and more efficient. But there was a union work rule that said the inspection facility could not be changed in any significant way without a renegotiation of the union contract. So guess what. The Treasury employee labor union went to the FLRA and they overruled Customs. And Customs was not able to change the inspection facility.

Look, maybe when you are talking about trying to keep drugs out of the country or illegal aliens, those work rules are more important. But when you are talking about lives, are they more important? If we can increase the probability of keeping chemical or biological or nuclear weapons from coming in through an airport in America by changing the inspection facility, are we supposed to wait around 18 months to negotiate with the union about the ability to change the room in which the workers are working? Some of our colleagues think so, but I do not think so. I do not believe the American people think so.

Let me give another example. You all remember Barry McCaffrey, the general who was appointed by President Clinton to be drug czar. He made note in the San Francisco Examiner about the different work rules of the different Government agencies that were protecting America's borders:

> Officials at one agency were actually forbidden to open the trunks of cars, a policy well known to drug dealers.

Look, maybe it makes sense to some people that a union work rule says people working for this agency or in this classification can not open a trunk at a border inspection, and so dope gets into the country or an illegal alien gets into the country. But if it is a nuclear weapon, does it make sense? Do we really think preserving that work rule that General McCaffrey pointed out was being gamed by drug dealers—do we really believe that is more important than keeping a nuclear weapon from getting into the United States?

That is the issue we are debating. I could go down the list and go on and on. In terms of deployment of the Border Patrol special task forces, the union work rule says you cannot deploy somebody where there is not a barber shop, a place of worship, or a dry cleaners. If we are just trying to keep dope out of the country, or keep out illegal aliens, maybe that is not so unreasonable. I do not agree with that, but maybe I am wrong.

But when you are trying to keep weapons of mass destruction that can kill thousands of our people out of the country, do we really want to go to the FLRA and spend months and months and months trying to renegotiate this? Or do we want to give the President the power to say: Lives are at stake. As long as that is the case, under the emergency powers as President I am going to send the Border Patrol where there is no dry cleaner.

That is what we are talking about. That is what this issue is about—the ability to deploy on merit, when lives are at stake, instead of seniority. We are talking about the ability of agencies to set gun policies—something today they cannot do because of union work rules—and search policies. When we are worried about drugs getting into the country or contraband of various kinds, maybe we want to say the union work rules are more important than the search policy. So you have to go to FLRA to renegotiate with the union and spend 18 months doing it. But if lives are at stake, and we are talking about a nuclear weapon getting into New York Harbor, surely people see the difference. These are the kinds of things we are talking about.

Let me try to sum up where we are and what the issue is. We are divided almost perfectly along partisan lines with the exception of one Member on each side. Is preserving this old horse-and-buggy system from the 1950s—that was designed primarily to protect workers, not to get the job done—more important than enhancing the probability that we can protect lives? I say no. Some others say yes. That is the issue.

It ends up being contentious because we cannot have it both ways. You can't serve two masters. You have to make a choice, and the choice I choose is national security.

Madam President, how much time have I used?

The PRESIDING OFFICER. The Senator has used 27 minutes.

Mr. GRAMM. Madam President, I ask for 10 minutes off the leader time.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

Mr. GRAMM. This time would not count toward our hour.

Madam President, Senator MILLER and I have spent 4 weeks listening and participating in this debate. We have looked at the House bill, a bill that the President says he would sign. We have looked at the President's proposal, a bill the President would sign. And we have looked at the bill before us, a bill the President has said he would veto. I do not know how we promote homeland security by giving the President a bill he would veto.

We have made some 25 changes in the President's proposal. Quite frankly, the

President has compromised more than I would have compromised had I been in his position. But the President wants to try to work on a bipartisan basis, and he wants this bill because lives are at stake.

We have limited, very narrowly limited, the President's power to use his emergency waiver in civil service. We have limited it by setting out parameters which he cannot violate in terms of his personnel flexibility. We have adopted some 95 percent of the Lieberman bill. We have adopted provisions of the House bill that represented bipartisan consensus. And we have talked to some 25 Members of the Senate and we have adopted some 18 measures that have been influenced by Members. The President has said this is as far as he can go.

What does that mean? Is it as far as he can go because he is mad about something? Is it as far as he can go because he is tired of the Democrats being successful, the Democrat leadership being successful in stopping him from doing what he wants? No. The President has said this is as far as he can go because he does not believe that he can effectively do the job if he gives up any more power. He doesn't believe if he gives up more power that he is getting the tools he needs to fight and win the war on terrorism. And I agree with him. I think he is right.

What are the issues we come to? The biggest issue we come down to is the issue I have already talked about at great lengths, and that is the issue of letting the President keep the powers that every President since Jimmy Carter has had. The Lieberman bill takes away power to declare a national emergency and to take extraordinary action that President Carter had, that President Reagan had, that President Bush had, and that President Clinton had. The President has said he is not going to let power that he had on September 11 be taken away in a bill that is supposed to be responding to September 11.

Interestingly enough, the President has offered a compromise where he will do things that President Clinton did not have to do when he used that power. He will have to notify Congress in advance, he will have to make public a declaration as to why he did what he did and his justification, something that President Clinton did not have to do. That is how much our President wants to get this job done. But has that been met by reasonable compromise on the other side? No.

We have a bill before us that takes that power away from the President. That is not going to happen. It is just not going to happen. We are not going to let it happen. The world may come to an end, but we are not going to take powers away from this President that four other Presidents have had when we are trying to fight and win a war on terrorism. It is just not going to happen.

The idea that it should be asked for is an idea that I would hate to have to defend. I would hate to have to go back to Mexia and stand up in front of the print shop of my dear friend Dicky Flatt and explain to people that we are going to take some of power the President has to protect us and we are going to do it in a bill that is supposed to be responding to the death of thousands of our citizens in Washington and New York.

Maybe you can make that sale in Mexia. But I cannot. I am not that good at it. I am talking about political ability. I could not make that sale, and I don't believe anybody else can make that sale in Mexia. Maybe they can make that somewhere else. I don't think they can make that sale in Young and Harris Counties, either.

But that is the first issue. What we have gotten from our colleagues on the other side of this issue is a series of proposals that all boil down to one thing: The power of the unions, and the power of doing it the same old way it has been done since the 1950s will be preserved, and the power of the President in the name of national security will be reduced.

That is the first major issue where we are at an impasse. We have language now that was written by the Public Employee Labor Union. It was offered in the House. It was rejected in the House. Yet that is being proposed once again. The answer is no. I don't know what part of that old country and western song they do not understand, What part of ''no'' don't you understand? But the answer is no.

The second issue is: When lives are on the line, should the President have the ability to hire people and have the flexibility to do it without waiting 6 months? Should he have the power if somebody comes to work drunk in a national security department to fire him without having to go through 18 months of rigmarole? I think the answer is yes. I think the answer is yes. But, obviously, the people on the other side of this issue think the answer is no.

Those are the two issues. You might say this is a great big, old, thick bill, and you sent a great big, old, thick amendment.

Let me make it clear. I sent that amendment for myself, for Senator MILLER, for Senator THOMPSON, for the President, and for some 40 Members of the Senate. That was our best effort at a real compromise where the President gave up powers he really, honestly to God, believes he needs. But he did it to try to solve this problem and to get this Department established and to get on with defending national security.

The terrorists are not waiting for this debate. I don't know what they are doing. But it scares me.

When you look at these great big, thick bills, we are really apart only on two issues. What should come first? Business as usual, or national security? And should the President have the power when lives are at stake to hire, to promote, and to operate in the most efficient manner possible this part of the Federal Government when the goal is to protect the lives and safety of our people? That, I think, is the choice.

Final point: Senator MILLER and I have worked hard with the White House for 4 weeks to provide what we believe is a compromise. It is the first real compromise that has been proposed, in my opinion. We want a vote on it. There is going to be an effort later by people on the other side of the issue to defy us that vote by amending our bill in these two critical areas so we never get an up-or-down vote on the President's program.

I am not crying foul by saying it is against the Senate rules to do that. I am not saying it is wrong to do it in terms of the way the Senate operates. I am saying I think the President deserves an up-or-down vote on his program. If you want to vote no, you have the right to vote no. But don't you think we ought to let the President have an opportunity to have his program voted on in the way he would like to see it voted on?

When that amendment is offered, we are going to use our rights under the Senate rules to hold out for a vote on our substitute. I believe in the end we will get it. I am sure some people on the other side of the aisle will stand up and say, you are delaying, you are delaying, you are doing this, you are doing that.

All we want is to vote. We have about 40 Members of the Senate who want to speak on it. They want to be heard. They will be heard. But, in the end, the President is going to be heard. In the end, the people are going to be heard. We want an up-or-down vote on the President's program.

I hope we are going to win. If we don't win, then we are going to be in a situation of trying to pass a bill the President will veto, and maybe we will have to wait until after the election and try again. That will mean that for 3 months we are not going to have the program in effect to protect national security. I think that is a risk. As a result, I want us to pass a bill.

I don't think any Member of the Senate can stand up and say they wanted to talk about this issue but Senator MILLER, Senator THOMPSON, or I have not been willing to try to work this thing out. But so far, we have seen no effort to work it out. So far it has been that we are going to take power away from the President, and if you don't like it, that is all right. Well, we don't like it, and it is not all right. It is not going to happen.

Ultimately, the debate ends here and the public has to make a decision. Is this a partisan issue? God knows that it should not be partisan. But, if you define partisan as being divided roughly along party lines, it is a partisan issue. It shouldn't be. I don't want it to be. There are many people on the other side of the aisle who don't want it to be, but it is.

In saying that, it is simply telling the truth. It is a terrible indictment of

us, a terrible indictment of the Senate, but it is telling the truth.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield to the Senator from Illinois such time as he requires.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Madam President. And I thank the chairman of the Governmental Affairs Committee, Senator LIEBERMAN.

Let me say for the record, this bill—the creation of a Department of Homeland Security—is a bill that has had two births.

It was first born in our committee under Senator LIEBERMAN's leadership before President Bush proposed its creation. We worked for the creation of this Department—believing the concept was sound—to bring together, in reorganization, agencies that are necessary to protect America.

When we had a vote in the Governmental Affairs Committee on Senator LIEBERMAN's proposal, I was happy to support it, but not a single Republican member of the committee supported it.

Not 2 weeks later, President Bush came forward and said: I now support a Department of Homeland Security. And Senator LIEBERMAN said: We will work with you. Let us put together a plan to bring it forward in a bipartisan fashion because, harkening back to an earlier statement on this floor: There is no partisanship when it comes to protecting America or its security or its freedom.

Senator LIEBERMAN, working with Senator THOMPSON, tried to bring out a bill, a bipartisan bill, to address the President's concern about a Department of Homeland Security. I think we have done a good job. I think we have brought this bill to the floor in good faith. We had a lengthy hearing, many witnesses. Amendments were considered; some adopted and some rejected. The orderly process of Congress was followed. My hat is off to Senator LIEBERMAN for his leadership.

But to think we have spent 4 straight weeks on the floor of this Senate unable to bring this bill to closure is clear evidence that there are people on this floor who do not want to see this bill passed in any form.

When the Senator from Texas comes up and says: Well, you have to understand, we are going to bring an amendment, and a few of our colleagues would like to speak on it on the floor, perhaps 40 Senators would like to speak on it on the floor—well, be prepared, that just means a filibuster by another name.

It means, frankly, there are forces at work on this floor that do not want to see this bill passed. They want to drag it out not 4 weeks or 6 weeks but 8 weeks and beyond. They have some other agenda other than giving the President a Department of Homeland Security. That is unfortunate.

I think Senator LIEBERMAN and the members of the committee have shown good faith from the start. We have come to the floor day after weary day, many times with absolutely nothing happening, except the threat of another filibuster. And here we stand. Here we stand this day without the Department of Homeland Security bill passing the Senate. I think it is unfortunate. I think it is sad.

Earlier, the Senator from Texas said: Now, some of those who spoke earlier, such as Senator DASCHLE, Senator BYRD, and Senator INOUYE, about their concern over the President's statements that raised a question as to whether the Democrat-controlled Senate was, in fact, committed to the security of America—the Senator from Texas said: Understand, he was not referring to the war on Iraq. He was only referring to this bill, the Department of Homeland Security.

Well, I am glad the Senator from Texas made the distinction. But it does not allay my fears that what we have emerging is partisanship when it comes to the security of America and the rhetoric that is coming out of the campaign forces, the campaign machine of the White House. It is no comfort to me to be told: Oh, they are just questioning your patriotism when it comes to the war on terrorism, not on the war on Iraq. I am sorry, that is unacceptable.

When September 11 occurred last year, President Bush did not even have to make the appeal to Congress. Within hours, Congress came together on a bipartisan basis. We came together and not only sang ''God Bless America,'' we also came together, within a few days, to give this President the authority and resources he needed to wage the war on terrorism.

There was never any question that this Nation would stand together—Democrats, Republicans, and Independents—and we did, as did Capitol Hill. We have stood with this President.

For those who are trying to fire up the campaign rhetoric for this coming election, questioning the patriotism of anyone in the Senate who would even offer an amendment to the Department of Homeland Security bill goes too far. Whether this questioning of patriotism is over the war on terrorism or the war on Iraq, it is entirely inappropriate. It is an afront to the many veterans in this Senate on both sides. It is an afront to many of us who believe this country is something we hold dear, and who try, in every single vote we cast, to keep that in mind.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield to the Senator for a question.

Mr. REID. Did the Senator hear the statement of Senator DASCHLE, the majority leader, today?

Mr. DURBIN. Yes, I did.

Mr. REID. Did the Senator hear the statement of the Presidential pollster, and also that of Karl Rove? And did the Senator hear, as I did, the direct quotes that they wanted a strategy for the campaigns that dealt with the war? Did the Senator hear that?

Mr. DURBIN. Yes, I did.

Mr. REID. That didn't seem to say anything about homeland security, did it?

Mr. DURBIN. Not a bit. It suggested to me, I say to the Senator from Nevada, coming back to this bill, when we go to the merits of this debate, let's be very honest about what this concerns.

This is a question about moving some 150,000 or 170,000 employees of the Federal Government under a new roof called the Department of Homeland Security. I support it. I supported it when Senator LIEBERMAN offered it. I supported it when the President suggested it. I still support it.

But the question before us today is, for 40,000 or 50,000 of these employees, when they come under that new roof, will they bring with them collective bargaining rights that they have had, have earned, have worked for, perhaps, all of their adult lives?

There are those who argue—and you have heard it from the Senator from Texas—once they come into this new Department, we can't afford to run the risk that someone who belongs to a labor union can really rise to the challenge of defending America.

Pardon me, Madam President. Do I recall correctly those profiles in courage of September 11, 2001, of which so many of us are so proud? Did you stop and think for a moment that those New York firefighters, going up those stairs in those burning buildings to rescue people did not know—complete strangers—doing their duty to their country, meeting the duty of their profession—did we stop and reflect, for a moment, that they were carrying, perhaps in their wallet, next to the picture of their family, a union card? Did anyone question their patriotism, their loyalty to our country, their devotion to so many people?

Oh, and yet today we hear speech after speech: We just can't run the risk of letting people who are members of labor unions in this situation, public employees——

Mr. GRAMM. Will the Senator yield? If the Senator is going to quote me, he ought to do it accurately.

Mr. DURBIN. Madam President, I ask that order be restored in the Senate.

The PRESIDING OFFICER. The Senator from Illinois has the floor.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I yield to the Senator from Nevada for a question.

Mr. REID. The Senator would agree, would he not, that the debate over this labor issue is one that we should have, and it has nothing to do with patriotism? I see on the floor one of the sponsors of the amendment, the Senator from Georgia, who is a distinguished American. He has written a book about the Marine Corps. No one can question his patriotism, his qualifications.

Wouldn't you agree a debate on labor-management relations is something we should have, and it has nothing to do with patriotism?

I have listened to the Senator from Georgia and how strongly he feels about Federal employees, and how we have to change, in his opinion, the way employees are treated. But that is an issue, would the Senator agree, that has nothing to do with patriotism?

Mr. DURBIN. I agree completely with the Senator from Nevada. For the Vice President, the President, or their campaign advisers to suggest that if we disagree on a labor-management issue in this new Department, we really are not committed to the freedom and security of America goes way too far. And I am afraid that is the point that was raised on the floor today and needs to be revisited.

I will yield to the Senator from Texas, if he has a question.

Mr. GRAMM. Yes. The only point I was going to make is, never in my remarks did I say anything about people being a member of a union. And if I am going to be quoted—and I like to be quoted; and I think it improves the Senator's speech to quote me—I would like him to do it accurately.

I never said anything about a member of a union. I simply said that when you have work rules that prevent you from deploying more patrol agents where there is no laundry, or where you are not able to change an inspection room without renegotiating a union contract, and lives are at stake, there needs to be some give. That is all I said. I did not say anything about joining a union or never mentioned a union in terms of the right of people to belong to it or their union membership or lack thereof having any relevance to do with this whatsoever.

Mr. DURBIN. I thank the Senator from Texas, but that is a distinction without a difference. To say, on one hand, I am not against labor unions, I am just against collective bargaining rights, is to get to the heart of the issue.

Let me give you an illustration that makes my point.

After September 11, 2001, we discovered that most of the terrorists responsible for the World Trade Center were coming over the northern border of the United States from Canada. We said that we were going to beef up efforts at the border to check people coming in so that others did not come in to threaten the United States. This administration said it. The Border Patrol said it. And do you know what. We did not do it. Two Border Patrol agents came forward and testified before a committee of Congress that it was all talk, we weren't putting the resources and the manpower in the right place to protect America after September 11, 2001.

These were Federal employees, members of labor unions with collective bargaining rights. Do you know what happened to them, I ask the Senator from Texas? Do you have any idea? They were fired from their jobs for testifying before Congress, terminated from their employment. Of course, there was a hearing because they had collective bargaining rights, and these whistleblowers were restored to their positions.

If we are going to talk about what is at stake, let me tell you this.

Mr. GRAMM. Will the Senator yield on that?

Mr. DURBIN. I will after I have made my point. The point I am making at this juncture is that collective bargaining rights make a difference. It is not a question about how bright the light is over the coffee pot for the employees taking their break and what color uniforms they are wearing. That is, I am afraid, a ridiculous extreme when we look at collective bargaining rights. It is the right of an individual employee at our Border Patrol to be able to stand before a committee of Congress and say: I don't care what my boss is telling you; I don't care what they are saying in their press release; they are not doing the job to protect America.

For these Border Patrol agents to stand up and tell us the truth under oath before a committee of Congress should not be grounds for termination. But they were. Thank goodness they had collective bargaining rights and their jobs were restored. I don't believe being a member of a labor union automatically qualifies you to be ready to fight for our Nation's security and be involved in intelligence gathering, but it certainly does not disqualify you. There are good, loyal, patriotic Americans who have collective bargaining rights.

Make no mistake, the bill reported to the Senate gives this President the authority, which he needs; if any individual employee, because of their new job assignments or because of the sensitivity of their assignments, needs to be removed from a bargaining unit, there is a way to do it, a legitimate, honest way. That is the point we are debating. To suggest that that has something to do with love of America and patriotism—I don't see it.

What we have before us and what concerns the Senator from Texas is, we have a bipartisan group that has come together and said: We have come up with a compromise. Let's deal with it.

As Senator Bumpers of Arkansas used to say: The Senator from Texas hates this bipartisan compromise like the devil hates holy water. He is afraid if we bring this to the floor and get a vote supporting the bipartisan position, all of his arguments and the President's arguments are weakened and disappear. That is what concerns him about this process and why he is promising 40 Senators who will speak interminably and drag this bill on for another 4 weeks.

If the President needs a Department of Homeland Security—and I believe he does—let's have this up-or-down vote. Let's decide where the will of the Senate is going. Don't be afraid of the will of Senate. Don't be afraid of the will of the people. Don't be afraid to say that collective bargaining does not disqualify people from defending America and from serving their Nation proudly.

Many of the people in these agencies are veterans who have served this Nation with pride and have risked their lives for the flag. To say as they come to a new Department that they somehow have to give up their rights to collective bargaining is unfair.

It has been said that it takes up to a year to fire an employee under civil service. That is a total myth. During their first year, employees can be terminated without notice, and 36 percent of new employees were removed during their probationary period in the year 2001. Any employee can be terminated with 30 days' notice.

Incidentally, in fiscal year 2000, it was said that out of 1.8 million Federal employees, only 6 were fired because they were found incapable of doing their job; and in 2001, only 3 out of 1.8 million were fired. These statistics grossly underestimate the number of Federal employees fired each year. The Republican claim that only three people were fired in 2001 refers to the three employees who were immediately removed for national security reasons only. In fiscal year 2001, 8,920 Federal employees were terminated and removed for disciplinary reasons.

The fact is, under civil service, employees can be removed. The fact is, under the bill that came out of the Governmental Affairs Committee, there is a procedure in national security for the President to make that determination. That is an issue.

I respect the Senator from Texas and the Senator from Georgia for what they are bringing as a substitute measure. Let me tell you this: They are leaving out some very critical elements of the bill brought out of the Governmental Affairs Committee.

After September 11 of last year, I focused on one particular issue that troubled me. I learned in the months leading up to it of the gross inadequacy of the information technology of the agencies of our Government relating to law enforcement and intelligence, the FBI being the classic example of an agency dealing with the most primitive technology.

I have worked for over a year to try to bring modernization of computers and information technology into intelligence gathering and law enforcement. I have spoken to everyone—Attorney General Ashcroft, FBI Director Mueller, the Vice President, as well as the President of the United States—about what I consider to be one of the glaring examples of our inability to deal with terrorism.

As a result, I prepared and offered an amendment which was on the Governmental Affairs bill that came to the floor and is still pending today. This amendment establishes that at the

Federal Government level, we will start blending together the computer architecture of different agencies of the Federal Government so that they are not only modern but they are interoperable, so they can communicate with one another, pass information along. If the FBI has a most wanted list or danger list, they can pass that along to the Federal Aviation Administration and the Immigration and Naturalization Service.

I am sorry to report that does not exist today. I worked long and hard on this amendment. It had the support of all of my colleagues on the Governmental Affairs Committee. They believe, as I do, that this is a critical element in the defense of America.

But the substitute amendment being offered by the Senator from Texas doesn't include this provision. They have decided it is unnecessary, or at least they have not addressed it. I sincerely hope they will at least reconsider that if we do bring this forward and this substitute becomes the bill we are going to amend, they could introduce a motion of cloture, for example, raise germaneness questions.

If we don't include it, some element of information technology in a Department of Homeland Security, we are fooling ourselves. We are saying we are creating a new Department that has a brandnew nameplate on the door with 170,000 employees but with computers that are inadequate to the job.

When I spoke to Gov. Tom Ridge about this amendment, he said: I support this. It is a force multiplier. That means it takes the existing resources of our Government and makes them that much more effective in fighting terrorism.

The substitute offered by the Senator from Texas does not include that. That is sad.

Frankly, it may be a political victory for his substitute to prevail, but it will not be a victory in the war against terrorism. We should put the weapons in place, the arsenal we need to protect America on a bipartisan basis, looking not only to employees of the Department but also the resources and technology available in the Department.

It has been made clear on this floor that when it comes to the security of the Nation, there should not be any partisanship whatsoever. We can stand here as Americans and Members of the Senate and debate the provisions of this bill and others, and no one should call into question our patriotism.

There is no reason we should take the roles and lives of 40,000 or 50,000 new employees of this Department and say it is basically going to be impossible for them to serve their Nation and to have their rights as employees respected. We can do both. They have already proven we can do both. To try to eliminate their rights to collective bargaining or to reduce them dramatically to a point where they are meaningless is unfair to the men and women who have served us so well in so many different ways, who are proud to have these collective bargaining rights and be members of labor unions.

Before we adopt this substitute, consider the elements it does not include. One of the elements is the fact that it does not deal with the information technology that is essential to fighting a war on terrorism in the 21st century. Their bill is silent on what I consider to be one of the most important elements of this war and one of the most important weapons we can use to bring it to a successful conclusion.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, I yield myself a moment or two or as much time as I require. I will yield in a moment so Senator MILLER may speak.

While he was on the floor, I wanted to thank Senator DURBIN for the substantial contribution he made to the committee's proposal for a Department of Homeland Security overall and the specific, unique, very valuable proposal he made regarding information technology.

This is really a key to all sorts of activities in our world today, including homeland security; the ability to interconnect levels of our government, different agencies that will be part of the new Department and Federal, State, county, and local governments. I appreciate it.

Senator GRAMM and I have had discussions, and at some point, as the most controversial parts of this discussion work their way to either an agreement or the Senate works its will, I hope we can sit and talk about sections of our committee bill, such as Senator DURBIN's, which are not partisan; they are good Government, with a capital G, good. We ought to be able to reach a bipartisan agreement to include that in whatever Department of Homeland Security we create.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. GRAMM. Madam President, will the Senator yield for 2 minutes? I do not want the Senator to lose the floor.

Mr. MILLER. I yield.

Mr. GRAMM. Madam President, I would like to make a couple responses. First, let me give you the actual figures of people being fired from the Federal Government. There are 1.8 million people on the Federal payroll. In the year 2001, three of them were fired outright. The previous administration, the Clinton administration, found that 64,340 Federal workers were poor performers.

Mr. DURBIN. Will the Senator yield for a question?

Mr. GRAMM. Let me finish my point. Only 434 of them went through the removal process, and that process takes as long as 18 months, and many of them remained on the payroll. That is the first point.

The second point, the Senator talks about INS. In 1990, at the Honolulu Airport, the Immigration and Naturalization Service was worried about a surge in flights and the long lines, and they wanted to hire more INS agents to enforce the law.

The American Federation of Government Employees filed a complaint with the National Labor Relations Board saying, under their contract, INS could not hire more agents without renegotiating its union contract. Guess what. The National Labor Relations Board ruled in favor of the union, prohibiting the people from being hired.

The Senator talks about a vote. I ask unanimous consent that on Friday morning at 10 o'clock, we have an up-or-down vote on the substitute I have offered with Senator MILLER. That way, there will be no doubt about the fact we are ready to bring it to a vote at that point. We would like an up-or-down vote on our amendment at 10 o'clock.

Mr. LIEBERMAN. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. GRAMM. Madam President, the point I want to make—and I am sorry I had to put our colleague in a position like that to object.

Mr. DURBIN. Will the Senator yield?

Mr. GRAMM. I will yield, but the point I want to make is we want an up-or-down vote on our amendment. This is the President's substitute, and the President's supporters should have a chance to speak on it. We have gone on for 4 weeks on this bill, not because of what supporters of the President have done, but because we have had amendments offered, probably 90 percent of that time taken up by people who do not support the President's position. That is where we are.

I will be happy to yield to the Senator.

Mr. LIEBERMAN. Will the Senator yield for a question?

Mr. GRAMM. Yes.

Mr. LIEBERMAN. Madam President, of course, we want to have a vote on the substitute amendment. What is the basis for denying Senators the normal privilege, which the Senator from Texas has exercised and utilized on so many occasions, to offer a second-degree amendment to his substitute so the Senate can work its will, dispose of it, and then go to an up-or-down vote?

Mr. GRAMM. The question is a totally fair question. As I said earlier, people have a right to offer amendments, but the point is, this is the President's best effort to reach a compromise with the Senator and with those who oppose his proposal, and he would like to have an up-or-down vote on his compromise as we have written it, not as it would be rewritten by others. The Senator has every right to offer an amendment. We have every right to resist it and not let the Senator have a vote on it. But we would like at some point to have people vote yes or no on the President's proposal. That is all.

Mr. LIEBERMAN. Madam President, in responding, I want the record to

show—and I yield myself a moment more—we are fully prepared to have an up-or-down vote on Senator GRAMM's substitute, but after we have the right to offer an amendment. That is the way the Senate works. That is why I objected.

Mr. GRAMM. There is the rub. I yield to the Senator.

Mr. DURBIN. Madam President, I thank the Senator from Texas. Is the Senator from Texas aware of the fact he is mistaken again in saying only 3 Federal employees out of 1.8 million were terminated, when the official figures show in fiscal year 2001, 8,920 Federal employees were terminated, and in fiscal year 2000, 8,400 Federal employees were fired for reasons related to poor performance? Is the Senator aware of those numbers?

Mr. GRAMM. Let me respond—

Mr. DURBIN. Let me complete my question and then I will sit down. Is he aware, as he continues to use the INS example at the Honolulu Airport, that after the ruling he referred to, they did work out differences with the workers and established the 9 p.m. to 5 a.m. graveyard shift once they worked out negotiations?

Mr. GRAMM. Does the Senator know how long it took to work it out?

Mr. DURBIN. I am sure the time it took for the lawsuit. It took a long time.

Mr. GRAMM. While they were working it out, what if somebody brought a chemical weapon in to Hawaii where my kinfolk live. What if they had been killed?

I am constantly capable of misstating facts and figures. I always tell my children: Do not get into a debate about facts, look them up. All I am saying is, the facts I have—and I do have as much faith in mine as anybody else's—say the Clinton administration found 64,340 Federal workers to be poor performers; 434 went through the process to be terminated, and that can take as long as 18 months.

Maybe it does not matter unless somebody's life is at stake. That is all I am saying. If somebody's life is at stake, you do not do business as usual. You can defend business as usual, but when it puts somebody's life at stake, when a man, woman, or child has their life at stake, business as usual is not usual. I think there is some urgency here. That is all I am saying. I am not trying to indict any of these work rules or say they are crazy. I would hate to have to run my business under these work rules. I would go broke. All I am saying is, when people's lives are at stake, there is some urgency. I yield back to the Senator from Georgia.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Georgia.

Mr. MILLER. Madam President, how much time is remaining for our side of the argument?

The PRESIDING OFFICER. The Senator has 23½ minutes.

Mr. MILLER. I thank the Chair.

Madam President, I rise to speak not on the subject of the war against Iraq—that is for another day—but I rise to speak on the homeland security substitute that Senators GRAMM, THOMPSON, and I, and about 40 other Senators, have sponsored that the President says he supports and will sign.

We do not teach our children the lessons of Aesop's Fables as much anymore. The wisdom of Sesame Street and the Cat in the Hat have taken their place. There is one fable I learned at my mother's knee, sitting around an open fireplace, that I believe is pertinent to this debate on homeland security that has so divided this Senate along party lines.

It goes like this: A certain man had several sons who were always quarreling with one another, and try as he might, he could not get them to live together in harmony. So he was determined to convince them of their folly. Bidding them fetch a bundle of sticks, he invited each in turn to break it across his knee. All tried and all failed.

Then he undid the bundle and handed them the sticks one at a time, which they had no difficulty at all in breaking.

There, my boys, said he. United you will be more than a match for your enemies, but if you quarrel and separate, your weakness will put you at the mercy of all those who attack you.

That is a lesson for today. That is a lesson for the ages. That is a lesson for this Senate and the House, for Democrats and Republicans, for the executive and legislative branches of Government. I am one of the most junior Members of this body. I do not have the experience and I have not seen the number of bills most other Members have, so my historical perspective, admittedly, is limited. But in the short time I have been here, I have never seen such a clear choice as there is on this issue.

For me, there are no shades of gray. It is clear cut. Why, in the name of homeland security, do we want to take the power away from the President that he possessed on 9/11? It is power Jimmy Carter had, power Ronald Reagan had, power the first President Bush had, and power Bill Clinton had. Do we really want to face the voters with that position, that vote written large on our foreheads like a scarlet letter, and even larger on a 36-inch television ad two weeks before the election?

We must give the President the flexibility to respond to terrorism on a moment's notice. He has to be able to shift resources, including personnel, at the blink of an eye. When the Civil Service was created well over a century ago, it had a worthy goal, to create a professional workforce free of cronyism. Back then, it was valid. But all too often in Government, we pass laws to fix the problems of the moment and then we keep those laws on the books for years without ever following up to see if they are still needed.

The truth of the matter is a solution for the 19th century is posing a problem for the 21st century, especially when this country is threatened in such a different and sinister way.

I do not want to belabor the point about how long it takes to hire a person or how long it takes to fire a person. I just know it is too long. I also know that a Federal worker can be caught knee-walking drunk and he cannot be fired for 30 days, and then he has endless appeals. Productivity should be the name of the game, and we lose productivity when we have such a law. That is no way to wage a war.

Do we not realize there is another disaster looming just around the corner, where American lives are going to be lost? And another one after that? And that those attacks against Americans and against our country will occur for the rest of our lives? Would anyone dare suggest that is not going to happen? Would anyone suggest 9/11 was some kind of isolated phenomenon never to happen on American soil again? Surely no one, even the most naive optimist, believes that. Surely no one in this body believes that.

Over 60,000 terrorists worldwide have already been identified. Terrorist cells in some unlikely places, such as Lackawanna, NY, have been discovered. They are all around us, they are everywhere, and when these other attacks come, as certainly they will, do you not think Americans throughout this great land are going to look back at what went on at this time in the Senate? And when they do, do you not think some hard questions and some terrible second-guessing will take place?

I can hear them now. The talk show lines will be clogged, and the blame will be heaped on this body. Why was the Senate so fixated on protecting jobs instead of protecting lives?

The Senate's refusal to grant this President and future Presidents the same power four previous Presidents have had will haunt those who do so, like Marley's ghost haunted Ebenezer Scrooge. They will ask: Why did they put workers' rights above Americans' lives? Why did that 2002 Senate, on the 1-year anniversary of 9/11, with malice and forethought, deliberately weaken the powers of the President in time of war? And then, why did this Senate, in all its vainglory, rear back and deliver the ultimate slap in the face of the President by not even giving him the decency to have an up-or-down vote on his own proposal? This is unworthy of this great body. It is demeaning, ugly, and over the top.

What were they thinking of, they will ask? What could have possessed them? Do not ask then for whom the bell tolls. It will toll for us.

Few leaders have understood the lessons of history as well as Winston Churchill because he was not only a soldier and a politician, but he was also a Nobel Prize-winning historian. Perhaps then at this time we should remember the question Churchill framed to the world when he made that famous

Iron Curtain speech at Fulton, MO, at Westminster College in 1946. He first reminded the audience:

War and tyranny remain the great enemies of mankind.

Then he asked this question:

Do we not understand what war means to the ordinary person? Can you not grasp its horror?

Some of the remarks earlier this morning on this floor reminded me of something else about that speech and its aftermath. Churchill, being so blunt, did not go over very well. The American media and others did not want to hear that kind of talk. They called Winston Churchill a warmonger, and even the usually gutsy Harry Truman denied knowing in advance what was in the speech and even suggested that Churchill should not give it.

The old soldier went on and said some other very sensible and thought-provoking things in that speech, like war used to be squalid and glorious, but now war is only squalid.

I want to repeat that line that is at the heart of what I want to say today: Do we not understand what war means to the ordinary person? Can we not grasp its horror? Has scoring points with some labor boss become more important than the safety of our citizens? Can you not grasp its horror?

I wonder if you would feel the same way if the Golden Gate Bridge was brought down and 95 cars plunged into the San Francisco Bay. Could we then not grasp its horror? Would we then in the name of homeland security still want to take powers away from the President?

Or would you feel the same way if that beautiful little city of New Roads, LA, on the False River, with the Spanish moss dangling on those live oaks, were to go up in a mushroom cloud? Could you then not grasp its horror?

We rev up our emotions so easily to fight superhighways from leveling ethnic neighborhoods. So it would seem to me we should be able to get up the same kind of rage when terrorists want to level entire cities such as Baltimore or Atlanta or the manicured mansions of Newport, RI. If those beautiful cities were the target of a terrorist attack, could you then not grasp its horror? Or the Space Needle in Seattle, filled with tourists, crashing to the ground. Or a smallpox epidemic, in days, wiping out completely the Twin Cities of Minnesota or spreading across the forest plains of South Dakota. From the great Atlantic Ocean to the wide Pacific shore, from the Blue Ridge of Tennessee to Beacon Hill in Massachusetts, I guarantee then the country would grasp that war is horror. And as sure as night follows the day, when catastrophes occur, the Senate, us, we will be held accountable if we fail to give the President the tools to do his job.

Why are people back home always ahead of the politicians? Because most politicians, most at our level, do not get out among them anymore. We think we do. And some of us do. A town hall meeting here, a senior center there, a focus group or two, but we don't really. We do not talk to real people anymore. We are too busy in that room dialing up dollars. The only horror we can grasp from that experience is some fat cat telling us that he is already maxed out.

Why are we even in this debate? How will it be recorded in years to come when the historians write their accounts of the days of a Senate in September of 2002? How will our actions be judged by the people who go to the polls this year on November 5? Frankly, I think it will be one of our sorriest chapters, certainly the worst time in my short time here, a chapter where special interests so brazenly triumphed national interests.

Herodotus, who lived in Athens in the 4th century B.C., is usually called the father of history. He wrote about the Persian wars, and about the Battle of Marathon, which later historians called the seminal event in the history of freedom. Herodotus wrote that the Persians lost that battle, even though their army was bigger and better equipped, because the Persians committed the sin of hubris; hubris, best defined as outrageous arrogance. If you study the lessons of history, especially the lessons of the history of freedom, you will find that hubris would time and time again bring down many other powerful civilizations.

Hubris, outrageous arrogance, is so prevalent in this debate. The hubris of some labor bosses and their purchased partridges in a pear tree. Outrageous arrogance. What else can you call it when the interests of the few are put above the welfare of the whole country?

For the rest of our lives, we will have to live with what we do on this issue. Will we choose to protect the special interests or will we choose to protect the lives of Americans? Will we hog-tie the hands of our President or give him the same unfettered flexibility other Presidents have had before him? Do not let this be one of those votes you will look back on and ask yourselves for the rest of your lives, what was I thinking? For as we are reminded in the ''Rubaiyat'' of Omar Khayyam: The moving finger writes, and having writ, moves on. All your piety nor wit shall lure it back to cancel half a line, nor all your tears wash out a word of it.

I ask one last time, do we not understand what war means to the ordinary person? Can we not grasp its horror?

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I yield myself up to 5 minutes from my time.

I will answer the question the Senator from Georgia has raised. Of course we understand what war means to our country and average citizens. That is why our committee has labored so long and so hard to bring forth this bill creating a Department of Homeland Security, consulting with Members on both sides, working with the White House, to have what is, for the most part, a bipartisan piece of legislation.

Senators have spoken this morning about the Senate being divided on this bill. The fact is, the Senate is not divided on this bill. The Gramm-Miller substitute, by Senator GRAMM's own reckoning, is 95 percent the same as our Senate Governmental Affairs Committee bill. And it ought to be. We have a common ground desire to go ahead and create a Department of Homeland Security.

We have a few areas we disagree on, the most significant of which, the most controversial of which, is the one that the Senator from Georgia has focused on. But I cannot let stand the question that somehow the committee bill, supported by nine Democrats and three Republicans—Senator STEVENS, Senator VOINOVICH, Senator COLLINS—somehow puts the protection of Federal workers ahead of national security. We have a different way we have tried to achieve fairness for Federal workers. We can debate that. There is a compromise achieved by Senator BEN NELSON, Senator CHAFEE, Senator BREAUX, that we will have a chance to vote on, the amendment we want to put on to this bill. However, there has been so much misstatement and mythology that has no relationship to reality.

Let me state it clearly, national security always must trump and prevail over any other aspect of law in the cases that are described. Let me be very specific why I say that. I will quote the law, United States Code, Title 5, collective bargaining law, section 7106(a)(2)(A) which says, first:

Nothing in a collective-bargaining law shall effect the authority of any management official of any agency in accordance with applicable laws to assign and direct employees in the agency.

Second, section 7106(a)(2)(B) says:

Collective bargaining shall not effect managers' authority to assign work and determine the personnel by which agency operations shall be conducted.

This is the directly relevant statute section of law which will continue to prevail and expresses the clear desire—I presume the desire of every Member of the Senate—to give maximum authority, latitude, to managers at a time of national emergency; section 7106(a)(2)(D) of the United States Code, Title 5, provides that collective bargaining shall not affect the authority of managers ''to take whatever actions may be necessary to carry out the agency mission during emergencies.''

In an emergency situation, the agency has statutory authority to act immediately. It does not have to take any time to collectively bargain. The agency actually has authority to act, even if a collective bargaining agreement would ordinarily require some other course of action. All the agency head has to do is to invoke a national emergency.

Therefore, the claims we have heard in the Senate today about how union contracts tie the hands of managers with ''silly union work rules'' and about how managers cannot order employees to do what is necessary to protect the security of the American people in an emergency are simply not true.

In a Federal agency, there is no such thing as a union work rule that impairs a managers' authority to assign work, to direct employees, or to take whatever action that manager deems necessary in an emergency. That is the law. That is not my opinion; that is United States Code Title 5. When lives are at stake in the kinds of circumstances the Senator from Georgia has described, a Federal manager can impose any changes in assignments immediately, without dealing with unions at all. And the unions get to bargain over ways, if they choose to, to affect the impact of those decisions long after the fact.

So we have some disagreements about the specific wording of civil service protections, management flexibility, collective bargaining rights. But, please, make no mistake about it, in a case of national emergency, the law of the United States, unchanged by the committee's proposal, makes clear that national security prevails over any other section of the law and over any provision of a collective bargaining agreement.

I yield up to 10 minutes to the Senator from Maryland.

Mr. GRAMM. Madam President, are we going back and forth? We do not have to, but we normally have.

Mr. LIEBERMAN. In this case, because I have used very little time, I want to hold it to allow the Senators from Maryland both to have the chance to speak.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Parliamentary inquiry: How much time remains on either side?

The PRESIDING OFFICER. The Senator from Connecticut has 32 minutes. The Senator from Texas has 7 minutes.

Mr. SARBANES. So there are 7 minutes on the other side and 32 minutes left with the Senator from Connecticut?

The PRESIDING OFFICER. The Senator is correct.

Mr. LIEBERMAN. So I yield up to 10 minutes—let's say I yield up to 20 minutes for both Senators from Maryland as they wish to use that time.

Ms. MIKULSKI. I thank the Senator from Connecticut. I know others are anxious to speak.

Madam President, I rise in opposition to the Gramm-Miller amendment. I rise to support the efforts of Senator JOE LIEBERMAN to create a framework for homeland security. I had hoped, when we were working on this legislation, we were not going to be Democrats or Republicans, we were going to be the red, white, and blue party. And I really deeply regret that this argument has been so deeply politicized.

I am here to stand up to protect America and vote for a Department of Homeland Security. But I also have to stand up for those who are protecting the United States of America, our brave, our gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are Customs workers, in the Coast Guard, the FBI, or the G men at the Department of Treasury, trying to do their job. I resent that my standing up for them, to have their constitutional right to organize, have freedom of assembly, would be called arrogant and hubris.

I listened to an argument that said: Battle? You don't know about it.

You are exactly right. I have never gone into battle. I do not bear the permanent wounds of war like some of our dear colleagues, names such as Dole and INOUYE. But I do know this. When we are going to send people into battle, I know we are going to think long and hard about it, because I know what it means. When I stand up for America, I also want to stand up, not for a Department, but for what America believes in.

Why was it OK to have a union in Poland that brought down the whole Communist empire and not to have a union here?

When our firefighters ran up into that burning building at the World Trade Center nobody asked if they were in the union. They didn't look at their clock and wonder if they were working to the rule.

When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They weren't there because they were union members—Oops. I am wrong. They were there because they were union members. They belonged to a union. They belonged to a union called the United States of America. That is the union that they belong to, and that is the union they put first.

Why are we abusing them as if they are the enemy? I hope we will start to be as hard on terrorists as we are on these union members. It has been over 1 year—where is Bin Laden? We haven't found Bin Laden, but we are going to nitpick over whether or not you have a union.

We had an anthrax killer who attacked the Senate and used the post office as a weapon. I have Marylanders dead and I have Marylanders permanently ill because of the anthrax killer. Let's make sure that our workers can go out and do the manhunt they need to do, or to do the money hunt for those who fund them. Let's not worry about whether they belong to a union or they don't. They don't hide behind the union not to do their job. But I tell you, there are those hiding behind a right-wing agenda to get rid of unions in this country or to make unions the problem.

The words ''labor boss,'' what do they mean? It is OK to be a CEO and have more perks than a potentate—that is OK, we can have the imperial CEO. But when people organize, they are called labor bosses, as though somehow or another it is the goon squad? I really resent that. I resent that for my customs workers. I resent it for the postal workers after what happened at Brentwood. The postal workers didn't sit down and go on strike because we failed to protect them. They showed up every day, and because they showed up every day and did their job, as I say, two are dead and many are sick. And we are sick at heart because it happened to them.

So I am kind of tired of this. I am tired of the politicization of the process. I am tired of the cynical manipulation of this process. I feel as though I am being set up. If we stand up for the workers, we are somehow or another slowing down the debate on homeland security.

This national leader, JOE LIEBERMAN, the Senator from Connecticut, has been working on homeland security and an agency to do it long before the White House has. Just like he was calling for a national commission to look at what went wrong on September 11 long before the White House. We have been ahead of the White House, but now we are going to work with the White House.

I think we have to defeat the Gramm-Miller amendment—put that aside and no hard feelings. I think we have to then move on to the Lieberman bill, pass it expeditiously to show the world we can organize and mobilize to protect America, and then let's get on to the other debate related to Iraq. And then let's also get back on another debate, such as what is happened to the economy.

The stock market has plummeted. It is about as bad as it was when Gerald Ford was President, in 1974. We do not want to go there again and then need a Democrat to bail us out—or maybe we will need a Democrat to bail us out, but I don't want to go there. I want to stand up for this country, but I want to stand up for the people who built this country, and it is the trade union movement. If we don't start protecting the protectors, to make sure they have the right equipment, the right training, and also have the right legislative framework where they can have their constitutional rights, then we have other issues.

I want to go back to the bill JOE LIEBERMAN is presenting. I think it is an excellent framework. I will go back to being part of the red, white, and blue party. Let's put the politics of hard feelings behind us, let's get Iraq together, and let's show America we can govern, and let's show the bullies of the world we are going to take them on.

God bless the Federal employees who stand sentry every day to protect America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I rise, first of all, to commend the very able chairman of the committee, the distinguished Senator from Connecticut, for the very fine work he has done on this legislation, particularly on this issue of Federal employees, and the care and sensitivity with which he has struck the balance.

Obviously, on the one hand we have national security concerns. But as the Senator indicated in the quotes he took right from the legislation, the actual words of the legislation, the flexibility that is necessary to deal with national security questions or emergency situations is contained in this legislation. Those would be stripped out by the amendment. The Gramm-Miller proposal would then move the balance. Really, it would eliminate the balance. It would provide no significant or meaningful protections for the Federal employees.

In one sense it raises the question: What is the nature of the society we are trying to protect? What is the nature of the society we are trying to protect? How far are we prepared to go in denying the essential freedoms and essential protections in the name of national security? Not in the reality of national security because the Senator from Connecticut has protected that reality.

Their proposal would give unfettered authority to the Executive in dealing with their employees—the very employees we have to draw upon to protect the Nation and to respond to the challenges we face.

I want to assert in unequivocal terms that, in my judgment, our Federal employees are loyal and committed workers who are dedicated to providing a high level of service. Legislation creating the new Department of Homeland Security should protect the rights of those workers to engage in collective bargaining and to protect their rights under the current civil service system unless critical questions of national security or emergency are presented. And those questions have been dealt with carefully, skillfully, and thoughtfully by the able Senator from Connecticut. I commend him for those efforts.

I don't understand why some are engaged in beating up on the Federal employees. Why is this happening? Have the terrorist strikes driven some to this point? Do they not recall the Federal office building in Oklahoma that was blown up by a terrorist, albeit a domestic terrorist? Do they not recall that, and those dedicated lives that were lost? People all across the country who were working in similar office buildings went back in the next morning to do their job on behalf of the country to serve the public interest—all across America—despite the fact that some of their colleagues had just suffered this grievous blow.

Why do we have this assault taking place? The Federal managers have much of this flexibility. The legislation has the emergency flexibility in it. The civil service law was originally put in place to protect against politicizing the public service. It has been adjusted and amended over the years.

These arguments that it impedes productivity have been addressed again and again by the chairman's committee. Adjustments have been made in the light of changing circumstances. But no one has ever come before the committee and said we ought to take away all of those protections which have given us a public service with some integrity to it, and which is not subject to political whim.

How are you going to call upon people to serve above and beyond the basic requirements of their job description if you do not treat them with some dignity and respect?

I don't know. Some around here may find that they draw the best out of those who work for them by sort of beating up on them; that if you are sort of whipping them all the time and driving them without any protections, completely at your whim, that enables you to bring out of them the best response. That has never been my experience. I don't know of any labor-management text or treatises by noted experts in the field who say that is the best way to get a stellar performance out of your workers. I haven't seen that treatise yet. In fact, the ones I have looked at say that is exactly the wrong thing to do if you want to draw out a quality and stellar performance from your workers.

There are a lot of very dedicated employees across the country. I think employee rights and the civil service protections which we have are essential to the effective workings of our Government.

Some come and try to portray this as some special interest. The public interest is served by having these arrangements because those arrangements enable us to get better people into the public service, and to draw on them and their full capabilities.

I rise in very strong opposition to the provisions in this amendment that have been offered by Senator GRAMM and Senator MILLER which would strip away from our Federal employees these important collective bargaining rights and these important civil service protections. In my judgment, given the balance which the chairman has already struck on important national security questions, to do what this amendment does—taking away those bargaining rights and those civil service protections—will harm our national security, not help our national security. It will harm our national security.

For that reason, I very strongly oppose the provisions that are contained in this amendment that deal with our committed and dedicated Federal employees.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Madam President, I thank my colleagues from Maryland, Senators MIKULSKI and SARBANES, for their very eloquent and passionate and compassionate statements. I appreciate the way Senator SARBANES and Senator MIKULSKI talked about the impulse of the people who are working for the Federal Government.

I cited the law before which talked about the primary status of national security. But the people, the loyal patriotic Americans, does anybody really think in a case of national emergency they are going to be citing subsections of the collective bargaining agreement? They are going to do what any American did. In fact, that is what they did on September 11.

I was in a meeting of a group of Federal employees who happened to be from FEMA. They rushed from where they were to the Pentagon. A whole group of them were flown up to New York. They worked long hours. They got very little sleep for days and days. Obviously, the firefighters in New York are unionized. It is a remarkable story. I don't remember the exact number. I talked to a battalion commander of a unit of New York firefighters a couple of weeks ago. He said on September 11, when they heard about the planes hitting the World Trade Center, several hundred firefighters who were off duty just rushed to the scene to help. They weren't thinking about a collective bargaining agreement. They were thinking about America and their duty. These are public servants in the best meaning of the term.

Mr. SARBANES. Will the Senator yield?

Mr. LIEBERMAN. I would be happy to yield.

Mr. SARBANES. Given this display of dedication on the part of these public employees, why now all of a sudden are we seeking to take away from them these basic rights and protections?

If someone came in and said what a dismal performance we have, and, therefore, we ought to give the management more leeway to sort of beat on these people or something of that sort, I don't know that I would buy that argument. But at least it would be something of an argument.

Instead, you have this exemplary performance, this manifestation of real dedication. And despite that, some now are coming along and, in effect, wanting to beat on people who have behaved in the most extraordinary, dedicated, and selfless fashion.

Mr. LIEBERMAN. The Senator from Maryland is absolutely right. There is no justification for it. At some level, it is not only wrong, it is offensive. And I thank the Senator for his substantial contribution to this debate.

May I ask the Chair how much time is remaining on our side?

The PRESIDING OFFICER. The Senator has 12½ minutes.

Mr. LIEBERMAN. Madam President, I am very pleased to see in the Chamber my friend from Hawaii, Senator

AKAKA, a very significant member of our committee, who has contributed substantially, in so many ways, to our legislation that came out of committee. I yield the Senator up to 10 minutes for his statement.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. I thank the Senator from Connecticut.

Madam President. I rise to address the amendment offered by Senators GRAMM and MILLER as it relates to whistleblower protections. Contrary to press accounts, the Gramm-Miller amendment, as well as the House-passed bill and the President's initial bill, do nothing—do nothing—to protect whistleblowers. As Congress debates the creation of the new Department of Homeland Security, we must remember the role that whistleblowers play in protecting this great Nation. We commend the courage of FBI Special Agent Coleen Rowley, who blew the whistle on the serious institutional problems at the FBI which impacted the agency's ability to effectively investigate and prevent terrorism. We commend Federal Border Patrol Agents Mark Hall and Bob Lindemann, who risked their careers by alerting Congress to Border Patrol and INS policies that compromised the security of our borders.

Their actions alerted us to flaws in the current system and allow us to fix such problems in order to have a more secure Nation. Because whistleblowers play such an important role in protecting our country, we must do our part to protect them from retaliation for disclosing Government waste, fraud, and abuse. The Lieberman substitute is the only amendment before us that provides real whistleblower protection.

During the Committee on Governmental Affairs hearings on the creation of the proposed Homeland Security Department, I asked Governor Tom Ridge about whistleblower protections for Federal employees in the Department of Homeland Security. He said that all employees in the new Department would have whistleblower protections because the bill would require the new personnel system to be grounded in the public employment principles of merit and fitness.

However, requiring that a human resources system be grounded in the public employment principles does not equate to whistleblower protection. Congress has worked hard, and continues to work, to provide real whistleblower protection to Federal employees. Claiming that whistleblower protection will be provided based on such principles does nothing to assure Federal employees of their rights and protections or assure Congress that their bipartisan efforts on behalf of whistleblowers would not be frustrated.

Adding to my concern over the lack of protections afforded to employees in the new Department, H.R. 5005 and the amendment offered by Senators GRAMM and MILLER fail to provide the same level of whistleblower protection that Federal employees have in most Federal agencies. Although the House bill and the Gramm-Miller amendment allegedly maintain whistleblower protections and other merit system principles for employees of the new Department, both allow the Secretary to waive due process procedures and the remedies an employee needs to assert those rights.

The Gramm-Miller amendment bars the Secretary from waiving the applicability of several chapters of title 5 covering a variety of civil service issues. The list of nonwaivable chapters conspicuously fails to include protections against unwarranted disciplinary actions and performance appraisals, access to third party investigations by the Office of Special Counsel, or independent hearings at the Merit Systems Protection Board. Those agencies provide vital third party review and transparent enforcement for whistleblower and other merit system rights.

When Federal employees allege that they have been subject to a prohibited personnel practice, including violations of the Whistleblower Protection Act, OSC has authority to receive and investigate such allegations. If the special counsel finds reasonable grounds to believe that a violation has occurred and corrective action is required, she must report the determination to the MSPB, the affected agency, and the Office of Personnel Management, OPM. If the agency fails to act to correct the prohibited personnel practice, the special counsel may petition the MSPB for corrective action.

Since these procedures are not specifically included in H.R. 5005, it is doubtful that the protections afforded to other employees are available to Homeland Security employees.

In 1995, Congress gave wide latitude to the Federal Aviation Administration to create its own personnel system. Although this system was to afford whistleblower protections, the Justice Department found that Congress incorporated only selected provisions of title 5 into the FAA personnel management system, thus leaving OSC without authority to investigate or otherwise pursue cases of whistleblower retaliation alleged by FAA employees.

The reasoning of the Justice Department is supported by Supreme Court precedent, which states that:

> [w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied.

Moreover, Congress has repeatedly demonstrated that if its intention is to exempt certain entities generally from title 5, but to apply the substantive whistleblower protections and all the ancillary enforcement procedures, it knows how to do so unambiguously. For example, when Congress applied only selected provisions of title 5 to the Panama Canal Commission, it provided for application of the whistleblower protection provisions as follows:

> Section 2302(b)(8) (relating to whistleblower protection) and all provisions of Title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

It is fair to conclude that whistleblowers in the new Department do not have the same protections as other employees in the Federal Government due to the absence of any similar reference to the whistleblower protection enforcement provisions of title 5 in the House bill or in the Gramm-Miller amendment.

The Lieberman substitute, however, maintains all of the title 5 protections for whistleblowers to ensure that they have the needed protection to come forward and alert us to serious problems in the Federal Government that can hamper our efforts to secure our homeland. It also ensures the continuation of union representation which allows third party arbitration for whistleblowers. The Lieberman substitute also contains two provisions, sponsored by myself and Senator LEVIN, which enhance the protections afforded to Federal employees.

The Akaka-Levin provisions grandfather the whistleblower rights of employees transferred into the new Department and provide full whistleblower protections for TSA baggage screeners. Whistleblower protections for TSA employees had unanimous bipartisan support from the Governmental Affairs Committee and the provision mirrors the language of S. 2686 which was introduced by Senator GRASSLEY. Despite such widespread support, the Gramm-Miller ''compromise'' amendment does not include this bipartisan protection for whistleblowers.

Under the terms of the Aviation and Transportation Security Act that we passed last year, the Under Secretary of Transportation for Security has the authority to employ, terminate, and fix the conditions of employment for the Federal screening workforce while the rest of the employees of the Transportation Security Agency are governed by the personnel system established by the Federal Aviation Administration.

While the FAA personnel system now provides full whistleblower protection to employees, TSA security screeners are denied such protection. In May, TSA and OSC reached an agreement to provide limited whistleblower protection to TSA baggage screeners. Under this nonstatutory agreement, security screeners were not afforded appeal rights. However, the right to appeal to an independent third party is a necessary part of providing real whistleblower protection. Such protection is necessary to ensure that screeners feel secure in coming forward with information of government waste, fraud, and actions that are dangerous to public health and safety.

Recognizing the need for full whistleblower rights, Congress resolved to provide OSC enforcement authority and

full whistleblower rights to FAA employees in 2000.

I urge my colleagues to once again protect our Federal whisleblowers by providing full and explicit whistleblower protection to employees in the Department of Homeland Security. I urge my colleagues to oppose the Gramm-Miller amendment and support the Lieberman substitute.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Madam President, could the Chair indicate how much time is remaining on each side?

The PRESIDING OFFICER. One minute to the Senator from Connecticut, and 7 minutes to the Senator from Texas.

Mr. LIEBERMAN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. Madam President, let me conclude in the moment I have remaining. I have the feeling this will not be the last moment I or other Members will have to discuss the Graham-Miller substitute or the question of protections for Federal workers.

There is a significant disagreement about the protections for homeland security workers. I do think, as we talk about the Nelson-Chafee-Breaux compromise, which I support, that it will be seen that it not only gives some protection to Federal workers, particularly those who are currently unionized and will be transferred to the new building, but it leaves the President with the last word on matters of national security. Let not the debate on that matter obscure the fact that, as Senator GRAMM himself has said, 95 percent of his substitute is the same as our committee bill. So let's settle the small point of disagreement and get the rest that we agree on done.

I believe my time has expired.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. CLINTON). Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Madam President, I have a unanimous consent request which I have informed the minority I am going to propound at this time. Senator NELSON has been designated as Senator DASCHLE's designee. I ask unanimous consent that following my unanimous consent request—and I understand there will be an objection—Senator NELSON be recognized to offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—S. 1140

Mr. REID. Madam President, I ask unanimous consent, on behalf of Senator DASCHLE, that the Senate proceed to the immediate consideration of Calendar No. 210, S. 1140, the motor vehicle franchise contracts bill; that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BENNETT. Madam President, I have no objection to this request, but I understand there is a Senator on this side who wants to review it further, and on his behalf I object at this time.

The PRESIDING OFFICER. Objection is heard.

HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 4740 TO AMENDMENT NO. 4738

(Purpose: To modify certain personnel provisions, and for other purposes)

Mr. NELSON of Nebraska. Madam President, I call up my amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, Mr. CHAFEE, and Mr. BREAUX, proposes an amendment numbered 4740 to amendment No. 4738.

Mr. NELSON of Nebraska. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. NELSON of Nebraska. Madam President, I am pleased to join with my friends, Senator JOHN BREAUX of Louisiana and Senator LINCOLN CHAFEE of Rhode Island, in helping break the stalemate on the labor-management issues that have held up the homeland security legislation. We need to move forward and pass a bill that provides real security for all Americans without the distractions of labor-management issues.

This legislation is a huge undertaking, and the reorganization will certainly not be accomplished overnight.

That being said, we need to get to it right now because the later we come back to try to do this, the more difficult it will be. We need to do it right because unscrambling the eggs is impossible.

The new Department will not begin well if it begins with a staff who feels their concerns have been ignored. We now have the opportunity to break that logjam. This compromise addresses the concerns of both sides. The agreement preserves the Presidential authority to exempt union employees from collective bargaining as employees of the Department of Homeland Security. It also grants the President historic personnel flexibility, giving him the authority to hire, fire, promote, demote, and to rewrite civil service laws in the area of performance appraisals, classifications, pay rates and systems, and adverse action.

The agreement provides binding arbitration on personnel flexibility. All sides will have a seat at the table during the development of the new personnel rules and any disagreements over the rules will be referred to the Federal Service Impasse Panel, which will have the authority to set the rules and resolve disputes. This is modeled after the IRS Restructuring and Reform Act of 1998, which is current law.

The Federal Service Impasse Panel has discretion to impose new rules to break this agreement. This is existing law. It is the way in which we ought to proceed.

I know this amendment will receive broad bipartisan support, and I hope those of us who seek to complete action on this important legislation will support this effort to clear one of the major hurdles that has been currently blocking our progress so we can move forward on this important and vital security matter currently before us.

I ask for the support of my colleagues, and I hope we will move forward on this as soon as we possibly can. There is no reason to delay this legislation any longer.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, I support the amendment to the Gramm-Miller amendment which has been offered by our good friend and colleague Senator NELSON, and by my colleague Senator LINCOLN CHAFEE. It is very clear the Senate, as we debate homeland security, has reached a point where we are at a logjam. I, for one, and I think the vast majority of our colleagues, strongly support the creation of a Homeland Security Department, and why is very simple.

In light of today's terrorist threat to this country, we can no longer continue to operate and protect our Nation's security in the way we always have. In the past, too often the right hand did not know what the left hand was doing, and vice versa. It is clear, from the evidence that has now been presented, we have agencies within our own Government that had certain amounts of information that was important information, but information they did not adequately share with other Departments and agencies within our Government.

It is nice to have individual agencies know a little bit about the intelligence of an international threat, but if they do not share that information with other Departments within our Government, and they do not put all of the information gathered into one single place where people can look at it and analyze it, it is really not very effective information. It is certainly not as effective as if we have the collective wisdom of all of the various intelligence-gathering agencies within our Government.

The point has very accurately been made if the CIA has information the FBI does not have, if the Immigration Service has some information neither one of the other agencies has, that is not a very effective situation. If you throw in information that agencies such as the Drug Enforcement Administration, the Immigration and Naturalization Service, and local police and State police have, if each one of them keeps that information to themselves, we are not providing the service we should to the American people. For the first time, the creation of a Homeland Security Agency is going to say to all of these collecting agencies that gather the information that is so important, we should absolutely share it and involve each other in what that information is all about, and that is what the Homeland Security Agency does very effectively.

All of those, Republicans and Democrats together, who have worked very hard to bring this legislation to the floor have done a good job. This is good legislation. It is important legislation. What this legislation does is simply say to the American people after 9/11, we are going to create a new agency in our Federal Government to ensure our ability to better protect the rights and freedoms of all American citizens than we have in the past.

There are actions that have to be taken in times of national emergencies that are not normal, such as during this period of special concern. One of the powers that is necessary for a President to have is the ability to move agencies, departments, and individuals as quickly as possible, to the best position to serve the American public.

The President currently has the authority to say if it is important for national security that some of the collective bargaining rights of some of these employees of the Federal Government have to be temporarily set aside. He can exercise that authority now, and he has exercised it in the past. It has not been only this President but it has gone back, I think, all the way to President John Kennedy. We are in that type of a situation.

With the creation of a new Homeland Security Agency, however, we are talking for the first time about creating a new agency where thousands of employees may be taken out of one position and put into the Homeland Security Agency.

Somewhere between 40,000 and 50,000 who have collective bargaining rights where they are currently working, if they are transferred to a new Homeland Security Agency, for the first time may have those collective bargaining rights taken away.

How ironic it would be if the agency we are creating to protect the rights and freedoms of Americans is the agency that is utilized to take away the rights of American citizens to collectively bargain without the appropriate justification for doing so. I do not think anyone would want to say that is their desire.

This Homeland Security Agency is designed to protect the rights and freedoms Americans have gained. Some may argue about the wisdom of having collective bargaining rights, but it is a right American citizens have. So the question before this body now is: How do we give the President the authority to do what is necessary in this new Homeland Security Agency, which I support very strongly, while at the same time ensuring while we take rights away from American citizens, it is only done under the most unusual circumstances, and if it is necessary it be done, it be done very carefully so everyone will understand how this transaction is taking place?

What brings us to the floor today is this suggestion my good friends, Senator NELSON and Senator CHAFEE, and myself, have worked on to try to say, yes, we support homeland security, but we also want to make sure we protect the rights and freedoms of our own American citizens.

It is interesting to note, if people would only take the time—and I have said this so many times. I have said this to my good friend, the chairman, Senator LIEBERMAN—if all of us had the time to read the legislation and see the actual differences between the two versions, they would find the differences are far less than the similarities, particularly when it comes to this very issue which is causing this problem right now.

If we look at the current authority of the President of the United States with respect to what he can do to remove collective bargaining rights of American workers when he transfers them, it is almost similar, if not identical, to what our suggestion is to break the logjam. For instance, under the current law of the United States, under 5 U.S.C. section 7103, this is what people are saying, do not take away the President's authority. The current law says the President may issue an order excluding any agency or subdivision thereof from coverage under this chapter—meaning take away their collective bargaining—if the President determines, first, that the agency or subdivision has as a primary function intelligence, counterintelligence, investigative or national security work; and, second, the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations. What that says is the President can take away their collective bargaining rights now only if he makes a determination that these two things are present.

How do we handle it in our amendment, which I think can generate more than a majority? Simple. Our legislation says no agency can have their collective bargaining rights taken away, unless it is shown that the mission and responsibilities of the agency or subdivision materially change, and, second, that a majority of the employees within the agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

I will argue with anyone who wants to say that this somehow hampers the ability of the President to take away collective bargaining rights. Under our suggestion, the President, as under current law, has to make a determination that these people are important to intelligence gathering. That is easy for the President. And also that the mission and responsibilities of the agency from which he wants to take these rights away have materially changed. I think that is a very easy thing, under the circumstances that exist today for the President to be able to reach that standard.

It is interesting that under the current law there is no appeal from the workers to go to the NLRB or any kind of labor agency. But there is no appeal under our provision to go to any kind of NLRB or agency at all.

Some of my friends on the Republican side say, yes, but those workers could take the agency to court. That is true. But that is also true under current law. If someone under current law thinks the President has not made this determination correctly, they have the right to go to court. I don't know that it has ever been done. If so, I think maybe once it was not successful. But they have that right today. It is not appropriate to say we are going to create this new agency but we are going to give workers less rights than they have today.

Some have also suggested they show that mission and responsibilities of the agency have materially changed. That would never fit today's circumstances. The example they give is, we may have an immigration agency working in south Texas that is all of a sudden going to be transferred to the new agency to look after immigrants who are coming from suspected terrorist areas of the world and that their mission will not materially change. They will be doing the same work in a different agency and, therefore, not meet the test of having their work materially change because they will be doing the same type of work.

That does not create a problem. It is the intent of the authors of this to clearly say it is our intent when you are transferring people who are doing immigration work in border towns,

protecting our States under normal circumstances, that they have to do that type of work to stop international terrorists at a time we have been attacked by terrorists from other countries is materially changing what they are doing. They are now looking out after foreign terrorists who are trying to attack the United States and do grave harm to this country. Their work has materially changed. The President makes this determination under our amendment, as he does under current circumstances. There is no appeal from the workers to be able to go to any NLRB-type of organization and plead their case.

I plead with folks at the White House who have looked at this, take another look at it. Read what the current law says. Read what our suggestion is on collective bargaining. You will find there is not any difference that is worth objecting to if we are able to get this through the Senate with a large majority. It is not a good idea, I suggest, to have a 50/50 vote on homeland security and have to ask the Vice President of the United States to come to this Chamber to break the tie, to barely get this through the Senate. What type of unanimity does that show the American people as we pass homeland security? This amendment should pass with 75, 80, or 90 votes at least. Our suggestion in the Nelson-Chafee-Breaux amendment would allow us to have a huge vote in support of this proposition.

The second area we have addressed in our amendment is important. The question is, Do you give the President flexibility to move people around, to change, perhaps, how they get paid, or to change their functions because now there is a question of national security? We have done that in our amendment. We have clearly spelled out the fact that they have the authority to have management flexibility. We have taken the larger part of the so-called Portman-Quinn amendment offered in the House which gives management flexibility to the President.

I happen to think he should have management flexibility, but certainly not unlimited. He should have it in the areas he needs it. We have offered that. The Portman language in the Senate gave him management flexibility in six different categories. We have said that we will take four of those six categories and give him the flexibility he needs to make the decisions he would like to make in moving these people around.

The President should have that in terms of the national emergency. We give him the authority that he needs, like in Portman-Quinn. The only suggestion is, you should not be able to do it, like you cannot today, without some involvement of the workers. You ought to at least sit down with them and discuss with them as you do in other agencies—such as the IRS, the FAA. Under current law, you sit down and talk with the people you are going to be moving around to get their support, to get their ideas, to get their suggestions about how it can be made to work in a more efficient manner.

What type of managers want to dictate to the employees that he will do this, that, and the other, and oh, by the way, I want you to be a loyal worker after I do this? Our legislation requires that in making these management changes, they shall be worked out with the representatives of the workers and the Secretary, that they would enter into a written agreement to approve the management flexibility that the Secretary thinks he needs.

The point is, if they do not reach an agreement, do the workers have a veto? Absolutely not. As under current Federal law, as under the Internal Revenue Service when we gave them management flexibility, this body and the other body voted and approved when they cannot agree on management flexibility, you bring in the Federal Service Impasse Panel and they will have the authority under the Federal Service Impasse Panel—if the parties cannot arrive at an agreement, they have the authority under our amendment, as under current law, to take whatever action is necessary to resolve the impasse. That means if they want management flexibility, they sit down with both sides and discuss it. If the two sides cannot agree, they bring in the Federal Service Impasse Panel and they make the decision. It is a binding decision.

What is this Federal Service Impasse Panel? Is this an arm of the AFL-CIO? A new creation? No, it exists in Federal law today. There are seven people on it. Guess who appoints the seven. The President of the United States. He appoints every single member of the Federal Service Impasse Panel that will look at what the President is trying to do, and if the people cannot agree, his appointees, all seven of his appointees, unanimously appointed by the President of the United States, put into effect what they think is appropriate and improper. I don't think that is something that is bad at all. That is current law for the Federal service workers right now when they are being moved around.

I suggest if we could adopt the Nelson-Chafee-Breaux amendment we could put this aside. This bill has to go to conference with the other body. There will be further negotiations on this issue. Hopefully, we can come back with something that leaves the Senate, first, with a very large vote, instead of 50/50, and then come back in a fashion that will also generate the type of support that I think is critically important.

I ask for a ''yes'' vote on my amendment, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, creating the Department of Homeland Security is an enormous undertaking. In fact, it is the largest Federal undertaking since the creation of the Department of Defense. Senator BREAUX, Senator NELSON, and I offer this amendment to address the concerns, not only of the President, of course, but also concerns of the many thousands of Federal employees to whom we are entrusting our national security. As Senator BREAUX and Senator NELSON have pointed out aspects of this amendment, I think it is important to note that what we have done is taken Republican amendments, I say to my colleagues on this side of the aisle, we have taken Republican amendments from the House, the Republican amendment offered by Representative MORELLA from Maryland, Republican amendments offered by Representative PORTMAN and Representative QUINN, from Ohio and New York, and offered them into this amendment. This is an honest attempt at bipartisanship.

Most important, as Senator NELSON has said, this amendment will finally enable the Senate to move the process forward by getting this bill to conference with the House. Without this compromise, there will be no Senate bill. There will be no Department of Homeland Security. But with this compromise we can empower the conference committee to work with the administration to finalize a bill that will meet the President's legitimate concerns and protect employees' legitimate rights. I do urge passage of this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. I ask unanimous consent the quorum call be rescinded.

Mr. REID. Reserving the right to object, Madam President—I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. LOTT. Madam President, I renew my request the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Just to clarify my intent, Madam President, this is not to get recognition to try to offer an amendment or affect the procedure on the pending issue. Talking with Senator REID, he wanted to make sure that at the conclusion of my remarks there would be an opportunity for someone to seek recognition on the other side. I am sure that would be the case, although Senator BUNNING is here and wishes to speak on the amendment at hand.

I would like, rather than just to speak on the amendment, to use leader time, as was done by Senator DASCHLE this morning, to speak on this critical area.

The PRESIDING OFFICER. The Senator has that right.

Mr. LOTT. Madam President, the Senate now has been on this important issue over 3 weeks. The creation of the Homeland Security Department, something that clearly is very important, needs to be done. Perhaps it needed to be done earlier—without being critical of anybody. There needs to be some way to bring these different groups together and get a focus, get some direction, to give them the directions they need and the funds and the people to deal here at home with the threat by terrorists and by others. We need this Homeland Security Department.

I had thought we could probably do a Homeland Security Department in a few days—probably less than a week. But here we are, now. Obviously, we are going to take a month on this issue.

What is at stake? What has delayed this issue is the President's authority to impose national security interests, the security of the American people in their homes and their streets and their businesses, innocent men, women, and children here at home—for the President to be able to act in the national security interest, to have some flexibility in management authority to make sure this Department runs efficiently. Yet we see we are still arguing over work rules in the workplace. We are still arguing over whether the President should have the authority to say, for national security reasons: I am going to be able to move people and money around, and we are going to be able to override work rules to look after the security of the American people.

I think it is ridiculous that we have come to this point. I oppose the pending amendment because, once again, this is an effort to try to find a way to make it difficult or even impossible for the President of the United States—and not just this President, Presidents—to be able to do the job on homeland security.

The President has said that the Senate needs to act on homeland security. There is beginning to be doubt about the Senate's commitment in this area because we are putting special interests of certain groups over homeland security. That is a legitimate debate. The debate has been gentlemanly. We have not had many amendments because we have had more talk than we have had amendments. But now we have the President's proposal that has been offered by Senator GRAMM and Senator MILLER—a bipartisan bill with some changes that have been agreed to. And now we have an amendment that will be offered. That is all well and good. That is fine.

Then there is the separate issue of the Iraq resolution. What are we going to do about Saddam Hussein? Let me read to you what the President of the United States said on that issue.

I want to thank Members of both parties of the U.S. Congress for working to develop a strong resolution and a strong signal to the world that this Nation is determined.

That is what the President actually said. Now, I am deeply saddened by the tenor and the tone of the remarks of my friend, the majority leader, this morning on the administration's conduct and Iraq. We live in grave times, when this body should be carefully and deliberately debating the threat that Iraq's weapons of mass destruction pose against the United States. Instead we heard accusations that a President of the United States is using the possibility of war for political purposes.

Who is the enemy here? The President of the United States or Saddam Hussein? That is who was attacked this morning here on the floor of the Senate. I think we would be better served debating Saddam Hussein and the threat he poses for the world. He is a brutal dictator. He has already used chemical and biological weapons against his own people.

We know he has the ability to deliver these weapons. We know he has invaded his neighbors.

We had better be asking ourselves what we are going to do about this tyrant. He has for 11 years ignored 16 U.N. resolutions and has been involved in the killing of thousands of innocent people.

For anyone who seems surprised that we are engaged in this debate, I ask a very simple question. Where were you, 9 months ago, when the President of the United States came before a Joint Session of Congress and said, ''Iraq continues to flaunt its hostility toward America and to support terror. The Iraqi regime has plotted to develop anthrax and nerve gas, and nuclear weapons for over a decade. This is a regime that has already used poison gas to murder thousands of its own citizens—leaving the bodies of mothers huddled over their dead children. This is a regime that has something to hide from the civilized world?

Where were you, 9 months ago, when the President continued, ''States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic''?

Where were you 6 months ago, on the half year anniversary of September 11, when the President said, ''Here is what we already know: some states that sponsor terror are seeking or already possess weapons of mass destruction; terrorist groups are hungry for these weapons, and would use them without a hint of conscience. And we know that these weapons, in the hands of terrorists, would unleash blackmail and genocide and chaos''?

The President continued, ''These facts cannot be denied, and must be confronted. In preventing the spread of weapons of mass destruction, there is no margin of error, and no chance to learn from mistakes. Our coalition must act deliberately, but inaction is not an option.''

Again in May, the President said:

The evil that has formed against us has been termed the ''new totalitarian threat.'' The authors of terror are seeking nuclear, chemical and biological weapons. Regimes that sponsor terror are developing these weapons and the missiles to deliver them. If these regimes and their terrorist allies were to perfect these capabilities, no inner voice of reason, no hint of conscience would prevent them.

The President of the United States has been actively laying out the case against Iraq in a deliberate and focused way for nearly 1 year.

Just a month ago, Democrats in the Senate and Republicans in Congress were saying to the President: Mr. President, make your case to the American people. Come to the Congress. Make your case to us. Let us be engaged in the dialog and the debate, have some resolution prepared, and vote. Go to the United Nations. Make your case to the world community. Reach out to our allies around the world, and those not necessarily our allies, and show them the danger. Talk to them. Have a dialog.

The President did that. He has been going to the American people. So has his administration. He came to the Congress and said: You are right. I am going to consult with you and communicate with you.

Let us have a dialog. Let us have a debate. Let us have a vote.

A number of Democrats have stood up and said: Yes, this problem is serious, and we must address it. We must address it now.

The President went to the United Nations. He showed commitment and leadership. He turned the whole debate there around and put pressure on the United Nations to decide if they were just going to be a League of Nations or if they were going to really enforce their resolutions that had passed several times.

The President gave a bill of particulars about why we must act, and we must act now, because with ever passing day, week, month, and year, the threat grows, it doesn't diminish.

This is about the people in Iraq who are being oppressed and who have been killed. This is about security in the region. This is about security here at home.

Some people have said: He can't deliver nuclear weapons yet. He may not have them.

He has the delivery systems. He is working to make them longer range. We know that. He is trying to get materials he needs to have these nuclear weapons. But put aside the nuclear weapons. We know he has biological and chemical weapons right now. We know that. Some of these weapons can be delivered with an aerosol can—right here; not somewhere else; right here.

Have we forgotten the events of 9/11 so soon, which was so catastrophic and so big? Are we ignoring what we are learning from the hearings that are underway and from the realities of the threats from terrorists all over the world, and particularly from Saddam Hussein?

Once the President came to the Congress, some people said: Wait. We didn't mean now. Some people said: Let us do it instantly. Now some people say it is being politicized; we shouldn't do that. We should reduce the shrill of rhetoric. We should try to find a way to do this in the right way and in a broad bipartisan way.

But let us go beyond the situation right here at home. Is somebody going to accuse Prime Minister Tony Blair of politicizing the issue? He is not up for reelection. In fact, he is going against a lot of the people in his own party. I think the British people support what he is doing. But he has shown real courage. He went before the House of Commons this week and laid out the information he had. He deliberately pointed out the danger and why we need to act now. Nobody can accuse him of politicizing the issue.

This is what he said.

[The British Joint Intelligence Committee] concludes that Iraq has chemical and biological weapons, that Saddam has continued to produce them, that he has existing and active military plans for the use of chemical and biological weapons, which could be activated within 45 minutes, including against his own Shia population; and that he is actively trying to acquire nuclear weapons capability.

The Prime Minister continues:

Since the departure of the inspectors in 1998, Saddam has bought or attempted to buy: specialized vacuum pumps of the design needed for the gas centerfuge cascade to enrich uranium . . . an entire magnet production line . . . and has attempted, covertly to acquire 60,000 or more specialized aluminum tubes which are subject to strict controls due to their potential use in the construction of gas centerfuges.

All this, and Iraq has no civil nuclear powerplants. So they are not doing it for that purpose.

The Prime Minister concluded:

Two things about Saddam stand out. He has used these weapons, thousands dying in chemical weapons attacks in Iraq itself. He used them in the Iran-Iraq war, started by him, in which one million people died. And his is a regime with no moderate elements to appeal to. Read the chapter on Saddam and human rights. Read not just about the one million dead in the war with Iran, not just about the 100,000 Kurds brutally murdered in northern Iraq, not just the 200,000 Shia Muslims driven from the marshlands in southern Iraq; not just the attempt to subjugate and brutalize the Kuwaitis in 1990 which led to the Gulf War. Read about the routine butchering of political opponents; the prison ''cleansing'' regimes in which thousands die; the torture chambers and hideous penalties supervised by him and his family and detailed by Amnesty International. Read it all again and I defy anyone to say that this cruel and sadistic dictator should be allowed any possibility of getting his hands on more chemical, biological or even nuclear weapons.

That was the British Prime Minister.

This is not about politicizing the issue. We shouldn't do that. But it is a very important issue. The American people's security is at stake.

I think what maybe has happened here is a desire to try to find some way to put this issue off or to in fact make it political.

But let me correct the Record just in case some of the comments here were inspired by misinformation.

Today's Washington Post story on President Bush and Vice President CHENEY has remarks in it that are flat wrong. The partial quote cited in the Post was specifically referencing the current debate over management flexibility of the Department of Homeland Security—not the war on terror in Iraq. I think that is a very important and critical difference.

I took the time to look at the Vice President's remarks. I know DICK CHENEY. I have the utmost respect for him. I have heard him speak to several different groups—political meetings and nonpolitical. He is always low key, very studied in what he says, very careful, and it is never inflammatory. He does talk about the need for the right actions in the economy, national and homeland security, and trade promotion authority. He has talked about the things we have done.

Then he said:

President Bush and I are very grateful for the opportunity to serve our country. We thank you for your support, not just for our efforts, but for good candidates like Adam Taff, who will make a fine partner for us in the important work ahead.

What is the problem with that?

When I looked at what was said today, I must confess, I was shocked and even horrified. I have taken a moment here to talk to some of the colleagues on the floor about the important work ahead of us.

At a press conference this very morning, I was saying: We are going to work this language out. We are going to find language that will give the President the authority he needs but language that will have broad bipartisan support in both bodies. We can find a way to do that.

But the accusations leveled against the President of the United States today cannot stand. This is not about unity. That is the worst kind of division. I am going to try to remain calm and attribute the reaction I heard today to perhaps misunderstanding. We are not going to question anybody's patriotism here, but we are going to question the commitment and what we need to do to protect the American people.

It is not about questioning it; it is about doing it. We are not going to pass a homeland security bill that ties the President's hands. It is not going to happen. And he will not sign it.

We are going to take action against Iraq to make sure their weapons of mass destruction are located and destroyed. If it takes regime change, this Congress, this Senate is already on record saying we support that.

I think it is time we get a grip on things. We have a lot of work to do. Here in the Senate, we are not moving anything. We are becoming totally dysfunctional. And now we are going to add to that the type of accusations we had here this morning?

We have 2 weeks and 2 days or so to do a lot of important work: the defense of our country, homeland security, economic security issues that we need to address—terrorism insurance. There is so much we need to do. I hope we will find a way to do those issues and get this discussion back on the right track.

I yield the floor, Madam President.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, we have been hoping to move this process along. And I would hope that we would continue to have debate throughout the day on the Gramm and the Nelson amendments.

The Senator from Texas had noted earlier that he was desirous of an up-or-down vote. I would be prepared to provide that up-or-down vote. I am going to propound a unanimous consent request to accommodate that, so I will do so at this time.

I ask unanimous consent that the Senate vote on Senator NELSON's amendment at 10 o'clock in the morning, tomorrow, and that immediately after it has been disposed of, Senator GRAMM be recognized to offer a further second-degree amendment that is the text of amendment No. 4738, and that the Senate then vote immediately in relation to Senator GRAMM's amendment.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Mr. President, reserving the right to object, all we have asked for, from the very beginning, is to have an opportunity to have an up-or-down vote on the President's proposal, not having an up-or-down vote on it as amended by somebody else.

The Senator has every right to amend it. It just seems to me, in a wartime situation, when the President has proposed a compromise and has asked that we vote on it, that we ought to do that. And on that basis, I will object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DASCHLE. Mr. President, I have a hard time understanding the basis for

the Senator's objection. We have offered him an up-or-down vote on his amendment, just as he has suggested.

Mr. NICKLES. Will the majority leader yield?

I am going to help the majority leader.

Mr. DASCHLE. I will yield in just a moment.

MOTION TO COMMIT

Mr. President, I do not see that we have any other option, then.

To ensure that we keep in place the current parliamentary circumstances that we have legislatively, I move to commit the bill to the Governmental Affairs Committee and that it be reported back forthwith with the Lieberman amendment No. 4471, as amended, pending. And I ask for the yeas and nays.

The PRESIDING OFFICER. The motion is before the Senate.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4742 TO THE INSTRUCTIONS OF THE MOTION TO COMMIT H.R. 5005 TO THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 4742 to the instructions of the motion to commit H.R. 5005 to the Committee on Governmental Affairs.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment there is not a sufficient second.

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4743 TO AMENDMENT NO. 4742

(Purpose: To modify certain personnel provisions, and for other purposes.)

Mr. DASCHLE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 4743.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I ask unanimous consent to be listed as a cosponsor of the bipartisan Gramm-Miller substitute and rise to speak in favor of that amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4738

Mr. BUNNING. Mr. President, I believe the proposal of Senator GRAMM and Senator MILLER represents our best hope of passing legislation this year to put a new Homeland Security Department in place.

The Gramm-Miller substitute addresses the legitimate policy concerns of many Senators on both sides of the aisle while also giving the President the flexibility and the authority he needs to put together and run a Homeland Security Department that fulfills its primary mission—defending our people and our Nation.

This amendment is a good, bipartisan compromise. It contains a number of provisions from the original bill reported out of the Governmental Affairs Committee. It also contains the bulk of what the President has asked.

As a member of the Governmental Affairs Committee, I would like to take a few minutes to talk about what I see as the strengths of this proposal as well as the weaknesses of the Democratic proposal and why it is imperative that we pass Gramm-Miller now.

One of the most important things this bipartisan amendment does not do is, it does not take away important Presidential national security authority when this country is in the middle of a war. Going back to the markup of the homeland security bill in committee, many of us argued that the President needs to have the maximum flexibility to effectively administer a Homeland Security Department. We are fighting a new type of war. The Department is going to have to be nimble. Officials there are going to have to be able to react to events at home and abroad on a moment's notice. The President must have the ability to make decisions and move resources around to fight an enemy that has spread throughout the world and could attack us from any point.

Every President since Jimmy Carter has had more discretion in running agencies that were involved in national security. For instance, over the past 30 years, every single President, Republican or Democrat, has been able to declare, and actually has declared, that some civil servants are exempt from collective bargaining rules that apply to other agencies. The Democratic bill would change that when it comes to homeland security.

Let me be clear: The employees at the new Department are going to have a very important job to do. They deserve our respect and our support. But to go as far as to give the President less authority over them and to put more bureaucratic rules into place is to distract from the reason we are debating this legislation in the first place.

We need to make sure these employees have the resources to do the job. We need to make sure the President has the same ability. To give him less authority is the exact opposite of what we need to do.

In short, that means the Democratic proposal would actually give the President less flexibility than he already has under current law. That is crazy. There is no reason to have this debate if we are only going to talk about making it harder, not easier, for the President to lead us in the war on terrorism.

This debate is supposed to be about crafting rules and building a new Department to help fight the war on terrorism. It is not supposed to be a debate about rolling back the clock to an outdated way of thinking about labor and management relationships.

I have said throughout this debate that if the choice comes down to national security versus more redtape and rules, national security must win every time.

Instead, what the Gramm-Miller proposal would do is give the President necessary management and personnel flexibility to allow him to integrate the pieces of many standing agencies into a new Homeland Security Department. This is going to be an awesome task we are undertaking. We are talking about taking bits and pieces from literally dozens of current agencies and quickly fitting them together into an effective unit called the Department of Homeland Security.

That job is going to be an even harder one if we continue to focus on old rules and redtape instead of how to fashion a new and flexible agency to fight a war in the 21st century.

Another reason to support Gramm-Miller and to oppose the Democratic bill or any substitute for it is the forward-thinking parts of the bipartisan bill when it comes to civil service and personnel issues. For instance, Gramm-Miller gives the President flexibility when it comes to management decisions relating to hiring, evaluating, and compensating. Democratic opponents look at this and see the glass is half empty. They claim it is a pretext for cracking down on workers. I see the glass as half full and view these reforms as a way for the President and the others to reward those employees who do a good job and provide the flexibility to hire the best and brightest for this new Department. After all, we are talking about defending our Nation and our people. Employees who do a good

job as part of that should be rewarded. Those who do not should either be disciplined or fired.

At the same time, Gramm-Miller also retains whistleblower protection and a full range of employee benefits and protections. I understand it might not be everything the Government unions want, but it is still a very good deal.

Gramm-Miller is also on the right track when it gives the President extra authority to transfer funding and responsibilities to the Homeland Security Department. Right now his hands are often tied by redtape, but if we were to have another 9/11 disaster, if we were to see another attack, the President would need more authority to act quickly when it comes to moving around funds and responsibilities to make sure we respond as rapidly as possible.

I know some of my colleagues worry about this new authority. They think we are going too fast and that Congress would be giving away some of its constitutional authority. I totally disagree. Gramm-Miller specifically says that as to the biggest changes, the President would ask Congress for permission by submitting a resolution to the House and to the Senate and that we would have 90 days to act. That is the type of consultation with which I am comfortable.

Obviously, we have to respect the separation of powers as well as Congress's power of the purse and our powers to declare what role they are going to play. We can do this while at the same time giving the President more tools to effectively administer the Federal bureaucracy.

My friends on the other side of the aisle who oppose Gramm-Miller have also thrown out a couple of other red herrings when it comes to labor and personnel issues. They have tried to fall back on the notion that the proposal would undercut the Davis-Bacon rules covering prevailing wage on Government construction projects. But the fact is that Gramm-Miller is neutral on this issue and explicitly does not address it.

They also try to make the claim that supporters of Gramm-Miller are using it as some devious way to undercut, in a broad manner, rights under the Federal Labor Relations Act. Again, this just is not true.

The President does have the right under Gramm-Miller to exempt applications of the rules on a limited basis but only—but only—if national security is involved. That sounds reasonable, and I believe most of the American people, if given a choice between tying the President's hands with labor negotiations or giving him the ability to act for national security, would give him the benefit of the doubt.

When you get beyond the debate about broad policies and personnel issues, Gramm-Miller also makes sense when it comes to the nuts and bolts of making changes to specific departments and agencies.

For example, when reorganizing the Customs Service under the new Homeland Security Department, the Democratic bill would provide for the transfer of Customs to the Homeland Security Department but at the same time also requires it to be maintained as a distinct entity within the Border and Transportation Security Directorate.

That also makes no sense. Customs cannot be in two places at one time. It is either a part of homeland security or it is not. There is no other way I can see how it can function effectively by splitting its resources and focusing among two agencies.

The only reason I can see that the Democratic bill does it this way is to protect turf, but all this would do is to protect the same old stovepipe system and personnel we have now, but under different names. If anything, moving Customs into two different agencies might make things worse.

Instead, Gramm-Miller would transfer Customs to homeland security and reserve at Treasury the limited right to issue regulations covering some of the Customs' revenue functions. That seems like a much more sensible and workable solution to me.

I know it might not be popular in the bureaucracy, and there might be some at Treasury and Customs who are resisting this change, but if it is a choice between keeping the status quo or some sort of warped version of it to save the bureaucratic face to protect turf, then I have no problem in upsetting the applecart and supporting a new streamlined approach to Government.

Another example of what I am talking about is how the competing proposal deals with FEMA. The Democratic bill moves FEMA to a new Department as a ''distinct entity'' that cannot be reorganized or merged.

The Gramm-Miller bill simply moves FEMA to the Homeland Security Department.

I do not even understand what the Democrat bill is trying to do here. It claims to move FEMA to Homeland and to give the Secretary some authority over it. But at the same time it says that FEMA cannot be reorganized or improved.

This is a distinction without a difference. Either FEMA is part of Homeland or it isn't.

Either the new Secretary has the authority over FEMA and the ability to put its resources to work or he doesn't.

The Democrat bill tries to tiptoe around the issue so that it does not step on toes. But when it comes to war and fighting terrorists, it is time to step boldly.

Instead of talking about shades of gray and playing word games, we need to start looking at the world in black and white and acting boldly.

In other areas, Senator GRAMM and Senator MILLER have gone out of their way to adopt workable sections of the Democrat bill and to compromise.

For instance, Gramm-Miller adopts the Democrat bill's language when it comes to Freedom of Information Act issues and the law enforcement powers of inspector agents.

These might seem small, but especially with FOIA I know that many of my colleagues were worried about accountability of the new Department, and I appreciate the bipartisan efforts to reach across the aisle from Senator GRAMM and Senator MILLER.

Gramm-Miller also borrows from the Democrat bill when it comes to provisions covering Federal workforce improvement and adopting reforms worked out in the Governmental Affairs Committees by Senator VOINOVICH and Senator AKAKA.

It accepts all of the Democrat proposal when it comes to emergency procurement authority.

On the subject of Administration of the Centers for Disease Control, it also accepts all of the Democrat proposal.

Gramm-Miller proposes effective immigration reforms by adopting the Democrat bill's proposal to create an Immigration Affairs directorate within the new Department and to transfer the Immigration and Naturalization Service to it.

Senator GRAMM and Senator MILLER also accept, with only minor changes, the Democrat's proposal to modify the Coast Guard's mission and reforms the rules that cover how we issue visas.

In short, Gramm-Miller has tried to take the best and most acceptable parts of the Democrat bill while also maintaining the flexibility and some of management proposals that the President says he needs.

For instance, the President's plan provides for unified intelligence analysis and infrastructure protection in one organization.

This would have a single agency responsible for providing both threat assessments and vulnerability analysis. Nowhere in the Government does this currently take place. This plan would fill that gap.

As the current Joint Intelligence Committee hearings have shown the last several days, our intelligence community needs some work.

Most importantly, information about what is going on in this country needs the most work, and information about what our own weaknesses are is largely nonexistent. This amendment would allow these two types of analysis to come together and provide the most accurate information about what we need to do as a Nation to protect ourselves domestically.

This flexibility and reform is not part of the Democrat bill.

We have been at loggerheads on this legislation for almost 4 weeks now.

I think we know it is getting down to crunch time and it is time to compromise. That is what Gramm-Miller does.

No one is going to get everything of what they want and the time before adjournment is shrinking rapidly.

I think it is time to move beyond confrontation and toward a workable

compromise that will allow us to put an effective Homeland Security Department into place now.

I know that some Members think we are moving too fast and they want to spend more time debating the bill.

I think that is the wrong way to look at this situation.

Obviously, we have to get things right in building the new Department. But at the same time, we all know that if we can come up short we come back and fix things down the road. I do not think anyone seriously doubts that if we pass a bill that needs to be tweaked down the road that the Congress is going to drag its feet on such an important national security issue.

We owe it to ourselves and the American people to finish work on this bill. We have been debating it for close to a month. Before that, it was subject to some public debate during the August recess and during the Government Affairs Committee markup in July. We have had over 15 hearings on this bill.

We are not reinventing the wheel. We have had a good debate. I think we have a good handle on this bill and now it is time to vote.

If we are worried about making mistakes or not passing a perfect bill we will be here until doomsday—literally.

This is a complicated issue. There are bound to be mistakes. But I think we are on the verge of getting much of it right, and on many levels we will not know for sure how to make the Department work until we get it up and running and see where the shortcomings are.

So let's get started. The people who will staff this new Department are already out there, trying their best to protect America.

They are dedicated public servants who make many sacrifices to serve this Nation and their fellow citizens, but right now they are spread throughout the Government.

It is time to bring them together and to harness their collective talents for the national good.

There is an old phrase that says one should either leads, follow, or get out of the way. Right now we are doing none of those things. We in Congress need to start leading

The President has been pretty clear about what he needs to administer the new Department.

He has told us what he can accept and what he has to veto.

The House has acted, and now I think a bipartisan majority in the Senate ought to be ready to act.

We can continue talking or try to pass a political bill that the President will send right back to us.

Instead, we should adopt Gramm-Miller. It is a good starting point—a solid, consensus bill.

It borrows the ideas from competing bills, and as the only bipartisan bill it offers common sense solutions when it comes to building the Department of Homeland Security.

I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader.

Mr. REID. Mr. President, before the Senator from Kentucky leaves the floor, I, as all Senators, I am sure, feel very fortunate to be able to serve in the Senate. One reason is the associations we develop with our fellow Senators. One of the things I haven't had a chance to say publicly, or even privately, to the Senator from Kentucky is how much I enjoy serving with him.

As a boy, I used to listen to baseball games—no television; we used to listen to the games. Of course, JIM BUNNING was one of the people who pitched those great ball games. Then, of course, I watched him do all the great things he did later on. And now, to serve in the Senate with a member of the Baseball Hall of Fame, for somebody who wanted to be a baseball player—that was what I wanted to be until I found out I wasn't good enough—is really one of the pleasures of my life—to say I served with somebody who is in the Baseball Hall of Fame.

Mr. President, I will send a cloture motion to the desk.

Mr. BUNNING. Will the Senator yield?

Now you have switched your allegiance to a fellow who lives in your home State?

Mr. REID. I have to admit I did give a statement on the floor the day before yesterday about another great pitcher who certainly will be a member of the Hall of Fame, Greg Maddux. In my statement, I said Greg Maddux is less than 6 feet tall, weighs maybe 10 pounds more than I do—not very big, clearly not as big as the Senator from Kentucky. The Senator from Kentucky hasn't gained much weight, if any, from the time he pitched. Greg Maddux is one of the great ones. On Sunday he won his 272nd game. He has an ERA lifetime of about 2.5. He tied Cy Young's record of winning 15 games 15 years in a row.

One of the interesting things I learned was that, as a 20-year-old, when he came up to the majors, the second game he won, he pitched against his brother Mike, and beat him. Mike played for the Cincinnati Reds at the time when he beat him.

I haven't switched my allegiance. I can have allegiance for more than one great baseball player.

Mr. BUNNING. I thank the Senator.

CLOTURE MOTION

Mr. REID. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under Rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Gramm-Miller amendment No. 4738 to H.R. 5005, the Homeland Security legislation.

Harry Reid, Ben Nelson of Nebraska, Hillary Rodham Clinton, Debbie Stabenow, Mark Dayton, Patrick Leahy, John Breaux, Tom Carper, Tom Daschle, Byron L. Dorgan, Jack Reed, Jim Jeffords, Tim Johnson, Mary Landrieu, Max Baucus, Daniel K. Inouye.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Because of the parliamentary matters we have been going through this afternoon, a number of Senators have come to the floor and have wanted to speak and have been prevented from doing that. Therefore, I hope things will run a little more smoothly this afternoon.

I ask unanimous consent the Senator from Utah, Mr. HATCH, be recognized for up to 15 minutes, Senator NELSON be then recognized for up to 10 minutes, and Senator NICKLES for 10 minutes. He told me that is what he wanted. Then, Senator VOINOVICH waited here all morning and part of the afternoon. I ask that he then be recognized for up to 35 minutes to speak and that then Senator LIEBERMAN, the manager of this bill, be recognized after that for up to 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. In that order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. Mr. President, I personally want to express my regard for the distinguished Senator from Kentucky and his excellent remarks today. I think he covered the problems quite well. I personally appreciate the friendship we have together and the great leadership he provides in the Senate. I think he did a very good job. I agree with him.

Mr. President, every Member of this body, and every citizen in this country, knows that the most critical issue facing our Nation today is the task of securing our homeland and protecting our country from further terrorist attacks. The enormousness of this task cannot be overstated; and its implementation is equal measures vexing and daunting. But we must rise to the challenge. And we must do so together. No less than the lives of our citizens and the security of our nation hangs in the balance.

With regard to this, I pay my compliments to the distinguished Senator from Georgia who gave a speech this morning that was really very good. Senator MILLER, it seems to me, has made a real effort to bridge the gap between Democrats and Republicans on the floor and otherwise. His remarks were just absolutely right on the money. I personally express my regards for his remarks and express my love and affection for him as a Senator. He is a good man, and we ought to listen to him.

I speak today out of a spirit of bipartisanship. I am proud of the way that Congress has come together on issues of national security since the horrific

attacks of September 11. In the wake of these tragic events, members of the Judiciary Committee and Congress worked tirelessly to provide the Attorney General with the tools necessary to fight terrorism worldwide and protect our country. Specifically, we passed the PATRIOT Act, a critical set of reforms needed to unleash our government's ability to detect and prevent terrorist attacks, by an near-unanimous vote of 99–1. It is my hope that enough of that robust bipartisan spirit remains today as we consider the landmark legislation to create the Department of Homeland Security. As we have just passed the anniversary of the terrorist attacks that killed thousands of innocent Americans, such a sentiment is not just sorely welcome; it is also fundamental and necessary and appropriate.

Today, we face a significant new type of military threat, one far different than post-World War II communism. We face today the danger of numerous, well-financed, well-trained and completely ruthless terrorist groups who will stop at nothing to cross our borders and attack our institutions, infrastructures, people and freedoms with all types of weapons. They engage in unconventional warfare and are bound by no rules. I speak not of just al-Qaida but many other terrorist groups. The creation of the new Homeland Security Department is a massive task precisely because the terrorist threat is so pressing and pernicious.

The proposal to create a new Homeland Security Department is the next logical and necessary step in our country's war against terrorism. In my view, there are several components that are critical to ensuring its success.

One of these involves our intelligence practices. In the aftermath of September 11, it is abundantly clear that we must improve the gathering, sharing, and analyzing of information within and among our Federal, State and local agencies. Our nation clearly needs to have a centralized office that is responsible for reviewing all of the terrorism-related information that collected by any agency, be it the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, or one of the others. The Homeland Security Department is a critical step to ensuring that intelligence information is comprehensively collected, analyzed and disseminated. We must be sure not to handcuff the new Department's ability to do its job in this area. In particular, we must take pains to ensure that we do not unnecessarily limit the use of this intelligence within the new Department. The stakes are simply too high to place artificial constraints on this important function.

Another critical area involves managerial flexibility. The new Department of Homeland Security must be given the ability to hire and retain the very best people to do the work of keeping our country safe. We need to give the Secretary of Homeland Security such fundamental management powers as the ability to remove poor performers and reward exemplary employees with merit-based pay raises. Believe it or not, under our antiquated system of Federal employment rules, it can take five months to hire a new employee and 18 months to fire a terrible worker. Most Federal employees also get annual pay raises based on how long they have worked for the government, not how well they do their jobs. The vast majority of ordinary Americans don't have such outdated rules in their workplaces. There is absolutely no sound reason to move such inefficiencies to the new Department of Homeland Security. That is the current law. The bill before us even expands that.

Let me be clear: I am convinced that the vast majority of Federal workers do an outstanding job for our country. That is why I am not concerned with giving the Department of Homeland Security more managerial flexibility. Indeed, because most Federal workers do great work, they have nothing to fear and everything to gain from an improved system that allows their work to be rewarded through merit-based bonuses and raises. Only poor workers need be concerned, and they should be. Frankly, there is no place for underperforming or incompetent workers in the agency charged with protecting our safety. The new Department has the Herculean task of preventing terrorist attacks and keeping our country safe. I cannot imagine any reason why we would handicap it by imposing a system of rules that protect bad Federal workers at the expense of good ones and, more importantly, at the expense of our nation's safety. That is what the amendment to the bill by Senator GRAMM and Senator MILLER changes.

The need for flexibility, in my view, must run through every corner of the Department of Homeland Security. The very nature of our enemy is quick and deliberate action; terrorists are quick to change their members, associations, plans, training bases, and destructive methods. Terrorists, moreover, come in many different shapes, colors and ideological bents. We must equip our security forces with the ability to be similarly adaptable. The Department simply must have the ability to adapt itself to a constantly changing enemy threat. We will fail our task miserably if all we end up doing is reorganizing dozens of inflexible agencies into a new titular Department of Homeland Security. If the Secretary of Homeland Security is required to keep intact within the Department each of the individual agency's personnel, components, budgets and rules, then we don't have a new department—just a hodgepodge of independent agencies. We will have created just another layer of bureaucracy. That cannot be our goal. That cannot constitute effective governance. For this reason, I think it is absolutely essential that we give the Secretary of Homeland Security the ability to move personnel, assets and money to best meet the rapidly shifting terrain of terrorist threats.

We all recognize that the war against terrorism cannot be won simply by reorganizing existing government agencies into a Department of Homeland Security. That Department must be equipped with the tools to complete its task. Moreover, it is essential that we tap into the resources and expertise of America's private sector. The new Department must enlist the aid and expertise of America's businesses to enhance our nation's security, and I am committed to making sure that the new Department is able to receive the uninhibited advice and counsel of our business leaders. It is private businesses which own and operate most of our infrastructure—our telecommunications, energy and financial systems. Our government cannot effectively fight this war against terrorism without their support. We must arm our agencies with the best technologies available, and our private sector is a critical player in this process, as it has been in our national defense and military. Our war against terrorism would be hopeless without the active innovation and support of private industries. We must also recognize that the private sector cannot realistically step up to help wage our fight against terrorism without some reasonable protection from frivolous tort litigation.

Congress must act and must do so quickly and carefully without political gamesmanship. Our task is too important; we cannot afford to sacrifice our country's safety in the process. The threat of terrorist attacks on our homeland, as well as abroad, is here to stay. Our response to this threat requires a singleness of focus. All of us in Government have a duty to do all we can to protect the American people from future terrorist attacks.

I have spent considerable time considering the tools that the new Department of Homeland Security simply must have to create an effective system of protecting our borders from terrorism. Having done so, I have reluctantly concluded that I cannot support Senator LIEBERMAN's proposal, which simply cobbles together dozens of disparate agencies without any mechanism for adapting their personnel and missions to meet the challenge of the new Department. On the other hand, I find myself in great agreement with the central proposals of the Gramm-Miller bill. It is a bipartisan measure. And, as all bipartisan bills, it represents a series of compromises. But, I am convinced, the compromises will not, in my view, detract from the core ability of the Department to do its job and protect American lives. Critically, the Gramm-Miller bill provides enough flexibility for the President and the Secretary of Homeland Security to respond to an ever-changing, multi-headed threat.

The task of guarding against terrorism is immense; the risk of failure is enormous. We simply cannot be bound by partisan interest groups in this time of war and crisis. Let us join together to pass the bipartisan Gramm-Miller bill so that we can feel certain that we have done all we possibly could to protect the mothers, fathers and children for whom each of us work.

The same considerations that compel me to support the Gramm-Miller bill cause me to oppose the Nelson-Chafee-Breaux amendment. While this amendment is a slight improvement from the Lieberman substitute, it still ties the President's hands much too much. Like the Lieberman substitute, the proposal cuts back on the President's existing authority to decertify the union affiliation for workers in the new Department in the interests of national security. This would be a step back under any circumstances; it certainly is not a forward-thinking way of creating a successful new Department of Homeland Security. Moreover, the amendment allows the unions to arbitrate any attempt by the President to loosen the civil service rules governing promotions and dismissals. I think I need to be entirely candid on this issue: how many members of this body would feel good about these rules if it took us 5 months to hire a staffer and 18 months to fire an incompetent one? How many of us would stand up and support such a system if it affected the way we do business?

There is not one of us who would do that. And that is what we will get if we have the underlying bill.

In all honesty, I think it is time to bring this matter to a close.

I personally have seen how the majority has loaded up the tree with a bunch of Democrat amendments in an attempt to prevent a vote on the Gramm-Miller amendment. We intend to have a vote on the Gramm-Miller amendment, and the sooner the better. It may be that the majority will win on that amendment; it may be that they won't. But that is the nature of the process around here. We can't keep playing parliamentary games with homeland security. That is what is going on around here. That is the reason I have come to the floor. I don't come to the floor that often to raise Cain. And I am not raising Cain here, I am just speaking frankly.

I think it is time for us to get about voting on these two different aspects of the bill. We ought to vote on the Gramm-Miller bill. There will have to be a vote on it. We ought to vote on the underlying bill, if that is the case—the Lieberman bill. I am not objecting to that. I don't think our side is objecting, nor is our side filibustering. We just want to be treated in a decent, honorable fashion; that is, give us a vote on the Gramm-Miller amendment, or the Gramm-Miller substitute, to put it in better terms.

I get a little tired of politics around here, especially now that we are dealing with homeland security. That is what the President was criticizing. I hate to say this, but I saw the remarks of the distinguished majority leader earlier. It was on all three cable networks, as far as I could tell. Those remarks implied that the President was politicizing Democrats. That is not the case. The President did say we are muddling around here. He didn't say it in those terms. I will put it in these terms—muddling around with this homeland security bill instead of voting up or down and getting the job done.

That is what we need to do. We don't need to have any distortions of what the President said or what Vice President CHENEY said.

That is what I think, unfortunately—I am sure it was sincere and well intentioned—was a distortion, but it is still a distortion.

I think it is time we get rid of those types of attempts to have political games at the expense of a bill of this importance. That is what the President is driven by.

After seeing all the weeks that we have been on this bill, I think the President is justified in his criticism.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to rise in support of the Nelson-Breaux-Chafee amendment which is a bipartisan compromise on homeland security.

I believe perhaps some clarification is in order because there seems to be some misinformation or misunderstanding about what this bill does.

My good friend from Utah said the amendment ties the President's hands. We have looked very carefully at existing authority that the President has in similar circumstances at this very moment. And it doesn't tie the President's hands.

I must say Nebraska is going to be playing Texas at Texas A&M. My good friend from Texas is my hunting partner. Senator GRAMM is not going to move the goalposts down in Texas when we play A&M. We are not going to move the goalposts on Texas when Texas plays in Lincoln. I don't think it is about moving goalposts in athletic events. But I believe on this amendment we have had the goalposts moved on us.

Just recently, while I was presiding, Senator GRAMM, in talking about the Lieberman bill, referred to the fact that it was too restrictive on the President's authority in the area of collective rights and bargaining rights, or in terms of civil service protection. At that point, he believed it tied the President's hands in dealing with these very important issues when it comes to national security.

It was partly as a result of his comments at that time that I thought we would try to find a compromise that could deal with the situation.

Let me read from some of Senator GRAMM's comments that he made on the floor, I believe, just last week.

He was talking about the fact that when we decided to federalize inspectors at airports, in that bill we gave the President power in terms of personnel flexibility to hire and fire, and we gave him the ability to get around the normal procedures that require up to 6 months to hire somebody. Then he goes on to say we have done that same sort of thing in the Federal Aviation Administration.

Then he goes on and references the Internal Revenue Service. I quote:

> I ask my colleagues: If we believed that the current system was failing us in the Internal Revenue Service and that we had a problem which required a different approach and more flexibility with regard to our sensitivity at the Internal Revenue Service with people who know our intimate financial information and who look at our tax returns. If we believed that flexibility to administer that Department was necessary—and we did, and we adopted it and it is the law of the land today—I wonder what people back home would think when we said we thought flexibility was required at the Internal Revenue Service. . . .

In other words, he says what we did in the Internal Revenue Service reorganization was OK.

That is what he said last week.

Well, lo and behold, because of his commitment to that particular flexibility, that is exactly the kind of language and that is the reference we have in this amendment.

If it was good enough for last week, it seems to me it ought to still be good enough for this week and next week and the week thereafter.

So if this isn't moving the goalposts, it is at least shifting around on the answers. And I believe that what was good enough last week, and what is good enough for the Internal Revenue Service to deal with flexibility, is good enough for homeland security.

Then the White House, through various spokespersons, has raised a question about whether the President's hands would be tied with what we are proposing.

But lo and behold, Governor Ridge—who took advantage of me with a bet on the Penn State-Nebraska game, which I shall pay him very vividly for—went ahead and said something in his letter to Senator LIEBERMAN that I thought was important.

This is in his letter dated September 5, 2002:

> Senator, the President seeks for this new Department the same management prerogatives that Congress has provided other departments and agencies throughout the Executive Branch. For example:
>
> . . . personnel flexibility is currently enjoyed by the Federal Aviation Administration—

And guess what—

> the Internal Revenue Service, and the Transportation Security Administration.

I do not know what has changed since September 3 or last week, because we thought this would be acceptable,

given the fact that the President needs the kind of historic personnel flexibility he is seeking.

So for those who said we are changing the laws, or we are somehow restricting the Presidential authority, or tying the President's hands by changing the law, apparently they have not focused on what the current status of the law is because they are asking for what we are trying to provide them at the present time.

Now, I don't know whether someone hasn't read the amendment, but some of the criticisms I have heard of the amendment would indicate they saw a previous iteration. It seems to me the current state of affairs with our amendment would be directly on point or on all fours with what has been asked.

So I am very anxious to see if we can get a clarification because I think it has to be some sort of a simple mistake. I cannot believe that we have been asked to do something, or it has been suggested that this would be OK, and then, when we offer it, that somebody cannot take yes for an answer. I hope this will be clarified.

It is also important to say that binding arbitration and personnel flexibility is part of the IRS Restructuring and Reform Act of 1998, which both Governor Ridge and Senator GRAMM have suggested was OK. So it seems to me that whether it was binding arbitration, personnel flexibility, or, in the case of Presidential authority, in terms of exempting union membership, union employees, from collective bargaining membership, we have done exactly what others have been asking us to do.

So it seems to me that if the people are as anxious as they seem to be, both in the administration and on the other side of the aisle, to get the Gramm-Miller amendment considered, the first step is to pass or at least have a vote on Nelson-Breaux-Chafee because it will, in fact, give us an opportunity to have that vote, and I think another vote shortly thereafter, if necessary, on Gramm-Miller.

I do not know what more a person can do today than give the other side the kind of answers they are seeking and the kind of solution for which they have been asking. I hope this will be clarified. If there are some misunderstandings—as I think it may be a simple misunderstanding—I hope some other people will show up and respond to what we have put out there at this point in time.

Very often, misinformation, a lack of information, mischaracterizations, and things such as that can drive the day. I hope they do not drive this day. National security is too important, and passing this homeland security legislation is of the utmost importance.

So for those who are suggesting there is any effort to delay it or in some way tie the President's hands, this simply does not do it. It is consistent with existing law, and it gives the President ample authority to do what the President needs to do for personnel, for collective bargaining, and for breaking the logjam in the homeland security debate, which is so important to the future of our country.

Passion runs deep: passion about Iraq, passion about homeland security, passion about getting something done as quickly as possible. I hope we can use that passion as a basis to accomplish something.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. JOHNSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I rise to speak for a little bit of time until Senator NICKLES from Oklahoma arrives, and ask unanimous consent that he then be permitted to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I simply want to respond, very briefly, to what I saw this morning on the television when I was observing the activity on the floor.

I saw the majority leader come to the floor and give what I thought were very intemperate remarks suggesting that—not suggesting—demanding that the President of the United States apologize, allegedly for politicizing the war effort.

My belief, after looking at all of the transcripts of the comments that were attributed to the President and the Vice President—and I have them all right here, as well as the newspaper accounts of the same—it suggests to me that it is not the President but the distinguished majority leader who needs to apologize.

I say that because it is very clear the President has not politicized anything with respect to this war. The comments in which he criticized the Senate—and I believe rightly so—have to do with our failure to adopt a homeland security bill. And he referred to the special interests that have been involved in impeding action on the bill, and complained about the fact that the Senate has not followed the leadership of the House and passed a bill.

As a matter of fact, earlier today the Senate precluded a vote on the President's plan. When Senator GRAMM sought to have an opportunity to vote on the President's plan, that was turned down.

So we have a situation in which the Senate, for the fourth week now, is debating the homeland security bill—has not passed it, will not even let the President have a vote on his proposal—and the majority leader suggests the President is politicizing national security.

The President is right to complain about that. But what the President did not do was to connect any activity of the Senate, or Democrats in the Senate—or anybody else, for that matter—to the war effort, as was inferred by the majority leader.

The majority leader attempted to take quotations that dealt with homeland security and transform them somehow or other into criticism of Democrats in the policy with respect to Iraq. And that simply is not true. It did not happen. For that reason, as I say, it seems to me the majority leader ought to be the one offering the apology, not the President.

I had been talking, just before watching this, about the damage that was being done to the attempts by the President to reach an international consensus in developing a plan for dealing with Iraq by the comments of German Chancellor Gerhard Schroeder during his election. And both Dr. Rice and Secretary Rumsfeld have noted the fact that those comments were not helpful and poisoned the atmosphere.

They poisoned the atmosphere internationally by, in effect, confirming what Saddam Hussein is saying, that the President is acting out of political motives rather than out of a desire to achieve peace in the world. When the distinguished majority leader comes to the Senate floor and seemingly validates those same criticisms of the President, he is further poisoning the atmosphere.

That is another reason why he owes the President an apology. He is literally politicizing the issue in a way that is destructive to the President's attempt to achieve an international consensus.

I find it ironic because it is the other party that has sought to assure the President would gain that consensus internationally, many of them suggesting that is necessary before we act, and then that very attempt is being undermined as a result of the comments made here.

Mr. ROBERTS. Will the Senator yield?

Mr. KYL. I am happy to yield.

Mr. ROBERTS. I ask the Senator from Arizona if he is aware, along the same vein of comments that were made by the distinguished majority leader in reference to the Vice President—I share the same concern he has mentioned—is the Senator aware when the Vice President was in Kansas, basically they are accusing the Vice President of politics in regard to the Iraq debate in urging an audience in Kansas to vote for a GOP congressional candidate?

Mr. KYL. I am aware of the fact the majority leader alluded to that. But he was only looking at a headline in a newspaper. I know the Senator from Kansas was actually at the event.

Mr. ROBERTS. I would respond to the Senator by simply indicating, there is nothing that hurts the truth more than stretching it.

I understand if somebody reads a headline and gets upset about it. I would, too. But the headlines I have

from the Kansas press—and the Senator is correct; I was at the meeting and introduced the candidate. The candidate introduced Lynne Cheney, the wife of the Vice President. The Vice President gave a very standard speech. Here is the headline, ''Cheney Talks About Iraq at Congressional Fundraiser.'' He said that our candidate would be ''an effective voice for Kansas, a fine addition to your State delegation, which is already one of the best in the country,'' which I appreciated. But I find nothing here that has anything to do with politics.

And then here is another one, ''Fundraiser for Taff Draws 500.'' From the Kansas City Star, ''Cheney Talks Tough at Taff Fundraiser.'' But the two things were separated. It was a very sobering discussion on the policy of preemption and what we face in Iraq.

As a matter of fact, the Vice President, in a private session, said the Congress ought to be asking tough questions, which we are, and urged bipartisan support. I heard every word. For the life of me, I just did not hear that kind of inference at all. I wanted to come to the floor—I thank the Senator for yielding to me—to indicate that simply was not the case. If we are into a situation where we are inferring we are trying to politicize this effort, that is not the case with the Vice President. We can't be in the business of the security of the American people and sending wrong messages to Saddam Hussein unless we get the facts straight.

In doing that, I am not trying to perjure the intent or the concern of the distinguished majority leader. It just did not happen. I wanted to set the record straight.

Mr. KYL. I appreciate that from the Senator from Kansas. I know the majority leader this morning a little bit later, in talking to reporters in response to a question, said he was relying upon the newspaper accounts of what had been said. But I suggest that while that might ordinarily be all right, the press can make mistakes, and when you are accusing the President of politicizing a war effort, you better be correct. We have gone back and actually looked at the stories, and the Senator from Kansas makes a point, too. The Vice President is a very careful person. He is not prone to politicizing things.

I will conclude by saying it is very important for us to keep our eye on who the enemy is. The enemy is the terrorists. The enemy is Saddam Hussein. The enemy for none of this is President Bush. I don't think we should be raising questions or throwing around allegations that undercut what ought to be a common effort from everybody in this country as well as this body to ensure we have the kind of consensus that will enable us to prosecute whatever war we prosecute in a way that enjoys both support in the United States and abroad. The kind of tirade entered into here this morning undercuts that effort. It does not assist.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I ask unanimous consent to add 10 minutes to the time allocated to me under the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. VOINOVICH. Mr. President, I rise today to talk about the Lieberman homeland security bill, the Gramm-Miller amendment, and the Nelson-Chafee-Breaux amendment to that amendment.

Before I do that, I will comment on the fact I am really disturbed at what I see going on here in the Senate in terms of the President of the United States. Our President has more on his plate than perhaps any President in my memory. He has the Middle East situation. I have been studying that for 20 years. That is more fragile than I have ever seen it during my lifetime.

We are in Afghanistan. We have forgotten we are there. That is a major undertaking. We are trying to work diplomatically to make sure Pakistan does not go after India and India after Pakistan, which could embroil us in a nuclear situation.

We have a problem with Saddam Hussein in Iraq. We have a domestic economy in bad shape today. People in this country are losing faith in our financial markets. We are in a very fragile, shaky period.

What we should be doing in the Senate is rallying to the cause to try and be as supportive as we can of the President, who is trying to rally the world and the United Nations and our allies in dealing in a responsible way with Saddam Hussein, who has thumbed his nose at us for so many years and has set up a new paradigm in terms of the United Nations where they will work together to make it very clear they will not tolerate people such as Saddam Hussein.

I was going to say it is business as usual in the Senate; I just wish it were business as usual. I hope my colleagues on both sides of the aisle will start to understand the American people are watching what we are doing here, and it is important that we behave in a way that gives them confidence that we are more interested in moving our country ahead than we are in partisan politics.

HUMAN CAPITAL AND THE FEDERAL WORKFORCE

Mr. VOINOVICH. Mr. President, since my election to the Senate in 1998, I have given top priority to a public policy issue that seldom gets the attention it deserves: The challenges of our Federal Government's civil service system.

For nearly 4 years, I have used my position as a member of the Governmental Affairs Committee and chairman and ranking member of the Oversight of Government Management Subcommittee, to focus the spotlight on this critically important issue. As I learned more about the condition of our Federal Government's personnel system, it became crystal clear we are in the midst of a human capital crisis in the United States Government, one which will only get worse unless this Congress acts decisively to address it.

What is it? Is it real? Why do we have it? The human capital crisis is, simply stated, the inability of the Federal Government to properly manage its workforce. Robust personnel management includes the ability to recruit the best candidates, hire people in a timely manner, award performance bonuses and other motivational tools to encourage retention, provide training and professional development opportunities, and the flexibility to shape a balanced workforce.

Good management includes the flexibility to act quickly and to compete as an employer of choice in the fast-paced 21st century knowledge economy.

Unfortunately, at present, the Federal Government's ability to use such tools is not what it could be. By now, we have all heard the statistics, and maybe some of my colleagues have not heard them. The average Federal employee is 47 years old. By 2005, more than 50 percent of the 1.8 million person Federal workforce will be eligible for early or regular retirement.

Even more incredible is the fact that by 2005, 67 percent of the Senior Executive Service will be eligible for regular retirement, and an additional 21 percent will be able to retire early. This is an astounding 88 percent of our top-level workers, managers, department heads, and division chiefs.

I was talking to businesspeople this morning, and they said: ''Explain to us what this is about.''

I said: ''Consider your own businesses. Say during the last 10 years you were eliminating employees without any regard for how that would affect your mission, or how high-tech manufacturing and information technology has changed your business. Then imagine half the remaining people working in your plant are going to retire soon. Then imagine that about 88 percent of your top managers are going to retire also. Where would you be today?'' They got it.

I remind my colleagues, this dire predicament refers to what could happen in the next 2 to 3 years, but it is virtually impossible to predict accurately the amount of experience and institutional knowledge that is literally going to walk out the door at the end of this decade.

Some may ask: Is the human capital situation really that important? Is it really a crisis in the Federal Government?

Consider some additional evidence we have learned from officials in some of the agencies that handle national security and finances, such as the CIA, FBI, FEMA, Social Security Administration, and Department of Commerce.

CIA Director George Tenet, in recent congressional testimony, said within 3

years, between 30 and 40 percent of his workforce will have been there for less than 5 years.

According to a recent GAO report, more than 70 agencies have foreign language needs, and staff shortages at those agencies, such as the FBI, ''have adversely affected agency operations and hindered U.S. military, law enforcement, intelligence, counterterrorism, and diplomatic efforts.''

Mr. President, do you remember after 9/11? The call went out: We need people who can speak Arabic and Farsi. Incredible. Ten years after the Persian Gulf war, we remain actively involved in the Middle East, yet we do not have enough people who speak Farsi and Arabic in the FBI, the State Department, or the CIA.

At FEMA, retirements have accelerated since 9–11–2001 as employees have reevaluated priorities, and nearly 50 percent of the remaining workforce will be eligible for retirement in the next 18 months.

According to a recent Federal Times survey of more than 2,200 managers at our Social Security Administration, dramatic downsizing in the ranks of managers and front-line employees has hurt training, caused burnout, strained resources, reduced managers' effectiveness, and created disconnects between headquarters and field offices, all at a time when the agency's workload is skyrocketing.

According to GAO, the Department of Commerce is unable to effectively monitor U.S. trade laws with foreign countries due to a shortage of staff with the right expertise.

Mr. President, the evidence is clear. The Federal Government has a serious human capital crisis. That is why I have sought information from some of the best minds in the country over the past few years in public policy and management, and why I have spent so much time listening to the people closest to the problem.

Furthermore, Mr. President, I believe that if a Federal agency or department is important enough to receive the hard-earned tax dollars of my constituents and yours, we have a moral responsibility to see to it that the people's money is spent wisely. Outdated personnel practices and lack of training not only put agencies at risk of not being able to fulfill their mission and provide needed services to the American people, this also represents wasteful Federal spending. We simply must provide the flexibility agencies need and give them the right tools to do their work.

I have sought to attract attention to this issue at every opportunity. My subcommittee held 10 hearings from July 1999 to March of 2002. Two of those hearings were held by Chairman DURBIN, and I thank him for his willingness to work with me on this issue.

Earlier this year, Senator AKAKA held 2 days of legislative hearings on civil service reform. I also recognize his leadership and partnership on this issue. I sincerely appreciate their assistance in raising the profile of our pressing human capital challenges.

Also, in December of 2000, just before our new President took office, I released a comprehensive report on this subject ''The Report to the President: The Crisis in Human Capital'' which summarized our subcommittee's activities during the 106th Congress and made recommendations to the incoming administration on how to address the Government's human capital challenges.

Mr. President, I want you to know I have not been alone in my assessment of the situation. In 2001, Comptroller General of the United States David Walker designated human capital on the General Accounting Office's ''High-Risk List.'' In the past, other areas that were on the list, such as the Y2K problem, the 2000 census, the Superfund Program, and the Department of Agriculture's farm loan programs, received attention and priority, and they no longer threaten the operations of the Federal Government. As Congress did with these issues, we must prioritize human capital; otherwise, this crisis will persist.

Dr. Joseph Nye, Dean of Harvard University's Kennedy School of Government, one of the top public policy schools in the Nation, also identified the Federal Government's human capital crisis as a critical issue. The problem truly hit home for his academic institution. During the nineties, increasing numbers of Kennedy School graduates, despite their top-notch graduate level training in public policy, chose employment in the private and nonprofit sectors rather than work for the Federal Government.

Dr. Nye noted he did not want the Kennedy School to be known as the second best business school in Cambridge! As a result, he organized a series of executive sessions during the 2001–2002 academic year, bringing together approximately 30 leaders on human capital management from the public, private, and nonprofit sectors: For example, professors from Harvard, Stanford, Wharton, CEOs, and former senior officials at the Departments of Treasury, Labor, Office of Federal Procurement Policy, and Office of Management and Budget. I attended three of the four sessions and found them productive and insightful.

In addition, the U.S. Commission on National Security in the 21st Century, a bipartisan group chaired by former Senators Gary Hart and Warren Rudman, released a series of reports providing a comprehensive evaluation of our national security posture.

We have been talking a lot about national security, haven't we? Their reports included many recommendations on homeland security which we are considering in this bill that is before the Senate. The Commission's final report concluded as follows:

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in Government.

Unprecedented crisis.

> The maintenance of American power in the world depends on the quality of the U.S. Government's personnel, civil and military, at all levels. We must take immediate action in the personnel area to ensure the United States can meet future challenges.

Furthermore, in his testimony before our committee, former Defense Secretary and member of the Commission James Schlesinger added:

> It is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

Mr. President, yet another poignant illustration was offered by FEMA Director Joe Allbaugh when he testified before a Senate committee earlier this year. I note FEMA is one of the key agencies in the proposed Homeland Security Department. In describing his workforce needs, Director Allbaugh said:

We have not been spending enough time internally on our employees. Before 9/11, retention was a problem and there was essentially no recruitment. Over the next 18 months, nearly 50 percent of our agency is eligible for retirement, and since 9/11, retirements have accelerated. The people who worked at Ground Zero came to my office with a different perspective on life. They want to spend more time with their kids, grandkids, and spouses.

I think these comments represent the feelings of many Federal employees, and Director Allbaugh's testimony calls attention not only to the urgent need for reform of our civil service laws, but also for a completely new mindset for considering the Federal Government's personnel requirements and workforce culture.

Mr. President, if that is not a compelling call to address this issue, I do not know what is. Despite all the evidence that significant human capital challenges exist in the Federal Government, this issue has not received the attention it deserves. To its credit, the Bush administration has taken steps to raise the profile of this issue. In fact, strategic human capital management is one of the five governmentwide issues targeted for reform in the President's management agenda, which was released in August of 2001.

Having recently marked the 1-year anniversary of the horrendous and unprecedented terrorist attacks on the United States on September 11, the Senate is considering legislation designed to reorganize our Federal Government in a way that will help our Nation prevent future such attacks.

Suddenly, in the context of this debate, civil service reform is the issue du jour. It is an issue which for years has not been substantively addressed except when agencies become dysfunctional. It is now front and center in the consideration of the most important

Government reorganization to take place in our Nation in half a century. It is about time.

In the debate over homeland security, we have backed into this personnel issue that has demanded attention for so many years. At least we are finally taking the first step to address the problem by having a debate on the subject. We are talking about personnel practices and the people who make a difference for the Government and deliver the services.

Unfortunately, however, this debate is limited to the proposed Department and not to the needs of the entire Federal Government. The entire Federal Government needs new flexibilities. Congress last enacted major civil service legislation for the entire Federal Government 24 years ago in 1978. In today's fast-paced, high-tech world, the 1970s represent almost prehistoric times when people were still using typewriters and the only computers were mainframes. To operate effectively, the Federal Government cannot afford to revise its personnel laws only every quarter or half century. The basic classification and compensation system for the Federal Government dates back to World War II, when the professionals in the civil service had jobs as clerks and typists and were at GS levels 2 and 3. Today's civil service professionals are typically GS–12s and GS–13s. So much has changed over the years, and changing times require new thinking and new laws—policies that allow flexibility in our Federal Government civil service system.

The intellectual basis for one of the areas I have sought to reform, competitive hiring, dates back to the Grant administration! Back then, our soldiers were using single-shot, repeating rifles, the telegraph was cutting-edge communications technology, and the primary mode of transportation was the horse! That was when we started the ''rule of three.''

I know of no successful business anywhere in the world that is using a personnel system based on management theory that is more than 50 years old, or which dates from the Industrial Age.

During the 107th Congress, I have worked with some of the Nation's premier experts on public management to determine what new flexibilities are necessary to create a world-class 21st century workforce, and to draft legislation based on their insights. These individuals include some of our colleagues in Congress, including Senator AKAKA; officials of the Bush administration such as OPM Director Kay Coles James; former OMB Director Sean O'Keefe, who now heads up NASA; Clinton administration appointees who spent a lot of time on this, including Steve Kelman, the former Administrator of the Office of Federal Procurement Policy; and Elaine Kamarck, a domestic policy adviser to then-Vice President Gore—this is a bipartisan effort; Federal employee unions such as the American Federation of Government Employees, with their president, Bobby Harnage, and the National Treasury Employees Union, NTEU, and their president, Colleen Kelley; representatives of public policy organizations such as the Council for Excellence in Government, Partnership for Public Service, Private Sector Council, Brookings Institution, National Academy of Public Administration, and the Volcker Commission; and subject experts in some of our country's top educational institutions, including Dr. Jack Donahue of Harvard's Kennedy School of Government.

I was especially attentive to the concerns of unions, making several significant changes to my draft legislation since last summer to allay their uneasiness with some of its flexibilities. I felt it was important. As someone who dealt with 25 unions when I was mayor, and with 5 unions when I was governor, I know it is important that unions be at the table and that their input be taken into consideration.

We made changes that include new language to clarify that the intent of my proposed early retirement and buyout authority is workforce reshaping, not the downsizing of the 90s; as well as the revision of removal of provisions that enjoyed strong support from other stakeholders, including the establishment of a public/private exchange program to cross-pollinate good management ideas between sectors of the economy.

In other words, we tried to accommodate the concerns of our union representatives.

Finally, Mr. President, I note that my bill was the subject of a letter to Chairman LIEBERMAN and other members of the Governmental Affairs Committee, a letter of support for the legislation was signed by 29 Kennedy School executive session participants. By combining my reform proposals with those of the administration, both of which I introduced last fall, I was able to develop a package of consensus human capital reforms that I believe will have a positive impact on the Federal Government's personnel management.

On June 20, along with Senators THOMPSON and COCHRAN, I introduced that consolidated bill, S. 2651, the Federal Workforce Improvement Act, a measure that is designed to get the right people with the right skills in the right jobs at the right time.

In July, during its consideration by the Governmental Affairs Committee, working with Senator AKAKA, I successfully amended key provisions of this bill to the homeland security legislation, and I really appreciate the bipartisan support we received for those changes. I am grateful to Senator AKAKA for that. I only wish we had put more of S. 2651 into the homeland security bill.

I hope as we wrap up homeland security—at least I hope we wrap it up, my colleagues will conclude we should adopt the rest of the provisions of S. 2651 in this important legislation.

Let us get it done all at once. The provisions we have already included will have an impact not only on the new Department but on all Federal agencies. The Voinovich-Akaka language will help the Federal Government begin to address its human capital challenges, challenges that extend far beyond the corridors of the proposed Department of Homeland Security. These flexibilities are not as comprehensive as what we were proposing for the new Department, but they represent a good start on the path of reform in this critical area that has not received adequate attention by past administrations or Congress.

It does the following: Creates Chief Human Capital Officers at the Federal Government's 24 largest departments and agencies, officials who have responsibility for selecting, developing, training and managing a high-quality workforce; establishes an Interagency Chief Human Capital Officers Council chaired by the OPM Director, to advise and coordinate the personnel functions of each agency and meet with union representatives at least annually; requires OPM to design a set of systems, including metrics, for assessing agencies' human capital management, something that has been largely ignored; reforms the competitive service hiring process, allowing agencies, consistent with merit principles, to use an alternative category ranking method for selecting new employees instead of the ''Rule of 3,'' making the process more efficient and fair, a practice that has been very successful at the Department of Agriculture for the past decade; provides governmentwide authority for offering voluntary separation incentive payments and voluntary early retirement, buyouts and early-outs, for the purposes of workforce reshaping, not downsizing. This authority, which I was able to secure with legislation 3 years ago, is currently being used effectively on a limited basis for civilian employees at the Department of Defense.

It also lifts the total annual compensation cap for senior executives, allowing performance bonuses to be paid in full in a single year; and it reduces restrictions on providing academic degree training to federal employees, thereby emphasizing the importance of individual professional development.

In light of the fact that there has not been government-wide civil service reform in a quarter century and, as the Hart-Rudman Commission noted, personnel is the basis for maintaining national security, it is absolutely appropriate that this legislation be included in the bill to create the Department of Homeland Security.

I thank Senators GRAMM and MILLER of their willingness to consider my proposals which represent extensive efforts to address the Federal Government's personnel challenges during my 4 years in the Senate, and for including the Voinovich-Akaka language in their substitute amendment. I believe it is a

strong addition that also has the administration's support.

As I said, I hope we'll be able to add the balance of S. 2651 to the homeland security bill before we conclude this debate, because these reforms are badly needed.

The Homeland Security Department is not the first, and not the last, agency that needs to have greater flexibility. Even more comprehensive flexibilities and reforms, similar to those proposed in the Gramm-Miller substitute for the Department of Homeland Security, which I will describe in a moment, are needed at other agencies as well, including the Department of Defense and NASA. These agencies may provide the impetus for Congress to return to this issue next year.

In fact I asked Senator WARNER and Senator LEVIN, when they were considering the Defense Authorization bill, to give consideration to accepting some personnel flexibilities that the Department of Defense wanted. I know from Secretary Rumsfield that they will be coming back asking for those flexibilities.

It is my hope that the incremental provisions I have developed with my colleagues and a diverse group of stakeholders over the course of the last year will assist the rest of the federal government while we consider next steps.

I would like to take a few moments now to discuss the personnel provisions in the Gramm-Miller substitute that apply specifically to the new department. I have worked with Senators GRAMM and MILLER on these provisions and believe this language will provide the Department with the tools it needs to get the job done, and at the same time respects the rights of those union workers being transferred into the new department.

I say this because I am close to the leadership in both of our major unions. They have some concerns. I tried to get the administration to sign an Executive order continuing partnerships between unions and the Federal Government. Unfortunately, this did not happen. The administration also included competitive sourcing on the President's Management Agenda, setting targets that each department had to meet in order to receive a green light on the Management Scorecard. I said, if you tell an agency head that he must outsource 10 percent, 15 percent, 20 percent—instead of trying to shape his department with the people he has and give them training, he will spend all his time figuring out how he is going to outsource those jobs.

The proposed Department of Homeland Security will merge nearly 170,000 employees from more than 20 Federal agencies. This is a momentous undertaking. Although the creation of the Department of Defense in 1947 combined a larger number of civilian and military employees, the consolidation we are now contemplating would require more than a score of different workplace cultures and personnel systems to be effectively harmonized, all while the Nation entrusts this new department with the one of Federal Government's most urgent and important missions: to preserve the homeland and protect American citizens from harm. In order to accomplish this very tall order, the President and the new Secretary of Homeland Security will need new flexibility, and I believe Congress should authorize it.

In recent years, however, Congress has engaged in management by scandal, only granting more flexibilities when agencies under-perform! For example, the FAA, IRS and SEC each received special personnel authorities over the last decade, but only after each of these agencies was singled out for its failure to achieve its mission.

The Bush Administration has correctly pointed out that we cannot wait for a similar occurrence at the Department of Homeland Security, and it has justifiably sought broad flexibility for the new department before any mission failures occur.

On a related matter, Mr. President, it is interesting to note that the recommendations of the Hart-Rudman Commission form the intellectual basis for large portions of the underlying legislation we are debating today. Yet, while we are paying close attention to the Commission's recommendation to establish a new Department of Homeland Security, we are not seriously considering its recommendations to modernize the civil service system. We simply must take these necessary steps now.

The personnel provisions in the Gramm-Miller substitute represent a good-faith effort to modernize the personnel system for the new department.

The Quinn-Portman amendment would preserve employee rights, including hiring and promotion based on merit and equal pay for equal work, and would protect employees from improper political influence and reprisal for whistle-blowing. Employees would still be protected from prohibited personnel practices, such as illegal discrimination, politicization of the hiring or promotion processes, and violation of veterans' preference requirements. I notice my friend, Senator AKAKA was talking about the fact that whistle blowing is not involved in the amendment. We specifically talk about protection of employees against reprisal for whistle blowing.

Furthermore, employees would still have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

First, the substitute features House-passed language proposed by Representatives JACK QUINN and ROB PORTMAN. In June, the President sent to Congress a blueprint for the personnel system he envisioned at the new department. The President realized that Congress would flesh out many of the issues in his proposal, and that is just what happened. The House-passed version is less flexible than what the Administration originally requested—it is really important to understand that—but it is designed to deal with the personnel flexibility sought by the President, and to address the collective bargaining rights that many of our colleagues seek to protect.

The Quinn-Portman amendment retains most of title V's provisions. This is not as broad as Transportation Security Administration to which Congress gave blanket exemptions from title V last November.

The language also requires that the new department collaborate with unions and other employee organizations in creating its personnel system. In addition, it includes procedures to ensure that exclusive bargaining units are represented by individuals designated by the union itself. It also provides certain safeguards for employees as the proposed department develops a new system for employee appeals.

In order to ensure that the new human resources management system is developed in collaboration with the unions, the Quinn-Portman amendment provides for direct involvement by employee representatives in three stages of the development process.

In the first stage, as the human resources management system is being designed, the Secretary and OPM Director must provide a written description of the proposed system or adjustment to the system; allow each employee representative at least 60 days to review and make recommendations on the proposal; and give any such recommendations full and fair consideration in deciding whether or how to proceed with the proposal.

At the second stage, when the Secretary and OPM Director decide to implement a human resources management proposal, they must, prior to implementation: give each employee representative details of the decision along with information upon which the decision was based; give each employee representative an opportunity to make recommendations; and give such recommendations full and fair consideration. If any employee representatives' recommendations are not proposed to be implemented, the Secretary and Director must explain why.

During the third stage, once a human resource management system proposal is implemented, the Secretary and OPM Director must develop a method for each employee representative to participate in any further planning or development.

The Quinn-Portman amendment also fleshes out the Administration's original proposal by providing necessary flexibilities in six key areas: performance appraisals, classification, pay rates and systems, labor-management relations, adverse actions, and appeals. Each of these areas would be open to modernization, subject to the explicit limitations included in the language to protect employees, which, as I have

just delineated, are comprehensive, and rooted in current civil service law.

We currently have pending a second-degree amendment to the Gramm-Miller amendment from Senators BEN NELSON, CHAFEE and BREAUX.

They would like to reduce the six areas of flexibility to four. I happen to believe that the administration, in order to create this new Department, is going to need those six areas of flexibility to get the job done.

Based on my experience as mayor and Governor, I thought it also would be a good idea to have the Secretary negotiate as opposed to consult with union representatives in the six areas in which the administration is seeking flexibility. My belief in that regard comes about as a result of my experience over the years. In other words, after the consultation and the negotiation occurred, there would be an impasse panel that could be appealed to for a final decision.

I thought that would be helpful because it would make the negotiation more robust and there would be fewer areas of disagreement. Once it was over, the parties could say the matter was taken to a third party and decided. That is the way it should be decided.

In other words, and I want to point out to my colleagues, the success or failure of the administration to get the job done is going to depend on the relationship they develop with our labor unions and other Federal employee organizations. If there is consensus, if there is openness and a sense of fairness, this will be a great success. On the contrary, if it is an adversarial relationship, one that is not open, one where we don't have the discourse that we need, it will be a failure.

I have reorganized as Governor. I have combined departments as Governor. And I have found that the only way you can be successful is to work with organized labor on a consensus basis and work things out. Without working things out, it will not be a success. I have brought this to the attention of the administration several times. I am confident that with the process that is in the Gramm-Miller amendment, the process will be open and fair.

I have talked to Kay Coles James, Director of the Office of Personnel Management; I have talked to Mark Everson, Deputy Director for Management at OMB, and many other people. They understand that they have to build trust with the unions if they expect to have a successful Department. If they don't work together and achieve a consensus, we are in big trouble.

Finally, the Gramm-Miller substitute includes the House-passed language proposed by Representatives CONNIE MORELLA and CHRIS SHAYS—with an additional provision that I have recommended. This language would, for the first time, limit the current authority of the President to exclude an agency or agency subdivision from participation in a collective bargaining unit.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has as a primary function intelligence, counterintelligence, investigative or national security work and that permitting the entity to have union organizations would be inconsistent with national security requirements and considerations.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has a primary function of intelligence, counterintelligence, investigative or national security work, and that permitting the entity to have union organization would be inconsistent with national security requirements and considerations.

I want to make this clear to my colleagues.

The Morella-Shays language would limit the President's current authority only with regard to the new department. It would prohibit the President from using the exclusionary authority unless the mission and responsibilities of a transferred agency materially change and a majority of the employees within such an agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism.

The language does provide, however, that the President could waive the above limitations on his authority if he determines in writing that their use would have a substantial adverse impact on the department's ability to protect homeland security.

Senators GRAMM and MILLER have agreed to add language that I proposed requiring that, when the President executes his authority under the Morella-Shays language, he must notify Congress of the reasons for his determination at least 10 days prior to the issuance of his written order.

What our unions are worried about is arbitrary and capricious action on the part of the President exempting members from membership in their unions.

This language basically says that we, for the first time, in the Homeland Security Department, will limit that power of the President, and if he exercises it under Morella-Shays, it means his decisionmaking will be subject to a filing in Federal court as to whether he has abused his discretion in exercising that power.

This is very important. If he decides to waive it and says, no, I don't want to do it by Morella-Shays, I want to go ahead and exercise my power, that basically says the President has to put it in writing, and send it to Congress. The unions will see it, the majority will see it, the minority will see it, the media will see it, and public personnel experts will see it. I have tried to convince some of my colleagues that this process is open to public scrutiny.

I have to say to my colleagues, how can you ask this President of the United States—at a time when we have a national security crisis—to give up the same authority held by all other Presidents since 1962—when we create this new Department of Homeland Security?

The fact that this administration has agreed to set up criteria and limit the President's authority to certain specific reasons for exercising it—to then say to the President, by the way, you can't do that now. To say, 'you have to send it to Congress 10 days in advance' is more than enough limitation on this historic executive authority. I say to my friends on the other side of the aisle, I say to my friends in the unions, that, first of all, I don't believe this President is anti-labor or trying to short-change or treat our employees improperly.

Second of all, even if he thought of doing something like that, or somebody recommended it, he would have to explain the rationale in writing, and allow it to be held up to public scrutiny 10 days prior to his order taking effect.

Mr. President, I have been one of the leaders on civil service reform during the last two sessions of Congress. I believe I have probably dedicated more time than any Senator to addressing the Federal Government's personnel interests. I have tried to raise the profile of this issue and then work in good faith with all interested parties to develop solutions. Based on my work, I want my colleagues to know I believe the personnel provisions in the Gramm-Miller substitute can go a long way towards putting personnel management in the executive branch back on track.

I just hope that somehow in the next couple of days we can work something out on both sides of the aisle so that people feel comfortable that we can protect the rights of organized labor and at the same time give the President of the United States the authority and the flexibilities he needs to get the job done.

I hope that after this debate is over, the well is not so poisoned that when the administration and the unions begin to sit down and talk with each other, they can work together to arrive at a consensus so that this reorganization can be successful and fruitful, and we can achieve what we all want to achieve to secure our homeland.

Thank you, Mr. President. I yield the floor.

Mr. REID. Mr. President, I say to my friend from Ohio, who I think is such a good legislator—

Mr. VOINOVICH. Could the Senator speak a little louder? I am wearing a hearing aid.

Mr. REID. I was saying nice things about the Senator. I will be happy to speak louder.

I was telling my friend from Ohio, who is such a good legislator, I would like to at a subsequent time today make a unanimous consent request that we vote on cloture on Gramm-Miller tomorrow. It is now set for Friday.

We want to move this legislation along. I think that is what we need to do.

The Senator doesn't need to respond to that at all. I just wanted to let him know that we hope to work something out in the next couple of days. I hope we can work something out tomorrow. We want to move this legislation along.

I have to say this: Having been on this bill for the fourth week, I am concerned that maybe people down on Pennsylvania Avenue don't want this bill. We have done everything we can to move this legislation. It doesn't appear that people on the other side of the aisle want it moved.

For example, Senator BYRD's amendment was pending for several days. At any time, Senator BYRD's amendment was subject to a motion to table. Everyone knew there were enough votes to table that amendment. But for days, the minority chose not to do that.

So I hope that I am wrong. I hope that I am wrong. I hope that there are as many on your side of the aisle as on our side of aisle who want this legislation to pass. But I have the feeling now, I say to my friend from Ohio, is that the minority does not want to move the homeland security bill.

We will see in the next——

Mr. VOINOVICH. Mr. President, I say to the Senator, I beg to differ with the Senator from Nevada. We do want to move forward with this homeland security bill. We do want it to pass. We know how necessary it is for the President to have this new Department, with the flexibility he needs to merge more than 20 agencies.

From my perspective, I cannot figure out why the Majority has been filing cloture motions on some of these amendments, when I think they could make a motion to table instead. I am still trying to figure that out. I may need to get the Parliamentarian to explain what this is all about.

But I can assure you, that after the time I have spent on this issue with many of my colleagues, including many on the other side of the aisle, we want this to move forward.

We would like to have a vote up or down on the President's amended proposal, which is contained in the Gramm-Miller amendment. We would like to have a vote on the recommendations from Senators NELSON, BREAUX, and CHAFEE, and see where the Senate stands on that amendment.

We have to move this along. We cannot go home, I think, without getting this done. I know this has gotten to be pretty partisan. But I honestly believe that if we can sit down and start talking about some of this a little bit more, we could work something out and move ahead.

I assure the distinguished Senator from Nevada that we are not delaying this. We want to move forward. And I will certainly do anything I can to help cooperate in this regard.

But we want a vote on the Gramm-Miller amendment. We also want a vote on the amendment of Senators NELSON and CHAFEE and BREAUX.

Mr. REID. I would simply say—the majority leader is here, and I don't want to take a lot of time—the majority of the Senators over here want a bill. I am confident a majority of the Senators want a bill. This is the fourth week we have tried to do it.

We are trying very hard. We should be able to do it. It appears to me that some people cannot take yes for an answer. We are willing to give a vote on the amendment offered by the Senator from Texas, but he says he does not want a vote unless he can have the first vote. It is just a lot of what appears to me, and I am sure to the people in Nevada and the public, to be a lot of silliness.

We want to move forward with this legislation. As the Senator from Ohio has said, you want it passed. We want it passed. Hopefully, we can do something. But it appears we are not getting impetus from the leadership on your side of the aisle and the White House to get this done.

I am sorry to have taken the leader's time.

The PRESIDING OFFICER (Mr. MILLER). The majority leader.

Mr. DASCHLE. Mr. President, parliamentary inquiry. Who controls the floor?

The PRESIDING OFFICER. Nobody controls the floor at this time.

The majority leader is recognized.

Mr. DASCHLE. Mr. President, I do not want to interrupt the statement of the Senator from Ohio.

Mr. VOINOVICH. Mr. President, I don't see anybody else seeking recognition on my side of the aisle. I yield the floor.

Mr. DASCHLE. Mr. President, I came to the floor for a couple of reasons. One was to reiterate what I think I heard the assistant Democratic leader say with regard to our desire to have a vote. As we have indicated publicly and privately, we are prepared for an up-or-down vote. We want a vote on the Nelson-Breaux amendment. And once that vote is taken, we are more than willing to vote on the Gramm amendment. So there should be no question about that.

I think I heard the Senator from Nevada say that there are some who cannot take yes for an answer. We are prepared to offer that vote any time. I would hope that our colleagues on the other side of the aisle would take our offer in the manner in which it was intended. We hope to have a vote up or down on that particular amendment.

NO ''CONTEXT'' JUSTIFIES QUESTIONING THE PATRIOTISM OF OTHERS

Mr. DASCHLE. Mr. President, the other matter I wanted to come to the floor to discuss is the reaction to some of the comments that I made this morning.

A number of our colleagues have come to the floor and, as I understand it, the administration has stated that if I had understood the context in which the President made those remarks—the remarks that Senate Democrats are not concerned about national security—that I probably would not have been so critical. In fact, they criticized me for having criticized the President.

Mr. President, what context is there that legitimizes an accusation of that kind? I don't care whether you are talking about homeland security, I don't think you can talk about Iraq, you can't talk about war, you can't talk about any context that justifies a political comment like that.

This is politicization, pure and simple. I meant it this morning and I mean it now. I don't know what may have motivated those in the White House to make the decision to politicize this debate, but it has to stop. There is no context within which anybody can make that accusation about people on this side of the aisle on an issue relating to homeland security, or Iraq, or defense, or anything else.

So let's get that straight. I would hope that we can finally bring this debate to a level that it deserves.

I can recall in 1991 and 1992—especially in 1992—when President Bush made the decision he did. I can recall several of my staff coming to me, suggesting that we say this or that. But never once did I have someone on my staff, someone here in the Senate, refer to the politics of the war with Iraq.

I remember sitting at my desk, handwriting my speech, explaining to my people in South Dakota, and to whomever else might be listening, why I made the decision I did. I did not make that decision for political reasons. And I don't think there is a person in this Chamber who did.

We need that same level of debate this time if we are going to have a debate, if we are going to do it this close to an election.

So I want all the apologies at the other side of Pennsylvania Avenue, all of these explanations about ''context'' to be taken for what they are worth. They are not worth the paper they are printed on.

The time has come for us to quit the explanations, to quit the rationalizations, to quit the politicization, and do what we should do as Americans: Make our statement, make our judgment, have a debate, and send as clear a message to Saddam Hussein as we can. We are not going to tolerate his actions. And we, as a country, will build on a coalition to do the right thing.

I hope this will be the last word. I look forward to talking directly with those in the White House, those on this side of the aisle, as we fashion our response, as we take this matter as seriously as we should, as we do it in a way that lives up to the expectations of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, in many ways, this has been a very hard day. I thank the majority leader of the Senate, TOM DASCHLE, for the remarks he just made and for the remarks he made earlier today. He actually spoke in defense of the Senate.

Anyone who knows TOM DASCHLE—and I think most people around here do—knows that TOM DASCHLE is a very soft spoken man. They know that TOM DASCHLE does not rise to anger or fights, if ever, very often. Therefore, one has to really look at why this occurred.

In my mind, this is not an isolated example of what has been happening. It is a continuum of what has been happening, starting with Andrew Card, the President's chief of staff, who, when asked, why didn't you start discussing this this summer, if you were ready to move such a resolution in October or September, answered, in essence: You don't roll out a new product in the summer.

This kind of thing just seems to continue. We have the Vice President campaigning and essentially saying to the campaigns of the Republican candidates: Gee, we really need you because the Democrats won't help our war effort.

I don't know where this President has been, but I have heard many Democrats, including, for example, the individual presiding in the chair, indicating their support. We are an umbrella party. We do represent different views. Frankly, it makes our party stronger. Everyone wants to go after Saddam Hussein. Everyone wants to get rid of those weapons of mass destruction. We may have a different path to get there. Some of us may want to go it alone and give the President the authority he asks for. Some may want to go with our allies. Some may want to see more U.N. resolutions, as the British have said they want.

The bottom line is, this makes us a strong party. Frankly, it makes us a strong Nation. I have heard members of the President's party express some concerns.

What TOM DASCHLE did was essentially come to the floor and defend the honor of the Senate and this democracy. Why did he have to do it? In today's paper, and also on television, we have seen this quote reiterated over and over. We have the President of the United States saying that the Senate is ''not interested in the security of the American people.''

I know of no one in the Senate, Republican or Democrat, who has slept well after 9/11. I know of no colleague on either side who doesn't think about it every day: How do we protect our people; how do we make the airlines safer; how do we protect this country from chemical warfare; how do we protect ourselves from a possible smallpox epidemic; how do we protect our nuclear powerplants; how do we protect our people night, day, in the air, on the ground? I don't know many Members in this Chamber on either side who have ever slept as well as they did before 9/11, who don't wake up in the middle of the night thinking about it or turn on the radio at 6 or 7 a.m. and pray that there isn't something there.

This kind of statement, that the Senate ''is not interested in the security of the American people,'' is very hurtful. It is hurtful to this institution. It is hurtful to our democracy. It is, in particular, very hurtful because I have talked to my colleagues who served in Vietnam or who served in World War II or even some in Korea. Nobody asks in the military, Are you registered Democrat or Republican?

This is a horrible turn of events. If we don't express ourselves, it is dangerous for our country to put partisanship ahead of being unified as a nation, standing for the rule of law, for free debate, for discussion, for tough debate. That is good for this country. We have a lot of points of view out there. Everyone in this country needs to know that somehow, some way, somewhere their voice is being heard, not being stifled. Because if you dare to say something that questions anything, whether it is this homeland bill, which is a major reshuffling, the biggest reshuffling of the Federal Government in many years, since the creation of the Department of Defense, if you dare say, are we doing the right thing, are we taking our time, if you dare say that, you will find yourself being criticized in the middle of a campaign.

That isn't right. Of course, we will disagree on certain issues. That is the strength of this Nation. People died for that right. When Senator DASCHLE came down here and said he thought it was important to get an apology, I believed that apology should have been given. Not saying, well, we didn't mean this had to do with Iraq. It had to do with something else.

The statement stands on its own—it could be applied to anything—''the Senate is not interested in the security of the American people.'' That is why Senator DASCHLE came to the floor. That is why Senator DASCHLE for a moment even lost his voice, because he was so filled with emotion.

He looked behind him at Senator INOUYE who lost a limb in World War II. He thought of other colleagues who lost their limbs fighting for this country, who faced the posttraumatic stress of Vietnam, who came home and had to deal with that. Are the Vietnam vets Democrats? Are they Republicans? Are they Independents? I can't tell you that. But some of them are homeless. We need to stand united because they faced a war at a time that our country was divided. We need to make sure we give full debate, not some open-ended resolution.

I sat through a hearing today at the Foreign Relations Committee. It was a very important hearing. We had Ambassador Holbrooke there and Robert McFarlane. We had a Democrat and a Republican. We had a very important debate.

Many different viewpoints were reflected on both sides of the aisle. Some were saying: We are ready. They were ready to give the President whatever he needed, whatever he wanted, now, ready, today, go. Others on both sides of the aisle said, as I said: Where are our allies? Would we be in better shape to go in after another U.N. resolution? I asked: Is there a path to peace? Is there some way we can avoid the bloody war that may ensue? Is there a path to that peace? Let's talk about it. If we must have a war, what is this President's intention following that war? These are important questions.

One question that never was raised by anyone in that committee was: Is anyone on this committee motivated by anything other than patriotism and wanting to do what is right for this country, whether they support the resolution or they do not; whether they support the resolution of the White House or a resolution that may be written by some other Republican or Democrat? No one ever suggested that anyone of either party sitting in that hearing did not have the best motivation at heart for our country.

It is extremely disheartening when we hear the statement of Andrew Card that basically says: We did not want to roll out our new product—meaning resolution—in the summer, talking about it as if it was toothpaste or a new car. It is about life and death.

If anyone says: Excuse me, what is it going to cost us in lives, in blood, in treasure, that person ought to be respected, not told they do not believe in the security of the people, whether it is questioning the homeland security bill or maybe a better way to do that or questioning an open-ended, blank-check resolution which I think has come over and I personally cannot support. The people in my State are telling me they do not want me to support it. They do not want me or Senator DASCHLE to come here and not speak what is in our hearts, in our souls, in our minds.

Senator DASCHLE did a very brave thing today. He did something I believe we do not see often enough in politics today. He spoke from his heart. He spoke the truth, unvarnished. He did not go through a committee. He did not bring it to a political adviser.

Mr. SCHUMER. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. SCHUMER. I thank the junior Senator from California for her remarks which I think are right on point.

Mr. President, I would like to ask the Senator a couple questions. First, she was there, as I recall, as I was, when Senator DASCHLE came into our meeting this morning—there were maybe seven or eight Senators—and read the remarks. All of us were stunned and furious. We were just so upset that not a policy debate but, rather, a sort of below-the-belt hit was being made not only by political operatives but by the President himself when he said people are not for national security.

I have been asked by reporters: Was this a calculated move?

I said: No; you should have been there and just seen the reaction.

I remember the junior Senator from California, the senior Senator from New York, and some others of us urged him to go to the floor and to just speak his mind. He was saying to others: Maybe I ought to reflect on it. No, you should speak what you think.

I think it is clear, and I have been talking with people in my State, that the President has stepped over the line with these remarks. This weekend, I was asked by many people way to the left of me: Isn't the President, when he wants to go into Iraq, using politics?

I said: No, I don't think so. I think he has been wanting to go into Iraq from the very beginning.

Then for him to accuse Democrats of using politics, in my judgment—and I wonder what the Senator from California thinks because she has spoken in a heartfelt, compassionate way—I think the American people are fundamentally fair, and ugly tactics like that will backfire on their own, but I also believe it has to be pointed out because war is serious stuff and we need unity. We do not need political games.

Senator INOUYE said it best. I just ask the Senator if she is finding the same thing in her State as mine; that people are not sure, they want some questions asked before we go into war, and people do not like one party accusing the other of not being patriotic or being less concerned about national security simply because they ask questions. I wonder what the Senator's opinion is.

Mr. REID. Will the Senator from California yield for a parliamentary request?

Mrs. BOXER. I certainly will.

Mr. REID. Mr. President, we are on H.R. 5005; is that right?

The PRESIDING OFFICER. That is correct.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate go off the homeland security bill and proceed to a period for morning business, with Senators allowed to speak for a period not to exceed 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. REID. My understanding is the Senator from California wishes to speak for how long?

Mrs. FEINSTEIN. Twenty minutes.

Mr. REID. The Senator from California, Mrs. FEINSTEIN, for 20 minutes following the statement of the Senator from California, Mrs. BOXER.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mrs. BOXER. Mr. President, let me respond to my friend from New York. The phone calls, letters, and e-mails we have been getting have been one-sided against an open, blank-check resolution, as they are phrasing it, as was sent over. They are very much against what the President sent over.

More importantly are my conversations with my constituents. They clearly are very pleased that Senator FEINSTEIN has made remarks regarding Iraq, and I have spoken out. I have received calls now because I raised a number of questions in the Foreign Relations Committee regarding working with our allies, working through the U.N., asking: Is there a path to peace here?

What I pointed out is in recent years, I have voted for two resolutions to go to war: One was to stop the genocide by Milosevic, that was with a Democratic President, and one with current President Bush to respond to the brutal, inhumane terrorist attack on 9/11 for which every single Democrat in this particular body voted.

To me, it is not a question of will I ever vote for such action. It is a question of what is the best way to proceed. My constituents want to hear what I am thinking. I have been in Congress for 20 years. They do not want to see debates where one party is saying to another: You do not care about the American people. My friend is so correct. They look to us to engage in a rational debate, not to have one-line zingers as the President put out. This is not what they want.

Then Ari Fleischer, who is the press secretary for the President, said this today:

> It's time for everyone to work well together to protect our national security.

That was his remark after he was questioned about the President's statement.

That is the point that Senator DASCHLE was making, but not as rhetoric, as fact. There is an expression, I believe it was John Adams said: Facts are stubborn things. The facts are this President said very clearly: The Democrat-controlled Senate "is not interested in the security of the American people." My people at home are appalled at that.

Mr. CORZINE. Mr. President, will the Senator yield?

Mrs. BOXER. Yes, I will continue to yield to both my colleagues.

Mr. CORZINE. I want to reinforce what the Senator from New York said. By the way, this statement about not being interested in the security of the American people was made in Trenton, NJ, on Monday at a political rally. It is hard for me to understand what special interests are being reflected in the President's comments and its repeated nature.

I wonder if the junior Senator from California actually knew this was made in Trenton, NJ, at a political rally for the competitor to our side of the aisle? Is that not political in and of itself?

Mrs. BOXER. I say to my friend, I learned of this quote reading the front page today of the Washington Post, and I am going to read what it says. It says four times in the past 2 days Bush has suggested that Democrats do not care about national security, saying on Monday that the Democratic-controlled Senate is "not interested in the security of the American people."

His remarks, intensifying the theme he introduced last month, were quickly seconded and disseminated by Republican House majority whip TOM DELAY of Texas.

I was unaware of this, although it is interesting to me, because that particular race, of course, in New Jersey, which is pivotal to the future of this Senate, and adds to the political nature of this comment.

Mr. SCHUMER. Will the junior Senator from California continue to yield?

Mrs. BOXER. Yes.

Mr. SCHUMER. I believe my friend was here when I was back in 1991. There was a long debate. I think it was a debate on the merits.

Mrs. BOXER. Yes.

Mr. SCHUMER. Both sides debated strongly in a heartfelt way. The Nation voted to go to war. Whatever side you were on, it seemed to me by having the debate, by keeping the invective aside—I do not remember the previous President George Bush ever using lines like that. After the debate, the vote was close, I believe, in both bodies. It certainly was in the House. The American people were more unified. There was a feeling that everyone had their point of view, that everything was explored.

I would say to my friend from California, at every townhall meeting about Iraq, and I have had a bunch of them around the State, they say you must know something we do not know. There must be some secret.

I have attended a few of the classified briefings and obviously would not want to disclose what is in there, but I say to them, no, as to the basic broad facts, not any kind of detail that would involve security, but the basic broad facts are known to every American because they are in the newspapers. There are no hidden, deep, dark secrets, at least that I am aware of. Maybe there are that we do not know about. But in a democracy, you cannot go to war this way. You cannot say if you are a leader of the country, I know something you do not know, when you are sending the sons and daughters of America to be put in harm's way.

I do not know how I would come out if we had to vote today, but whether I would end up voting yes or no—and I do not know what the resolution would look like—I sure would feel bad if we did not have a debate, if we did not have a discussion, if a whole variety of questions were not asked.

I would like to hear my friend's opinions on this. This is the most awesome, humbling decision that a Member of the Senate or the other body can make, because you are putting the beautiful young people of America in harm's way. You have to be careful.

I am not a pacifist. I can think of a whole number of wars in our country's history where I would have enlisted. I would have been lined up the next day.

I would not say that first strikes should always be ruled out, but I sure want to ask some questions and I sure want to know some answers. This idea of trying to impugn the patriotism, in the interest of helping the American people, of anyone who wants to ask questions, I find, well, too low for words.

I ask the junior Senator from California if she has the same feeling. I come from New York. I know what terrorism does. I knew people who were lost. I put this flag on September 12, and I have worn it every day since then in memory of those who were lost. God willing, I am going to wear it every day for the rest of my life.

I know what terrorism is all about. Nobody wants to beat back terrorism more than I do, but I want to make sure we do it and we do it right. I want to make sure if we go to war in Iraq we are not going to ignore or take resources away from, for example, fighting al-Qaida or other terrorist groups. Perhaps we can do both, but I have not had a chance yet to get all the answers about that. I wonder what the Senator thinks.

Mrs. BOXER. I say to my friend, he is absolutely right.

I want to say for the benefit of my senior Senator for California, I will be talking another 5 minutes and then I will yield.

I want to underscore that what the Senator says is so right. After that debate that took place on the first gulf war, about 80 percent of the American people said they were so proud. Clearly, they may not have agreed with my position, your position, or any other Senator on the other side of the debate, but they saw debate free and open, respectful debate, among colleagues, asking questions, posing ideas, other solutions, other paths to resolve the issue.

In some cases, there was strong support for the President. They realized then that we are a representative democracy. They were calm.

When I went home this past weekend, I found out the people in my State are not calm. They are very agitated, and it is because they are worried that debate is being stifled. They are worried that a resolution is——

Mr. MILLER. The Senator has used her 10 minutes.

Mrs. BOXER. When Senator REID made the request, he did not apply the 10 minutes to this speaker, but I ask unanimous consent to continue for 5 additional minutes before Senator FEINSTEIN proceeds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. The people at home are agitated, I say to my friend, because they expect to see this respect go both ways between the parties and even, frankly, within the parties. We have Republicans who are asking questions and others who are not. We have Democrats who are ready to vote today for the Bush resolution and others, such as myself, who frankly could not because I believe it is a blank check.

I thank my friend for his engagement in this colloquy. Let me conclude in this way: I have thought to myself, why is this happening? I believe there is a political decision that has been made to keep this country focused on the foreign policy questions and not focused on the everyday kitchen table issues, the domestic issues that need to be addressed. I am going to go to some charts very quickly.

We have seen long-term unemployment more than doubling since this administration came in. We have seen the worst performance of the stock market since Hoover. That means pensions are going down the tubes, as well as 401(k)s, and people's hopes and dreams for their retirement. We have seen an average rate change in the real gross domestic product, which is the worst in generations. It is the worst of all Presidents from Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, the first George Bush, and President Clinton. It is the worst growth rate. That is what we have seen.

In summing up the economic record, we have seen record job losses, weak economic growth, declining business investment, falling stock market, shrinking retirement accounts, eroding consumer confidence, rising health care costs, escalating foreclosures, vanishing surpluses, higher interest rates on the horizon, raiding Social Security, record executive pay and a stagnating minimum wage.

So I believe that a decision was made to deal with a foreign policy issue at the exclusion of what is happening on the ground with our families. Mr. President, that is distressing. We need to do both.

We need to rise to the foreign policy challenges we face. On the war against terrorism, we have a long way to go. In Afghanistan, in Pakistan, right here, with the cells that exist in our country, we have a long way to go. We need to step to the plate on that fight. We need to step to the plate on the Iraq challenge and handle it correctly with our allies, with a plan that will lead us perhaps to a peaceful end without having to shed blood. Maybe there is a chance. We should at least explore it. We have to step to the plate on the economic issues and we need to do that across party lines. We have to do it with the Republicans, with the Independents, with the Democrats—together.

One course we do not want is for one party to say about the other: They don't care about the security of the American people. If one party does that, as the Republicans did today, as the President did, as reported today, we will lose all these other battles. We will have a divided country. We will not be able to work together in good will.

My leader, TOM DASCHLE, the leader of the Senate, was right to say what he said, was right to express himself in the way he did. I hope the answer will be that in the future we will join hands as Americans and, even where we might disagree on a strategy, on an amendment, on a bill, work together as Americans. That is when the people are most proud of us.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized for 20 minutes.

IRAQ

Mrs. FEINSTEIN. Mr. President, I thank my friend and colleague, Senator BOXER, for her excellent remarks, and those Senators from New Jersey and New York who joined her. She has made a very impassioned message. It is a correct message. I hope people listen.

I also am deeply saddened by recent comments made by the President and Vice President which imply that Democrats are not protective of our Nation's security. Nothing is further from the truth.

There is no shortage of courage and bravery and patriotism on this side of the aisle. We, too, have our heroes who prove that: Senator MAX CLELAND, Senator DANIEL INOUYE, former Senator Bob Kerrey, and Senator JOHN KERRY, people who fought with bravery and distinction in major conflicts this Nation has had.

Even to imply the Democrats are not interested in the security of the American people is not only wrong, but in the present pre-election period I believe it is also base.

Last night, it was reported the Vice President went so far as to state that American security would be enhanced if a certain GOP candidate was elected to the House of Representatives. This very statement, carried by major newspapers, jaundiced any fair discussion in this pre-election period.

One might ask why? The reason is both the President and the Vice President have an extraordinary bully pulpit with a very long reach. It makes up about 95 percent of everything that reaches the American public; the remaining 5 percent is scattered among whoever is able to receive it.

If this debate is politicized in the heat of an election and the decision is made for the wrong reasons—out of fear; if we do not carry out the public trust that is invested in us and make the decision for the right reasons, then we betray our trust. And no election is worth doing that.

I share the concern of the majority leader, and I hope it is not too late to end this politicization. But there is only one way. Shortly, we in Congress will begin debate on whether to authorize the President the authority to use force against Iraq. It is, in effect, a declaration of war. The President has sent a draft resolution. He made his case before the United Nations. Today he

seeks the support of the international community. Now it is our job, our constitutional duty, to debate this resolution. But we must do so in an atmosphere that is true. The decision to go to war is perhaps the most grave and significant decision any nation makes. It is a decision that must be made on its own merits, with a timetable determined by the cause and the case and not based on political considerations and upcoming elections. I believe that deeply.

A declaration of war against Iraq is the most serious decision many Members will ever make as Senators. It is a life or death decision for the American men and women we put into harm's way, for the innocent Iraqi people who will be killed, for the repercussions it will have throughout the Persian Gulf, the Middle East and the Arab world, and throughout our own country and the rest of the world.

Congress must not rush to judgment before it has had ample opportunity to answer the many questions that still remain regarding why a war, a preemptive war, should be fought at this time against Iraq. For example, what is the immediate threat to American security to justify an attack on another sovereign nation? How would such a war be conducted? How would we respond to Iraq's use of chemical or biological weapons, to an attack on Israel, or to a ricochet of terrorist incidents in our country and around the world? And what are our responsibilities for postwar stability once Saddam Hussein is ousted? How do we prevent civil war between the Sunnis and the Shias?

No one questions that Saddam Hussein is an evil man, or the potential of Iraq acquiring the nuclear capability within the next 5 to 7 years is a possibility. We believe it is. There is reason to believe that Saddam Hussein has squirreled away biological and chemical weapons. But they are most likely close to civilians: in tunnels, under mosques, around schools and hospitals, and inside palaces or in mobile vehicles.

This is not sufficient reason to preemptively attack another sovereign nation—for the first time in this Nation's history—without first being provoked by an attack against our homeland, our people, or our interests. It is not sufficient reason to put our service men and women in harm's way when there are real, viable options short of war left on the table. There is no question this country should take steps to disarm Iraq. Saddam Hussein, with chemical and biological weapons, represents a real threat to his own people, to the Middle East region, and to the international security. The question is, Is use of force the first option or the last option? In my view, it should be the last. In my view, working with the international community, doing all we can to disarm Iraq before jumping to military force, remains an option.

If Saddam Hussein balks at inspectors, if he starts playing games, if he continues to thwart the will of the international community, then the use of force by the United States has a moral imprimatur and is the only remaining viable answer.

There is no question that Iraq is in direct violation of international law, numerous U.N. Security Council resolutions, and that he poses a threat in the region. Nobody debates that. But there is no persuasive evidence that Iraq is prepared to unleash its biological or chemical weapons today. Although he used them against the Kurds in 1987 and 1988, and against Iran in their decade-long war, he has not used them in over 10 years, and he knows what will happen to him if he does. He may be homicidal but he is not suicidal.

Likewise, there is no persuasive evidence that he possesses nuclear weapons today. He may be trying to gain these weapons, but he remains years away. So instead of rushing to war, I believe we should proceed in a calm, methodical, and nonpolitical manner. The United States should work through the United Nations Security Council—as the President himself suggested in a September 12 speech to the United Nations and as Secretary of State Colin Powell is now trying to do to obtain full and unconditional access for arms inspectors, and hopefully accompanied by a United Nations military force.

We should seek the complete destruction of Iraqi weapons of mass destruction and the means to deliver them. This approach should be our first option, not window dressing or an option to be dismissed out-of-hand. And we should do this not for idealistic reasons but because it is in our national security interests to do so.

Indeed, the benefit of pursuing a multilateral approach was seen clearly when Saudi Arabia suggested that, if the United States were working through the United Nations, it would grant U.S. forces access to its bases. Action against Iraq becomes much more complicated, from a military perspective, if there are no landing or flyover rights in other Arab countries; and managing the aftermath becomes much more difficult if we find the entire Arab world against us.

So I believe that if the United States fails in its efforts to compel Iraqi compliance with a United Nations inspection, verification, and destruction regime—either because other countries threaten a veto in the Security Council or the United Nations is unable to muster the muscle and will to enforce its own resolutions—then the United States, with or without willing partners in the international community, must be prepared to go it alone.

But we must be clear. If we go to war, it should be to force Iraq to disarm.

This time, too, it is critical that the United States stays the course on the war on terror.

In every book you read on Osama bin Laden, you see that he believed that we would never stay the course in a war against him. We would hit a camp once and then disappear. As happened before, we would go to Somalia, get into trouble in Mogadishu, and we would turn tail and run. Bin Laden bet on that. He cannot be right about that. We have much to do to win this war.

Many of those who perpetrated the September 11 terrorist attacks remain at large, including two-thirds of the al-Qaida leadership; the Taliban and its leader, Mullah Omar; not to mention thousands of terrorists sympathetic to al-Qaida worldwide, including in our own country.

Afghanistan remains a fragile and unstable country. The United States must continue our efforts to rebuild this country. We cannot repeat what was done to it since 1979. We must continue our efforts to rebuild Afghanistan, the Afghan economy, to assure that the Taliban and al-Qaida do not return to power there—because they will if they can. We must protect and stabilize the Government of Hamid Karzai. And any effort in Iraq must not detract from our war on terror.

The President has rightly pointed out that the war on terror will be a long and hard-fought battle, and it is not just against al-Qaida. It is Hezbollah, which equals al-Qaida in its reach, in its viciousness, in its malevolence, and its evil. We must not take our eye off this ball. The President must come forward to explain not only how we fight this two-front war without allowing one front to jeopardize our interests in the other, but also what we would do in the event of a major strike against Israel.

I have come to this floor before and indicated that there is ample evidence that rockets are being shipped out of Iran, through Syria and into southern Lebanon—Katyusha rockets with extended range anywhere from 8,000 to 10,000, to hit Israel's industrial zone north of Haifa, should we attack Iraq.

What do we do then? What is our commitment, and what will the other Arab States do? I think we ought to know this. I think as prudent leaders, as part of a debate in the greatest deliberative body in the world, we ought to know these things before going into it, so there are no surprises.

Finally, it is critical that if and as we consider any use of force against Iraq that we have a clear understanding of the aftermath. Who would do the rebuilding? Who would pay for it? Who would run any new government? And could that government provide security? Could it prevent a bigger and more brutal battle between the Sunni and the Shia.

That is not a question to overlook. Read the history on Iraq. You will see the brutality and the viciousness, the attack of one tribe on the other that has characterized Iraqi history from the time of ancient Mesopotamia. There are a lot of grievances out there to be settled, big grievances between the Shia majority and the ruling Sunni Baath party minority.

As General Shalikashvili made clear in his recent testimony before the Senate Armed Services Committee, planning for a post-conflict situation, winning the peace, is every bit as important as planning for the conflict itself.

And until the planning for post-war Iraq is in place—and it is not now—we should not rush to initiate combat. In fact, every general with whom I have talked—and I have talked with several—has urged caution. Every general with whom I have talked, privately, believes this war could end up being much more difficult than some expect it to be.

So to simply rush ahead and authorize the President to use force now, before these questions are answered, and without an imminent threat—save what some hope to gain from this issue in the elections—would be a grave error.

Congress must debate these issues fully, thoroughly, on a schedule, and with a timetable driven only by the merits of the issues. We must then move forward to pass a resolution tailored to the specific circumstances and giving the President the proper authority he needs to safeguard U.S. national interests.

So much is at stake here. American lives are at stake. We do not know how many, but I know one thing: It is not going to be like the gulf war. This war will be in cities. This will be street to street and house to house. We might send in the B–2s, the B–52s and the 117s, and they might drop huge numbers of laser-guided missiles and precision bombs. We will kill a lot of people. And then do we risk what may happen with the chemical and biologicals squirreled away? Do they go up in those attacks? Or are they released over innocent people? I have never heard one person discuss this, and it is time that we do so.

We are not a mercenary nation. This is not our heart. It is not our soul. And we have never engaged in a preemptive attack on another sovereign nation.

It may well be that untold numbers of lives are at stake elsewhere in the Persian Gulf, in the Middle East, and yes, right here in the USA.

Matters of war and peace, of life and death, must not be held in the grip of shortsighted, partisan rancor. I for one refuse to make them so. I respectfully suggest the Administration do the same. The stakes are simply too high.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak as if in morning business for up to 10 minutes.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. BROWNBACK. Thank you, Mr. President.

THE VICE PRESIDENT'S SPEECH IN KANSAS

Mr. BROWNBACK. Mr. President, I rise to discuss an issue that has been in the press much today, and I think there is a great deal of misinterpretation taking place about the President's and the Vice President's comments regarding homeland security and the war on terrorism.

I make specific reference to a speech that Vice President CHENEY gave in Kansas on Monday. I was at that event. I heard the speech. I was there supporting the candidate for whom the speech was given. Adam Taff, a fine candidate, is running for Congress in the Third Congressional District in Kansas. I want to make it very clear—and I want to enter into the RECORD a copy of the Vice President's words verbatim.

I ask unanimous consent that a copy of the Vice President's speech which he gave on Monday in Kansas be printed in the RECORD.

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

REMARKS BY THE VICE PRESIDENT AT LUNCH FOR CONGRESSIONAL CANDIDATE ADAM TAFF, SEPTEMBER 23, 2002, KANSAS CITY, KANSAS

THE VICE PRESIDENT: Well, thank you very much, Adam. And thanks for the kind words, and for the opportunity to be here with all of you today. It's good to be back in Kansas, and standing next to the next Congressman from the Third District. (Applause.)

I'm also delighted today to get the opportunity to spend a little bit of time with Sam Brownback and Pat Roberts, two great United States senators. (Applause.) I know—of course; Pat was up here talking before we came on, and somebody came in and said, you know, you've got to get right down there, Senator Roberts is running out of things to say. (Laughter.) I knew better. (Laughter.)

It's always fun to get a chance to travel with my bride, and spend a little bit of time out on the campaign trail, doing important work. I often explain to people that we have a Republican marriage, that if it hadn't been for that great Republican victory in 1952, when Dwight Eisenhower was elected President, that our lives would have come out very differently. In 1952, when Eisenhower got elected, I was living in Lincoln, Nebraska, with my parents, just a youngster of some, I guess 11 years old at the time. But he came in and reorganized the Agriculture Department—my dad worked for the U.S. Soil Conservation Service. Dad got transferred to Casper, Wyoming. We moved to Wyoming. I met Lynn—we went to high school together, grew up together, got married, celebrated our 38th wedding anniversary last August. (Applause.)

But I explained to a group of people the other night that if it hadn't been for that Republican election victory, that Lynne would have married somebody else. She said, right, and now he'd be Vice President of the United States. (Laughter.) There's no doubt in my mind that what that's true. (Laughter.)

Of course, my job now as Vice President—my only job, actually, as Vice President—is to preside over the Senate. And when they wrote the Constitution they decided they needed a Vice President, somebody to backup the President in case something happened to him. But at the end of the constitutional convention they realized they hadn't really given the Vice President anything to do. So, finally, they settled on making him the President of the Senate, so that he could preside over the Senate and gave him floor privileges, as well.

And John Adams, of course, was our first Vice President, the first President of the Senate. And he presided and he also used those floor privileges—got up and could actually participate in the debate and speak to the issues of the moment and argue for and against the majors on the floor. And then he did that a couple of times and they withdrew his floor privileges. (Laughter.) And they've never been restored. (Laughter.)

But one of the things I do get to do is to swear in the new Senate every January. And I'm enthusiastically looking forward to next January, when I can swear-in Pat Roberts and the new members of a Republican-led Senate in January.) (Applause.)

We've got a lot of races here in Kansas this year. Of course, a new Secretary of State, Ron Thornburgh, I think will do very well. Congressman Jerry Moran, who has proved to be a great member of the House of Representatives. And, of course, the next Governor of Kansas, Tim Shallenburger. (Applause.)

And I bring greetings to the people of Kansas from President George W. Bush.

We're all here today because there's an important race for Congress in the third district—and we've got a tremendous candidate. This seat belonged for many years to a great lady and a close friend of Lynne's and mine. We all admire Jan Meyers for her integrity and devotion to duty. (Applause.)

I served for ten years in the House, most of that time with Jan and explained to people, of course—it was a special kind of arrangement to be the congressman from Wyoming, since there was only one congressman from Wyoming. It was a small delegation. (Laughter.) But it was quality. (Laughter.)

But our nominee that we have for the third district today follows very much in the tradition that January established for this district. Adam is a first-class candidate; a distinguished Naval aviator who has carried out missions in many parts of the globe; a citizen actively involved in the life of his community; and a person who understands the need for limited and effective government.

He'll be an effective voice for Kansas, and a fine addition to your Republican delegation—already one of the most talented we have in Washington. The election is just six weeks away, and there's a lot of work ahead. And I am here today to make absolutely certain that Adam Taff is the next congressman from the third district in Kansas. (Applause.)

The President and I look forward to welcoming Adam to the nation's capital come January. He'll be vital in helping us meet the key priorities for the nation—in terms of winning the war on terror, strengthening the economy, and defending our homeland.

For the economy, this administration's goal is for faster growth and for more jobs for American workers. Even in the face of the major challenges—from the terrorist attacks to recession—the economic picture is nonetheless promising. Worker productivity has grown. Interest rates remain low. Inflation is under control. Personal income has continued to rise. And the economy continues to expand.

All of these factors set us on a path for long-term growth and prosperity. And if we

continue the positive direction President Bush has set for the nation—with solid, pro-growth, pro-job reforms—Americans will enjoy even greater prosperity in the years ahead. But we will not be satisfied until every sector of the economy—from agriculture to high-tech—is vigorous and growing. And we will not rest until every person in America who wants to work can find a job.

We'll see more growth and new jobs when Congress passes the President's energy policy—a policy that encourages efficient technology and conservation, and increases production here at home. Especially in times like these, we must pass a comprehensive energy bill, and reduce America's dependence on foreign oil.

We'll see more growth and new jobs when people around the world have more opportunities to buy things that are made and grown here in America. Under President Bush's leadership, Congress has passed trade promotion authority, signed into law just recently. The President will use that tool to open up new markets to our country's farmers, ranchers, and manufacturers.

Congress has also followed the President's lead in passing a new law to protect investors, to bring more accountability to corporations, and to ensure tougher oversight in the accounting profession. Our country has the most productive, creative, and promising economic system the world has ever known. The President's reforms will bring out the best in that system, and make it even stronger and better than ever before.

Americans can also count on President George W. Bush to continue working to reduce the federal tax burden. Last year we passed the biggest taxpayer relief package in a generation. As enacted, however, those reductions stay in place only for a time, and then expire in the year 2011. Even the death tax is scheduled to rise from the dead that year. For the health of the economy—and for the well-being of every taxpayer—we need to make the Bush tax cut permanent, and enforce spending discipline in Washington, D.C. (Applause.)

Some in that city need reminding that every dime the government spends was earned and sent in by someone else. And we have a responsibility to help keep spending under control. In a time of war and recession-induced deficits, we need to show extra care in our spending priorities, and the discipline that fits the times. The President's budget commits most new spending to national security and to homeland defense, and seeks to hold the rest of government to an increase of two percent. Were spending to grow without restraint, billions more would be diverted from families and entrepreneurs, limiting the economy's ability to expand in the future. President Bush is going to insist on spending discipline in Washington—and, if necessary, he'll use the veto power to protect the American taxpayer.

Another responsibility the President takes very seriously is the job of placing qualified, common-sense judges on the federal bench. (Applause.) The Senator has a responsibility of its own—to give every nominee a prompt hearing and a vote. The Democratic leadership has refused to do so. Dozens of judgeships sit empty, while many of the President's judicial nominees have waited for more than a year for the Senate Judiciary Committee to even give them the courtesy of a hearing.

In nominating judges President Bush chooses men and women of experience, judicial temperament, and good judgment—people who respect the Constitution, and understand the limits of judicial power. The Senate should move to confirm the President's nominees for the federal courts, and they should do so without wasting another day. (Applause.)

As we look to the agenda for the fall, we are keeping first things first. The most important responsibility we have, as Adam mentioned, is to protect the American people against future attack and to win the war that started on September 11, 2001.

This has been a period of testing for the United States. The American people have met that test. We are united. We understand the threats that have formed against us. We are determined to protect our country. And we will prevail.

In the past year, we have captured many terrorists, and frozen the assets of many terror groups and front organizations. Our people in law enforcement and intelligence, working under the most urgent and sometimes dangerous circumstances, have disrupted terrorist plots here and abroad. At home, we are reorganizing the federal government to strengthen our ability to guard against further attacks. And of course in Afghanistan—where so many terrorists were housed, armed, and trained—we have shut down the camps, and liberated an entire nation from the Taliban regime. In the case of Osama bin Laden—as the President said recently—''If he's alive, we'll get him. If he's not alive—we already got him.'' (Laughter.) That's a Texas phrase, I guess. (Laughter.)

Every bit or progress we've achieved, all of us appreciate that we are still closer to the beginning of this conflict than to its end. The President and I begin each day with a briefing on the threats facing the country. There is little doubt that our enemies are determined to do further significant harm to the American people. Nine-eleven and its aftermath have given us a clear picture of the true ambitions of the global terror network, as well as the growing danger of weapons of mass destruction.

In that changing environment, as always, we must take the facts as they are, not as we wish they were, and we must think anew about the requirements of national security. In the days of the Cold War, we were able to manage the threat with strategies of deterrence and containment. But it is a lot tougher to deter enemies who have no country to defend. And containment is not possible when dictators obtain weapons of mass destruction and are prepared to share them with terrorists.

We have already found confirmation that the al Qaeda terrorists are seriously interested in nuclear, chemical and biological weapons. At the same time, there is a danger of terror groups joining together with regimes that have or are seeking to building weapons of mass destruction. In the case of Saddam Hussein, we have a dictator who is clearly pursuing these capabilities—and has used them previously, both in his own against Iran and against his own people.

The government of the United Stats must not look the other way as threats gather against the American people. We are consulting with Congress and with our friends and allies around the world about the course of action. In his speech to the United Nations General Assembly, President Bush made clear to the international community the kind of challenges we must face together.

The President reminded the U.N. that Saddam Hussein made a series of commitments after his defeat in Desert Storm—and that he has broken every one of them. Saddam agreed to cease at once his repression of his people—yet the systematic violation of human rights continues in Iraq to this day. He agreed to return all prisoners from Kuwait and other lands—yet more than 600 are still unaccounted for, and one American pilot—a Kansan named Scott Speicher—is among them.

Saddam Hussein agreed to renounce all involvement with terrorism, and to permit no terrorist organizations to operate in Iraq. Yet Iraq continues to shelter and support terrorist organizations. Dissidents abroad are targeted for murder. The Iraqi regime has attempted to assassinate the Emir of Kuwait and a former President of the United States.

Saddam Hussein promised the United Nations that he would destroy and cease further development of weapons of mass destruction and long-range missiles—and that he would submit to unrestricted inspections. He has flatly broken these pledges, producing chemical and biological weapons—aggressively pursuing a nuclear weapons program—and working to develop long-range missiles. And for four years now, he has refused to admit U.N. inspectors—four years during which he has been able to plan, to build and to test in secrecy.

Last week's letter from the Iraqi government to the United Nations, now pledging to allow inspectors back into the country, is another attempt to avoid strong action by the Security Council. We have seen this kind of tactic before. In the letter, the regime says it has no weapons of mass destruction. We know this is a lie. The entire world knows, beyond dispute, that Saddam Hussein holds weapons of mass destruction in large quantities, and is seeking to acquire more. This is not a matter of inspections. The only issue is the disarmament of Iraq, the elimination of the weapons of mass destruction, as required by Security Council resolutions.

False statements from the Iraqi regime will not cause us to ignore history or reality. Saddam Hussein has spent more than a decade in complete defiance of all the demands of the United Nations.

The question for the international community is whether the Security Council resolutions will be enforced, or disregarded without consequence—whether the United Nations will be effective, or irrelevant. As for the United States, the President has made our position abundantly clear: we want to work with the United Nations to meet the common challenge. The Security Council resolutions are to be enforced, or action will be unavoidable. We must, and we will, take whatever steps are necessary to defend our freedom and our security. (Applause.)

In the challenges to America we will be expecting a lot from our military—and those who serve have a right to expect a lot from us. If we're going to ask young men and women to defend our country, our allies, and our freedom, if we're going to send them into harms' way, on dangerous missions to fight determined enemies—they deserve the best tools, the best training, and the best support we can possibly give them.

We are investing in our military so that we can deploy swift and agile forces—any place, any time they're needed. We are building precision weapons that can spare the lives of American soldiers, and innocent civilians in foreign lands. We will multiply every advantage in order to prevail over any enemy. And to have this capability, President Bush has asked for the most significant increase in defense spending since Ronald Reagan lived in the White House.

The conduct of our military does more than bring credit to the country; it reflects the basic character of the American people. This is a good, and decent, and generous land. We fight not for revenge against our enemies, but for the freedom and security of our own people—and for the peace of the world. At times in our history the price of freedom has been very high, but Americans have always been willing to pay that price—even when the odds weighed heavily against us.

I was reminded of this the other day as I read David McCullough's biography of our first Vice President, John Adams. When Adams and his fellow delegates voted to approve the Declaration of Independence, they knew precisely what kind of trouble they were bringing on themselves. To sign the Declaration, one of the founders said, was like signing your own death warrant. As of July 4, 1776, they would be considered traitors to the king, at war with the army of an empire.

Large numbers of enemy soldiers were already positioned on American soil, intent on crushing the rebellion in short order. In mid-August, 32,000 British troops landed at Staten Island—an army greater in size than the entire population of our then-largest city, Philadelphia. The American force was far smaller, had very little in the way of equipment and supplies, and was comprised almost entirely of poorly-trained volunteers. All they had was the courage of human beings determined to live in freedom.

Before they prevailed the Americans endured not weeks, not months, but years of hardship and struggle. The American victory at Yorktown didn't come until the fall of 1781. The Treaty of Paris, which John Adams helped negotiate and which ended the Revolution, was finally concluded in September of 1783—more than seven long, difficult years after the Declaration was signed.

From that day to this, the people of the United States have understood that the freedom that we enjoy did not come easily—and we have no intention of letting it slip away. History has called generations of Americans to defend our country and to defeat some of the gravest threats known to mankind. We have accepted that duty once again, because we know the cause is just—we understand that the hopes of the civilized world depend on us—and we are certain of the victory to come.

In this critical time I have the honor to stand beside a President who has united our nation behind great goals. For all the challenges we face, the United States of America has never been stronger than we are today—and even better days are ahead of us. President Bush and I are very grateful for the opportunity to serve our country. We thank you for your support—not just for our efforts, but for good candidates like Adam Taff, who will make a fine partner for us in the important work ahead.

Thank you very much. (Applause.)

Mr. BROWNBACK. Mr. President, I think it is important that we work off actual words and not headlines, off actual words and not interpretations, and off actual words and not feelings towards words.

That is the reason I wanted to enter into the RECORD the specific wording the Vice President used in the speech that is being commented upon a great deal by a number of Members. The headline that was out was not something that was said by the Vice President. I think it is important we get the actual words he used on Monday.

I want to also make something very clear. The Vice President did not at all challenge the patriotism of any Member of Congress—House or Senate, Republican, Democrat, or Independent. He did not challenge any of that. He didn't mention any member by name other than the one he is supporting, and who is running for the House of Representatives.

He spoke at length about Saddam Hussein, about the need for homeland security, and about the need to move these bills forward.

There was no accusation whatsoever about any lack of patriotism on anybody's part. He is supporting, in this case in Kansas, the Third District candidate, Adam Taff, a man who is a former military man, an F–18 pilot, who fought in the gulf war the first time around, and who is running for Congress. This particular individual actually served as an F–18 pilot in the military when Vice President CHENEY was then Secretary of Defense.

Here is a person, a candidate, Adam Taff, who actually worked for the Vice President when he was Secretary of Defense, in a military capacity, and he does push forward his military credentials, as any candidate for office would push forward his credentials for office. And Adam Taff claims his military credentials. I think that is fully laudable and appropriate.

I think it is important to make clear that the Vice President didn't challenge any patriotism whatsoever and did not reference the Senate in any of his comments. Again, as I stated, I have here his actual comments that have been submitted for the RECORD.

I think there has been far too much protesting about this when what we really need to do is get homeland security passed and get an Iraqi resolution dealt with and I hope passed. I hope we can get a resolution, work together in a bipartisan fashion, and get an overwhelming majority for the Iraqi resolution. If we need to adjust words on it, I think that is fully appropriate because we need to show to the world a united front and that this distraction today is just that—a distraction.

Homeland security we should have passed some time ago. We have been on it now for 3 weeks. We have been on it primarily because of special interest issues and not because of interests for the country. I think we need to get that bill posted and cleared in this Congress. It would be an important thing for us to do. It is the time for us to get that done. We have dawdled too long on it.

But these allegations coming forward today that somehow there has been a challenge to the patriotism of other Members of this body are simply not supported by the facts. They are not supported by the facts anywhere. They are not supported by what the Vice President said in Kansas.

We clearly need to deal with the facts instead of trying to divert attention by saying there is an accusation going on which is not built upon the facts—allegations that are coming forward challenging the patriotism of people who have served in the military and in this body. Nobody is challenging that.

There is a clear challenge that we are not getting homeland security passed. We have been 3 weeks at it. There is a clear challenge that we have to get an Iraqi resolution passed before this body goes out for the election period—possibly an extended recess, or coming back in a lame duck session, whichever actually takes place.

We really should get this bill moved forward. I think if people want to do away with these accusations, the best thing we can do is pass the homeland security bill and pass an Iraqi resolution that we work and mold together here as a body, and get that passed by an overwhelming majority in this body.

I urge my colleagues; I think it would be wise for us to lower our decibel level on this, look at the factual material, and not go after misleading headlines but actually examine the record and move forward with these two very serious pieces of business. It is important that we do that.

The Vice President has not—and I don't think in the future will—challenged anyone's patriotism. People disagree on political issues. They disagree on issues of policy. That is clear. That is why we have a body that debates these issues.

Some people view homeland security one way, and some people think we ought to support giving the President the authority to take whatever means necessary to remove Saddam Hussein. The former Vice President articulated a couple of days ago, saying no, that this is something we don't need to do and shouldn't do at this time. That is the former Vice President's opinion. Others have a different opinion on that.

But we would be wise to debate what those issues are, and the specifics, and not allege issues of character which are not being challenged by the President or by the Vice President.

I yield the floor.

COMMERCIAL OPERATIONS OF THE CUSTOMS SERVICE

Mr. BAUCUS. Mr. President, I am very pleased that the Senate agreed last night, by unanimous consent, to adopt an amendment that Senator GRASSLEY and I offered to the homeland security bill. Our amendment will reinforce the commercial operations of the Customs Service within the new Department of Homeland Security.

A key objective of the homeland security bill is to create coherence in law enforcement at our nation's borders. The Customs Service is vital to that endeavor. For the vast majority of people entering the United States, their first encounter with the U.S. Government is when they are cleared by a Customs officer.

The Customs Service is the principal U.S. Government agency at most ports of entry. It enforces a multitude of commercial and other laws on behalf of itself and some 40 other Federal agencies. In addition to collecting duties, fees, and taxes on imports, Customs assists the Census Bureau in collecting trade data; enforces our environmental laws by ensuring that products of endangered species are not brought into this country; protects U.S. intellectual

property owners and consumers by barring entry to counterfeit and ''gray market'' goods; prohibits illegal drugs and other contraband from coming into the United States; and enforces numerous other laws.

It was a Customs inspector who apprehended the so-called millennium bomber in Port Angeles, WA in December 1999. Customs also has played a major role in putting an end to the scourge of child pornography on the Internet and to fighting the war on drugs. Unquestionably, Customs is an essential player in law enforcement at our borders and, for this reason, ought to be integrated into a new Department of Homeland Security. At the same time, we must not forget that the core mission of the Customs Service is a commercial mission. Customs is first and foremost responsible for the collection of duties, taxes and fees on imports. This is one of the oldest functions of the Federal Government. It was authorized by the second act of Congress, in July 1789.

Today, duties collected by Customs constitute the second most important source of federal revenues, after the income tax. In fiscal year 2001, Customs processed over 25 million formal entries of cargo, worth over $1 trillion. Duties, fees, and taxes on that cargo amounted to about $20 billion. Thus, Customs' performance of its core commercial function is critical as a source of revenue to the U.S. Government. Customs' performance of its core commercial functions also is extremely important to the U.S. businesses that rely on imports and exports. The approximately 25 million formal entries that Customs processed in fiscal 2001 represented a 60 percent increase from only 5 years earlier. The volume of international trade is increasing significantly. To keep that trade flowing, Customs must perform its job with ever greater efficiency.

For these reasons, we must ensure that in moving from the Department of Treasury to a new Department of Homeland Security, Customs is able to do its commercial job as capably as it does today. I commend Chairman LIEBERMAN for recognizing this imperative and for working with the Finance Committee to secure the Commercial side of Customs within the new Department. I would like to point out that in mid-July, the Finance Committee held a very enlightening hearing on the issue of Customs' integration into a Department of Homeland Security. Following the hearing, Senator GRASSLEY and I transmitted a set of recommendations to Chairman LIEBERMAN and Ranking Member THOMPSON. I am very pleased that a number of the key recommendations are part of the pending bill. In particular: The bill preserves the Customs Service as a ''distinct entity'' in the new Department. The bill provides that appointments required to be made by the President, by and with the advice and consent of the Senate shall continue to be subject to that requirement. I understand that this will include the Commissioner of Customs. The bill preserves for the Secretary of the Treasury certain legal authorities regarding ''customs revenue functions.'' Thus, even though Customs will move to the Department of Homeland Security, the Secretary of the Treasury will remain the ultimate decision maker in issuing most commercial regulations administered by Customs. this is important, because it ensures that the national economic interest will guide the issuance of regulations affecting Customs' commercial operations.

We must bear in mind that this bill will move a commercial agency—Customs—from a Department whose primary focus is on the national economic interest, to a Department whose primary focus is on national security. The provisions I cited will help ensure that Customs' commercial mission does not get diluted in that process. The amendment accepted yesterday bolsters that objective.

The amendment contains three provisions.

First, it makes clear that certain user fees that Customs collects from passengers and conveyances entering the United States will be available for use by the Customs Service exclusively.

Second, it sets up a special account at the Treasury to support development and implementation of Customs' Automated Commercial Environment, known as ''ACE.'' ACE is a modern computer system that will replace Customs' antiquated system for the processing of imports. Of the fees collected by Customs for processing merchandise, $350 million per year will be deposited into the ACE account.

Third, the amendment makes clear that the Advisory Committee on Commercial Operations of the United States Customs Service—known as the ''COAC''—will remain in existence following Customs' move to the new Department. The COAC was created by statute in 1987. It is a bipartisan group of 20 representatives of individuals and firms affected by commercial operations of Customs. Over the years, it has provided valuable advice to the Secretary of the Treasury. Under this amendment, ti will continue to do so, and will advise the Secretary of Homeland Security as well.

I firmly believe that these provisions, along with the customs-related provisions in the underlying bill will ensure that Customs remains a strong and effective trade agency, as well as a strong and effective law enforcement agency, in the new Department.

Finally, I would like to say a word about another aspect of the Lieberman bill for which the Chairman should be commended. I am referring to the provisions protecting the rights of employees in the new Department. The most valuable resource of our government is the people who work for it. We must give every incentive for the best and the brightest to serve and to continue serving.

I understand that the President has asked for enhancement ''flexibility'' in dealing with employees of the new Department. However, it is not at all clear to me that depriving federal workers of collective bargaining rights, merit systems protections, and whistle-blower protections, among other protections, is necessary to achieve improved homeland security. In fact, I believe that just the opposite is true. To improve homeland security, we need a top-notch workforce. Getting and keeping that top-notch workforce means assuring employees that they will be treated fairly and enjoy the same protections that other federal employees enjoy. I applaud Chairman Lieberman for recognizing this and embedding it in the bill.

I thank the Chair.

EXPLANATION OF VOTES

Mr. BAUCUS. Mr. President, I rise today to discuss my intent on four rollcall votes where I was necessarily absent due to my required presence in my home State of Montana. These votes are directly important to Montana and the Nation. I would like the opportunity to further the debate on these timely issues.

The cloture vote on Senator BYRD's amendment to the fiscal year 2003 Interior Appropriations legislation has a direct and fundamental impact on Montana for three reasons. First, the amendment reimburses the United States Forest Service for funding expended fighting fires this year. This funding is essential because of the high fire danger that still exists in the West due to the prolonged drought and funding already spent on fires cannot be used for existing USFS obligations and duties on our national forests.

Second, my good friend from West Virginia's amendment has already been modified to include the most important funding that could be dispersed this year for Montana's economy. I'm speaking, of course, about natural disaster funding for our farmers and ranchers. Montana is suffering through its fourth year of drought and conditions could not be worse. If we do not move forward with a disaster package, there will simply be fewer family farms and ranches around next year. Period. This is a debate that has gone on far too long and the House and President Bush need to come to the table and accept the work of the Senate. A natural disaster proposal has now passed the Senate twice by a large bipartisan margin. Now is the time to get this funding out to the people who need it, who need certainty about their future.

Finally, the reason that a cloture vote is required stems from the controversial nature of the pending amendment of Senator CRAIG regarding forest health. The issue of forest health is a huge problem in the West and has the most direct of conditions with not

only the increased fire risk, but the drought that this legislation addresses. While the proposals vary, forest health is an issue that needs to be dealt with immediately. Further delay in the Senate does not serve Montanans or anyone in the West that is trying to make a living and a life under these conditions.

Because we need to deal with all three of these issues as soon as possible, I fully support cloture on Senator BYRD's amendment. I am disappointed that it did not pass.

With regards to the amendment proposed by my colleagues from Connecticut, Senators DODD and LIEBERMAN, I am forced to disagree with the basis of their amendment. My colleagues from Connecticut have represented their amendment as only codifying existing procedures. But, from what I understand based on the hearing held in the Indian Affairs Committee on September 18, this amendment in fact requires the implementation of new procedures, including adversarial hearings at the request of any interested party, raises the burden of proof that a petitioning group must satisfy in meeting the seven mandatory criteria, and requires the Department to provide notice to officials of every State and local government and municipality where a tribal group may have ever been historically located or any geographic area a tribal group may have ever occupied.

In my home State of Montana, the Little Shell Band of the Chippewa Indians have been battling for over a decade for their Federal recognition. They have had to jump through many hoops as it is and they have yet to receive their official recognition. My Colleague's amendment would not only prolong the Little Shell's recognition, but would only add to the burden they have already carried for over a decade. Based on the outcome of the Indian Affairs hearing and the impact on my tribe at home, I respectfully disagree with my colleagues on this matter and believe it is in the best interest of the recognition process that their amendment was rejected.

Moving on to the Homeland Security votes, I would like to address the amendment introduced by my esteemed colleague from West Virginia once again. Senator BYRD has urged that the Senate take its time to thoroughly debate and analyze the proposed legislation to create the Department of Homeland Security. He has introduced an amendment to ensure that the Congress continues to play a role in the creation of a new Federal Department of Homeland Security. I agree with the good Senator that Congress should debate and analyze this proposal, but I disagree with his proposal on how that debate should proceed.

The Byrd amendment would require that the department be established in three phases. Each phase would be initiated by a proposal sent to the Congress by the President. Each proposal sent to Congress would be referred to the appropriate congressional committees. The appropriate Congressional Committees should be involved in this process. But there are no deadlines or fast track procedures for legislative consideration and no guarantee the proposals would ever emerge from Congress and be signed into law.

This amendment would force Congress to reopen every battle over which agencies should be transferred into the new Department and on what terms they would be transferred. Moreover, by dividing the development into five separate legislative proposals, this amendment makes it impossible for legislators to consider the Department as a whole.

I regret to say that I cannot support my colleague's amendment and believe it was in the Nation's best interest that the amendment was not agreed to.

Finally, ever since the devastating attacks of September 11, Americans have been asking how the attacks happened, why they weren't prevented, and what corrective measures could be taken to prevent similar tragedies from ever occurring again. The American people deserve answers to these very legitimate questions. It's important that we find out just what happened through a non-partisan commission.

The amendment introduced by Senator LIEBERMAN represents a bipartisan initiative to help answer the many remaining questions in a constructive, methodical, and nonpartisan way. I support the amendment and am pleased that it passed.

SALUTE TO TAIWAN'S FIRST LADY

Ms. LANDRIEU. Mr. President, I take great pleasure in welcoming Taiwan's First Lady, Wu Shu-chen, to Capitol Hill. Madam Wu Shu-chen is a unique and remarkable woman. She is the Republic of China's youngest first lady, yet she has the poise and charm equal to those much older than she is. Men and women of all political parties admire her as a genuine person, totally unaffected in manners. When she addresses an audience, she speaks from her heart and writes her own speeches in a simple and direct style. She is what you see, a natural gem, without artificial polish.

Like her husband, Chen Shui-bian, Madame Wu, has overcome a great deal of adversity. And like her husband, they have both been strengthened by their struggles. In 1985, Madame Wu was struck by a hit and run driver. Her injuries left her permanently paralyzed from the waste down and confined to a wheel-chair. Soon after Madame Wu was tragically wounded, her husband was imprisoned for political reasons. Madame Wu did not shrink from her duties to her family or her country. While her husband was in jail, she not only served as a pillar for her family, but she ran for a seat in the national legislature and won. No obstacle affecting her body or her heart could deter her.

Such a woman deserves our praise. Madame Wu is a natural leader; a matriarch in her family; and a matriarch to her country. I salute her for her selfless devotion to the people of Taiwan. We can all take strength from Madame Wu, and she is a role model for young women everywhere.

Mr. HELMS. Mr. President, I extend my warmest welcome to the First Lady of Taiwan, Chen Wu Sue-jen, wife of President Chen Shui-bian, who is in Washington this week to visit with some of her and her husband's many friends here.

I am among the many admirers of President Chen. He is a courageous leader of his country at a very difficult time. The courage of his wife has earned for her great respect. In 1985, while supporting one of her husband's campaigns, Mrs. Chen Wu was hit by a vehicle that left her paralyzed from the waist down. That regrettable episode, believed by many to have been politically motivated, left this dear lady permanently confined to a wheelchair.

The following year when her husband was imprisoned by his political foes, Mrs. Chen Wu sought election on his behalf for a seat in the national legislature. She won and served in the legislature in spite of her serious injury. This courageous lady thereby kept Chen Shui-bian's political cause in the public eye.

Both before and after these events in their lives, Mrs. Chen Wu provided indispensable encouragement and support as Chen Shui-bian progressed from legislator to Taipei Mayor to President. He has called his wife his ''most important source of strength.''

First Lady Chen Wu Sue-jen was instrumental in building Taiwan's early, unequivocal and generous support for the United States and American people following the attacks on September 11, 2001. She comes to the United States this week with a message of Taiwan's continuing strong support in the war against terrorism.

I know that Senators will share my appreciation for her country's friendship and solidarity. I also hope they will join in welcoming Taiwan's First Lady on the occasion of her historic visit to the United States.

Mr. BOND. Mr. President, today I would like to recognize Madame Chen We Sue-jen, the first lady of Taiwan, and welcome her to Washington, DC.

Madame Chen We Sue-jen has displayed exemplary character and strength in her endeavors to promote justice, human rights, and democracy in Taiwan. Overcoming both personal and professional hardships with grace, she has remained steadfast in her support of these principles.

Although Madame Chen We Sue-jen has overcome obstacles throughout her public career, never has she let it overcome her. She is described as optimistic, cheerful and friendly-noted for

her sense of human and laughter. She continues to act as a strong and effective advocate for Taiwan's physically challenged citizens. Throughout all her trials, she has remained solid in her support for her family and the people of Taiwan. This strength of character has contributed much to the First Lady's greatness.

First Lady Chen Wu is here today to bring a message from her husband and the people of Taiwan. Her message is one of cooperation and support from the Taiwanese in our joint antiterrorism campaign. Already, with support of Madame Chen We Sue-jen, Taiwan has demonstrated charity and humanitarian assistance to the victims of the terrorist attacks on September 11, 2001. As mentioned in the House Resolution, the Government and people of Taiwan have consistently provided tremendous support and generous contributions to the United States after those attacks.

Madame Chen We Sue-jen is a woman of great character and strength. I wish to offer my warmest welcome to her as she visits the Capitol. I extend my gratitude to her for all the important work she has done and I wish her well in her pursuits of justice and democracy.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 17, 2001 in Helena, MT. A gay college student was beaten unconscious in his dorm room. The attacker struck the student in the head with a bottle, beat him while he was unconscious, and wrote ''Die Fag'' on his body with an ink marker. The victim withdrew from school two weeks after the attack.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

CRANE CONSERVATION ACT OF 2002

Ms. LANDRIEU. Mr. President, I rise today to express my support for S. 2847, which I recently joined as a cosponsor.

Cranes, the tallest flying birds on Earth and among the most graceful, inhabit wide expanses of wetlands and grasslands and exert a charismatic appeal reflected in many cultures.

Our Whooping Crane, the rarest of the world's cranes, is shared with Canada and has survived only because of close cooperation between the United States and Canada. If the species is to survive, however, those magnificent birds need more intensive conservation efforts. This bill would provide such help, all up and down the Mississippi River Flyway, while also applying our conservation techniques on behalf of nine more endangered species of cranes in Africa and Asia.

This bill would support organizations with expertise in crane conservation by funding projects in areas such as habitat protection and restoration, research and monitoring of crane populations, community participation and outreach, and reintroduction of cranes to the wild. The projects will be asked to promote long-term conservation by eliciting matching funds from government agencies, local communities, NGOs or others in the private sector.

Whether in Louisiana, elsewhere in the United States, or overseas, protecting cranes' ecosystems benefits thousands of other animal and plant species at the interface between aquatic and terrestrial habitats.

Louisiana is important to cranes because of the spectacular wetlands along our southwest coast. Sandhill cranes, which had disappeared from the state, already have returned as a wintering species. In a natural area near New Orleans, the Audubon Nature Institute has established a Species Survival Center which is rearing the endangered Mississippi subspecies of the sandhill crane, for release in the Mississippi Sandhill Crane National Wildlife Refuge near Biloxi. That Center also recently received eight Whooping Cranes and plans to expand to ten breeding pairs as the core of a plan to restore Whooping Cranes to Louisiana's coast.

Funding would flow through a new ''Crane Conservation Fund'' in Interior's Multinational Species Conservation Fund. In covering cranes, this bill would for the first time provide such protection for a species of bird.

I ask other Senators to join me in supporting the Crane Conservation Act of 2002.

FALUN GONG

Mr. BOND. Mr. President, today I would like to recognize the determination and perseverance of the Falun Gong, a peaceful movement seeking the basic freedoms to think as they wish and believe as they choose that we as Americans hold so dear.

Three principles of Truth, Compassion, and Tolerance lie at the core of Falun Gong. Those who practice Falun Gong do so to become better, healthier people through living by these principles.

Despite Falun Gong's peaceful principles and teachings, violations of human rights have occurred in China against Falun Gong practitioners. Human rights is an important goal as recognized by the United Nations Universal Declaration of Human Rights which sets forth certain basic rights such as the right to life, to liberty, and to the freedom of expression. The Senate has ratified a series of international treaties such as International Covenant of Civil and Political Rights, 1976, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1987. The Senate's approval of these and other treaties highlights the progress made towards human rights.

In direct response to the recent human rights violations against Falun Gong practitioners, the Senate, on November 19, 1999, unanimously approved Senate Resolution 217. This resolution, ''recognizing the plight of many Chinese citizens,'' calls on the Government of the People's Republic of China to: 1. release all prisoners of conscience and put an immediate end to the harassment, detention, physical abuse, and imprisonment of Chinese citizens exercising their legitimate rights to free belief, expression, and association; and 2. demonstrate its willingness to abide by internationally accepted norms of freedom of belief, expression, and association by repealing or amending laws and decrees that restrict those freedoms and proceeding promptly to ratify and implement the International Covenant on Civil and Political Rights.

We must embrace the opportunity to continue to support the principles of Falun Gong to realize freedom and I wish them well in their quest for freedom and justice.

ADDITIONAL STATEMENTS

NEW JERSEY TASK FORCE ONE

• Mr. TORRICELLI. Mr. President, I rise today to bring to the attention of the Senate the outstanding efforts and contributions of the New Jersey Task Force One Urban Search and Rescue Team.

On September 11, 2001 at approximately 9:00 a.m. New Jersey Task Force One was activated and deployed to the World Trade Center Attack. Requested by New York City's Office of Emergency Management, New Jersey Task Force One had an advance team in New York City by 11:15 a.m. The team's entire equipment cache, along with 140 members was set up at the Jacob Javits Center by 2:00 p.m. that same day. They deployed search assets to search for survivors during the afternoon and evening of the 11th and for the next 10 days, they worked continuously as part of the urban search and rescue effort.

In a short period of time, New Jersey Task Force One became an integral part of the rescue efforts. The team was integrated into the FEMA Urban Search and Rescue System and was included in the FEMA Urban Search and Rescue Action Planning. The well-equipped New Jersey Task Force One had the ability to lend critical equipment to some of the responding FEMA

teams and developed an excellent working relationship with many of these teams. Structural engineers and planners from New Jersey Task Force One were used by the FEMA Incident Support Team to brief the incoming FEMA teams as they rotated into New York City.

FEMA gave an operational performance evaluation to New Jersey Task Force One for their participation related to the World Trade Center Operations. New Jersey Task Force One was rated as superior in six out of nine categories. Those categories included attitude, initiative, consideration for personnel welfare, obtain necessary equipment and supplies, physical ability for the job, and safety.

With valor and honor, the members of New Jersey Task Force One have proven themselves as one of the finest Urban Search and Rescue teams in the country. It is for these reasons that my colleague, Senator CORZINE and I introduced S. 2618 to designate New Jersey Task Force One as the 29th National Urban and Search Rescue Team.

New Jersey Task Force One was formed in 1997 and they have used the FEMA Urban Search and Rescue guidelines in its development. The team is organized under the New Jersey State Police Office of Emergency Management Domestic Preparedness and Hazardous Material Planning and Emergency Response Unit. The State provides an annual budget of $1.5 million to support New Jersey Task Force One.

The team consists of 180 members from over one hundred different fire, police and EMS agencies throughout the State. Over the past few years, New Jersey Task Force One has purchased the necessary cache of equipment, based on the FEMA equipment list, and has trained its members to FEMA Urban Search and Rescue Standards. New Jersey Task Force One is in the process of purchasing weapons of mass destruction response equipment.

The 180 courageous men and women of New Jersey Task Force One have dedicated their lives to saving others. They have proven themselves to be highly qualified to join FEMA's Urban Search and Rescue System. I strongly believe that New Jersey Task Force One would enhance FEMA's Urban Search and Rescue program. I urge the FEMA Director to include New Jersey Task Force One as the 29th FEMA Urban Search and Rescue team. ●

TRIBUTE TO MR. BOB HAYES

● Mr. NELSON of Florida. Mr. President, I rise today to mark the passing of a truly exceptional friend and athlete, Mr. Bob Hayes. On September 18, 2002, the State of Florida and the world lost a trailblazing athlete who broke records on the track field and set the standard for speed and agility in the National Football League.

Bob was a native of Jacksonville, where he attended Gilbert High School. While at Gilbert High, Bob displayed his athletic talents on the football and baseball fields, and on the basketball court. The honors he won in these athletic pursuits afforded him the opportunity to attend Florida Agricultural and Mechanical University on scholarship, where he played half-back and returned kicks for legendary coach Jake Gaither. In his illustrious career as a FAMU Rattler, he led the team in kick-off returns, held the team's touchdown record in 1963, and averaged over 26 yards per punt return in 1962 and 1963. In his senior season, Bob became the first African-American to play in the Senior, North-South, Bowl, a game in which he caught a touchdown pass from former NFL-great Joe Namath and was also named the South's Most Valuable Player.

Bob was also a premier track star. In his junior year at Florida A&M, Bob competed in the Tokyo Olympic Games. He earned the title ''World's Fastest Human'' for record-breaking performances in which he won the 100 meters in a world-record time of 10.5 seconds and anchored the 400-meter relay, finishing in 39.0 seconds. Both performances earned him Olympic Gold medals. His performance in the 400-meter is widely regarded as the greatest relay leg in track history.

In 1963, the Dallas Cowboys drafted Bob in the seventh round as a receiver. As a rookie, Bob had 46 catches for 1,003 yards and 12 touchdowns. Several past NFL players, including Roger Staubach and Calvin Hill, have commented on how Bob's speed and agility forced the NFL to begin to design defenses to counter his phenomenal plays. Indeed, Bob established the standard, in terms of speed and quickness, which present players now emulate. Bob spent 10 years in Dallas, where he was part of two Super Bowl teams. At the end of his career, Bob had 371 catches for 7,414 yards and 71 touchdowns, still a Cowboys receiving record.

At his death, Bob remains the only athlete to have won a Super Bowl ring and Olympic Gold Medals. His amazing achievements on both the football and track field truly give meaning to his nickname-''The Bullet''. He is enshrined in the USA Track and Field Hall of Fame and similar Halls of Fame in Florida, Texas and at Florida A&M. In September 2001, Bob was inducted as the 11th member of the Cowboys' Ring of Honor at Texas Stadium.

Bob's achievements stand as a testament to hard work, dedication and perseverance. In his later years, he sought to pass these ideals on to aspiring high school track stars through the Bob Hayes Invitational Track and Field Meet. Truly, it can be said that he touched many lives and inspired future generations of athletes. While it is with great sadness that I mark his passing, I am happy to recognize Bob's legacy for the great State of Florida and the entire world.●

TRIBUTE TO DR. BERNARD S. ARONS

● Mr. WELLSTONE. Mr. President, I rise today to join my colleagues Senator EDWARD KENNEDY, Congressman PATRICK KENNEDY, and many others to recognize the extraordinary achievements of Dr. Bernard S. Arons as Director of the Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration, and to acknowledge his departure as he moves forward to become Senior Science Advisor to the new Director of the National Institute of Mental Health. As we strive to pass critically important mental health legislation in this Congress, we know how fortunate we have been to have Bernie's extraordinary leadership at CMHS during these past nine years. His expertise and remarkable ability to integrate mental health services with evidence-based practices and scientific research made him an outstanding national leader who directed our country's mental health agenda through many years of challenge and crisis.

When Bernie first came to CMHS in 1993, he faced an enormous challenge: heading a new Federal Center whose mission was to lead our country in the delivery of mental health services. To do this, he faced the reality of inadequate resources at the federal, state, and local level for those with mental illness. The lack of mental health parity in private and public health care systems leaves many states struggling with how to help. Yet he was undaunted. He and his extraordinary staff at CMHS led the way on making mental health a major priority for this country. For these last 9 years, he has clearly taken our country forward and helped to restore hope to the millions of Americans with mental illness. Bernie's extraordinary talents as an administrator, scientist, and communicator, have made him a major force in advancing the public's awareness of the ways in which mental illness affects the lives of so many. Although stigma still exists, there are very few who dare to challenge the fact that mental disorders are real, that they are treatable, that there are effective national and community programs that can help, and that we must do more to ensure that all get the treatment they need.

During his tenure at CMHS, Bernie worked closely with former Surgeon General David Satcher to publish the first-ever Surgeon General's Report on Mental Health, which continues to enhance national awareness of mental health issues. He led CMHS in addressing many critical mental health issues that traditionally impede access to quality services, such as stigma and lack of community services. His commitment to making a difference fueled the work on a National Strategy for Suicide Prevention, which continues to bring together researchers, providers, advocates and consumers in developing a prevention plan to reduce suicide in the United States. Bernie also guided

CMHS in providing a national response to recent terrorist threats, based in science and best practices. From studies on parity in mental health coverage to initiatives on school violence, CMHS has become a leading national voice on mental health issues under his leadership.

We are particularly pleased that Bernie was at the forefront of the efforts to shape the future of mental health services as our country faced the crisis of terrorism. More than ever, his efforts to include the voices of patients and families in the overall planning process at CMHS was needed. We too rely on those whose lives are touched by mental disorders to be the true experts in our work to shape public policy.

With his thoughtful, wise, and gentle manner, Bernie is truly a man who has the ability to bring together people with diverse responsibilities and missions to address the serious mental health crisis. Through his efforts, and with minimal resources, he shaped CMHS into an institution that has brought us so much further in the struggle to provide decent mental health services, reduce stigma, and to recognize as a society that mental disorders are real and treatable.

As he departs from the Center for Mental Health Services, we wish him well and thank him for all he has done to improve mental health care in our country. We are confident that Bernie has placed CMHS on a course that promises to build on these remarkable achievements, one that will meet the extraordinarily challenging mental health needs ahead. Dr. Bernie Arons will be sorely missed, but we know he will continue to be a major force for the improvement of mental health care in our country.●

MESSSAGES FROM THE HOUSE

At 3:41 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill with an amendment:

S. 941. An act to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment:

S. 1105. An act to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes.

The message further announced that the House has passed the following bill, with an amendment:

S. 1240. An act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment:

S. 1894. An act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

The message further announced that the House has passed the following bills, without amendment:

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

S. 1325. An act to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests in Adak Island, and for other purposes.

S. 238. An act to authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1448. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

H.R. 1606. An act to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes.

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3656. An act to amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4708. An act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District.

H.R. 4917. An act to provide for an exchange of lands with the United Water Conservation District of California to eliminate private inholdings in the Los Padres national Forest, and for other purposes.

H.R. 4919. An act to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes.

H.R. 4938. An act to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska, and for other purposes.

H.R. 4953. an act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

H.R. 5099. An act to extend the period of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5109. An act to direct the Secretary of Energy to convey a parcel of land at the facility of the Southwestern Power Administration in Tupelo, Oklahoma.

The message further announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 110. Concurrent resolution honoring the heroism and courage displaced by airline flight attendants on a daily basis.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 419. Concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the International Association of fish and Wildlife Agencies.

H. Con. Res. 458. Concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

H. Con. Res. 472. Concurrent resolution recognizing the 100th anniversary of the 4–H Youth Development Program.

H. Con. Res. 301. Concurrent resolution expressing the sense of Congress regarding American Gold Star Mothers, Incorporated, Blue Star Mothers of America, Incorporated, the service flag, and the service lapel button.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 640) to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes.

At 4:00 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1646) to authorize appropriations for the Department of State for fiscal years 2002 and 2003, and for other purposes.

At 5:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 483. Concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 1646.

ENROLLED BILLS SIGNED

The following enrolled bills, previously signed by the Speaker of the House, were signed on today, September 25, 2002, by the President pro tempore (Mr. BYRD):

H.R. 486. An act for the relief of Barbara Makuch.

H.R. 487. An act for the relief of Eugene Makuch.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1448. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa; to the Committee on Finance.

H.R. 1606. An act to amend section 507 of the Omnibus Parks and public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 3656. An act to amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank; to the Committee on Foreign Relations.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4708. An act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District; to the Committee on Energy and Natural Resources.

H.R. 4917. An act to provide for an exchange of lands with the United Water Conservation District of California to eliminate private inholdings in the Los Padres National Forest, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4919. An act to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4938. An act to direct the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water supply for the Santee Sioux Tribe of Nebraska, and for other purposes; to the Committee on Indian Affairs.

H.R. 5099. An act to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins; to the Committee on Energy and Natural Resources.

H.R. 5109. An act to direct the Secretary of Energy to convey a parcel of land at the facility of the Southwestern Power Administration in Tupelo, Oklahoma; to the Committee on Energy and Natural Resources.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 301. Concurrent resolutions expressing the sense of Congress regarding American Gold Star Mothers, Incorporated, Blue Star Mothers of America, Incorporated, the service flag, and the service lapel button; to the Committee on Armed Services.

H. Con. Res. 419. Concurrent resolution requesting the President to issue a proclamation in observance of the 100th Anniversary of the founding of the international Association of Fish and Wildlife Agencies; to the Committee on the Judiciary.

H. Con. Res. 472. Concurrent resolution recognizing the 100th anniversary of the 4–H Youth Development Program; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4953. An act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Michelle Guillermin, of Maryland, to be Chief Financial Officer, Corporation for National and Community Service.

*Glenn Bernard Anderson, of Arkansas, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2003.

*Barbara Gillcrist, of New Mexico, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Graham Hill, of Virginia, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*Marco A. Rodriguez, of California, to be a Member of the National Council on Disability for a term expiring September 17, 2005.

*David Wenzel, of Pennsylvania, to be a Member of the National Council on Disability for a term expiring September 17, 2004.

By Mr. HOLLINGS for the Committee on Commerce, Science, and Transportation.

*Coast Guard nomination of Rear Adm. (Selectee) Robert J. Papp.

Mr. HOLLINGS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

*(Coast Guard nominations beginning Kurt J. Colella and ending Lucretia Flammang, which nominations were received by the Senate and appeared in the Congressional Record on September 24, 2002.)

*(Coast Guard nominations beginning Alan N Arsenault and ending Matthew J Zamary, which nominations were received by the Senate and appeared in the Congressional Record on September 24, 2002.)

*(Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. KENNEDY (for himself, Mr. GREGG, Mrs. CLINTON, Mr. ROBERTS, Mr. DODD, Mr. FRIST, Mr. JEFFORDS, Ms. COLLINS, and Mr. TORRICELLI):

S. 3001. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU:

S. 3002. A bill to provide for the preservation and restoration of historic buildings and structures at historically black colleges and universities; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3003. A bill to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HELMS:

S. 3004. A bill to eliminate the Federal quota and price support programs for certain tobacco, to compensate quota owners and holders for the loss of tobacco quota asset value, to establish a tobacco community reinvestment program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. AKAKA:

S. 3005. A bill to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. JOHNSON:

S. 3006. A bill to prohibit Internet gambling; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 710

At the request of Mr. SMITH of Oregon, his name was added as a cosponsor of S. 710, a bill to require coverage for colorectal cancer screenings.

S. 732

At the request of Mr. THOMPSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 732, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain restaurant buildings, and for other purposes.

S. 776

At the request of Mr. BINGAMAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 776, a bill to amend title XIX of the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2002.

S. 858

At the request of Mr. HUTCHINSON, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 858, a bill to amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small business with respect to medical care for their employees.

S. 885

At the request of Mr. CLELAND, the name of the Senator from Hawaii (Mr.

AKAKA) was added as a cosponsor of S. 885, a bill to amend title XVIII of the Social Security Act to provide for national standardized payment amounts for inpatient hospital services furnished under the medicare program.

S. 917

At the request of Ms. COLLINS, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 940

At the request of Mr. DODD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 940, a bill to leave no child behind.

S. 1115

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 1115, a bill to amend the Public Health Service Act with respect to making progress toward the goal of eliminating tuberculosis, and for other purposes.

S. 1304

At the request of Mr. KERRY, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 1304, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of oral drugs to reduce serum phosphate levels in dialysis patients with end-stage renal disease.

S. 1394

At the request of Mr. ENSIGN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1394, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 1626

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 1626, a bill to provide disadvantaged children with access to dental services.

S. 1651

At the request of Mr. DORGAN, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 1651, a bill to establish the United States Consensus Council to provide for a consensus building process in addressing national public policy issues, and for other purposes.

S. 1746

At the request of Mr. REID, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1746, a bill to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities.

S. 2499

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 2499, A Bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes.

S. 2573

At the request of Mr. REED, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2573, a bill to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes.

S. 2750

At the request of Mr. CONRAD, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2750, a bill to improve the provision of telehealth services under the medicare program, to provide grants for the development of telehealth networks, and for other purposes.

S. 2758

At the request of Mr. DODD, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2758, a bill entitled ''The Child Care and Development Block Grant Amendments Act''.

S. 2790

At the request of Ms. CANTWELL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 2790, a bill to provide lasting protection for inventoried roadless areas within the National Forest System.

S. 2844

At the request of Mr. ROCKEFELLER, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2844, a bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes.

S. 2847

At the request of Mr. FEINGOLD, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2847, a bill to assist in the conservation of cranes by supporting and providing, through projects of persons and organizations with expertise in crane conservation, financial resources for the conservation programs of countries the activities of which directly or indirectly affect cranes.

S. 2855

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2855, a bill to amend title XIX of the Social Security Act to improve the qualified medicare beneficiary (QMB) and special low-income medicare beneficiary (SLMB) programs within the medicaid program.

S. 2892

At the request of Mr. KENNEDY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2892, a bill to provide economic security for America's workers.

S. 2965

At the request of Mr. KENNEDY, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2965, a bill to amend the Public Health Service Act to improve the quality of care for cancer, and for other purposes.

S. 2990

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2990, a bill to provide for programs and activities to improve the health of Hispanic individuals, and for other purposes.

S. RES. 239

At the request of Mr. ALLEN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Res. 239, A resolution recognizing the lack of historical recognition of the gallant exploits of the officers and crew of the S.S. Henry Bacon, a Liberty ship that was sunk February 23, 1945, in the waning days of World War II.

S. RES. 270

At the request of Mr. CAMPBELL, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Tennessee (Mr. FRIST) were added as cosponsors of S. Res. 270, A resolution designating the week of October 13, 2002, through October 19, 2002, as ''National Cystic Fibrosis Awareness Week''.

S. CON. RES. 11

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. Con. Res. 11, A concurrent resolution expressing the sense of Congress to fully use the powers of the Federal Government to enhance the science base required to more fully develop the field of health promotion and disease prevention, and to explore how strategies can be developed to integrate lifestyle improvement programs into national policy, our health care system, schools, workplaces, families and communities.

S. CON. RES. 145

At the request of Mr. KENNEDY, the names of the Senator from Alaska (Mr. STEVENS), the Senator from Connecticut (Mr. DODD) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. Con. Res. 145, A concurrent resolution recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

AMENDMENT NO. 4543

At the request of Mr. WELLSTONE, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of

amendment No. 4543 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4544

At the request of Mr. WELLSTONE, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of amendment No. 4544 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4545

At the request of Mr. WELLSTONE, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 4545 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4546

At the request of Mr. WELLSTONE, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 4546 intended to be proposed to H.R. 5093, a bill making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

AMENDMENT NO. 4699

At the request of Mr. KYL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 4699 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4731

At the request of Mr. ALLEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of amendment No. 4731 intended to be proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KENNEDY (for himself, Mr. GREGG, Mrs. CLINTON, Mr. ROBERTS, Mr. DODD, Mr. FRIST, Mr. JEFFORDS, Ms. COLLINS, and Mr. TORRICELLI):

S. 3001. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish labeling requirements regarding allergenic substances in food, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, I am pleased today to join my colleagues Senator GREGG, Senator CLINTON, Senator ROBERTS, Senator DODD, Senator FRIST and others in introducing legislation to improve the labeling of allergens in food.

American families deserve to feel confident that the food they eat is safe. The Food Allergen Labeling and Consumer Protection Act will allow the seven million Americans with food allergies to identify more easily a product's ingredients, avoid foods that may harm them, and stay healthy. One hundred fifty Americans die each year from ingesting allergenic foods, and this legislation will greatly reduce that number.

The Food Allergen Labeling and Consumer Protection Act will require that food ingredient statements on food packages identify in common language when an ingredient, including a flavoring, coloring, or other additive, is itself, or is derived from, one of the eight main food allergens.

The Food Allergen Labeling and Consumer Protection Act will require the Food and Drug Administration to provide for ''gluten-free'' labeling on foods, to help people with celiac disease avoid the glutens that cause their disease. It will require FDA to report to Congress about how manufacturers can minimize cross-contact with food allergens between foods produced in the same facility or on the same production line, and about when manufacturers should use ''may contain'' or other advisory language in food labeling.

The Food Allergen Labeling and Consumer Protection Act will also require the Centers for Disease Control and Prevention to track deaths related to food allergies, and it will direct the National Institutes of Health to develop a plan for research activities concerning food allergies.

I urge my colleagues in the Senate to support this legislation that will do so much to improve the lives of those with food allergies and celiac disease. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3001

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Food Allergen Labeling and Consumer Protection Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is estimated that—

(A) approximately 2 percent of adults and about 5 percent of infants and young children in the United States suffer from food allergies; and

(B) each year, roughly 30,000 individuals require emergency room treatment and 150 individuals die because of allergic reactions to food;

(2)(A) Eight major foods or food groups—milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans—account for 90 percent of food allergies;

(B) at present, there is no cure for food allergies; and

(C) a food allergic consumer must avoid the food to which the consumer is allergic;

(3)(A) in a review of randomly selected manufacturers of baked goods, ice cream, and candy in Minnesota and Wisconsin in 1999, the Food and Drug Administration found that 25 percent of sampled foods failed to list peanuts or eggs as ingredients on the food labels; and

(B) nationally, the number of recalls because of unlabeled allergens rose to 121 in 2000 from about 35 a decade earlier;

(4) a recent study shows that many parents of children with a food allergy were unable correctly to identify in each of several food labels the ingredients derived from major food allergens;

(5)(A) current regulations of the Food and Drug Administration require that ingredients in foods be listed by their ''common or usual name'';

(B) in some cases, the common or usual name of an ingredient may be unfamiliar to consumers, and many consumers may not realize the ingredient is derived from, or contains, a major food allergen; and

(C) current regulations of the Food and Drug Administration exempt spices, flavorings, and certain colorings and additives from ingredient labeling requirements that would allow consumers to avoid those to which they are allergic; and

(6)(A) celiac disease is an immune-mediated disease that causes damage to the gastrointestinal tract, central nervous system, and other organs;

(B) the current recommended treatment is avoidance of glutens in foods that are associated with celiac disease; and

(C) a multicenter, multiyear study estimated that the prevalence of celiac disease in the United States is 0.5 to 1 percent of the general population.

SEC. 3. FOOD LABELING; REQUIREMENT OF INFORMATION REGARDING ALLERGENIC SUBSTANCES.

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(t)(1) If it is not a raw agricultural commodity and it is, or it intentionally bears or contains, a major food allergen, unless either—

''(A) 'Contains', which statement is followed by the name of the food source as described in section 201(ll)(1) from which the major food allergen is derived, follows immediately after or is adjacent to (in a type size no smaller than the type size used in the list of ingredients) the list of ingredients required under subsections (g) and (i); or

''(B) the common or usual name of the major food allergen in the list of ingredients required under sections (g) and (i) is followed in parentheses by the name of the food source as described in section 201(ll)(1) from which the major food allergen is derived, except that the name of the food source is not required when—

''(i) the common or usual name of the ingredient is the term used to describe a major food allergen in section 201(ll)(1), or

''(ii) the name of the food source as described in section 201(ll)(1) has appeared previously in the ingredient list; and

''Provided all major food allergens are labeled in a consistent manner either as specified in clause (A) or as specified in clause (B).

''(2) The information required under this subsection may appear in labeling other than the label only if the Secretary finds that such other labeling is sufficient to protect the public health. A finding by the Secretary under this subparagraph is effective upon publication in the Federal Register as a notice (including any change in an earlier finding under this subparagraph).

''(3) Notwithstanding subsection (g), (i), or (k), or any other law, a spice, flavoring,

coloring, or incidental additive that is, or that intentionally bears or contains, a major food allergen shall be subject to the labeling requirements of this subsection.

''(4) The Secretary may by regulation modify the requirements of subparagraph (A) or (B) of paragraph (1), or eliminate either the requirement of subparagraph (A) or the requirement of subparagraph (B), if the Secretary determines that the modification or elimination of the requirement is necessary to protect the public health.

''(u) Notwithstanding subsection (g), (i), or (k), or any other law, a spice, flavoring, coloring, or incidental additive that is, or that intentionally bears or contains, a food allergen (other than a major food allergen), as determined by the Secretary by regulation, shall be disclosed in a manner specified by the Secretary by regulation.''.

(b) EFFECT ON OTHER AUTHORITY.—This section does not alter the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) to require the labeling of other food allergens.

(c) CONFORMING AMENDMENT.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(ll) The term 'major food allergen' means any of the following:

''(1) Milk, egg, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans.

''(2) A proteinaceous substance derived from a food specified in paragraph (1) (unless the Secretary determines that the substance does not cause an allergic response that poses a risk to human health).''.

(d) EFFECTIVE DATE.—A food that is labeled on or after January 1, 2006, and that is, or that intentionally bears or contains, a major food allergen (as defined in the amendment made by subsection (c)) shall be labeled in compliance with the requirements of the amendment made by subsection (a).

SEC. 4. REPORT ON FOOD ALLERGENS.

Not later than June 30, 2004, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1)(A) analyzes—

(i) the ways in which foods, during manufacturing and processing, can be unintentionally contaminated with major food allergens, including contamination caused by the use by manufacturers of the same production line to produce both products for which major food allergens are intentional ingredients and products for which major food allergens are not intentional ingredients; and

(ii) the ways in which foods produced on dedicated production lines might nonetheless become unintentionally contaminated with major food allergens; and

(B) estimates how common those practices are in the food industry, with breakdowns by food type as appropriate;

(2) recommends methods that can be used to reduce or eliminate cross-contact of foods with the major food allergens;

(3) describes—

(A) the various types of advisory labeling (such as use of the words ''may contain'') used by food producers;

(B) the conditions of manufacture of food that are associated with the various types of advisory labeling; and

(C) the extent to which advisory labels are being used on food products;

(4) determines how consumers with food allergies or the caretakers of consumers would prefer information about the risk of cross-contact be communicated on food labels by using appropriate survey mechanisms; and

(5) identifies the circumstances, if any, under which advisory labeling could appropriately be used.

SEC. 5. INSPECTIONS RELATING TO FOOD ALLERGENS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall give priority to increasing the number of inspections under section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374) of facilities in which foods are manufactured, processed, packed, or held—

(1) to ensure that the foods comply with practices to reduce or eliminate cross-contact of a food with major food allergen residues that are not intentional ingredients of the food; and

(2) to ensure that major food allergens are properly labeled on foods.

(b) REPORT.—On October 1, 2003, and biennially thereafter, the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that—

(1) states the number of inspections conducted in the previous year and the numbers of facilities and food labels that were found to be in compliance or out of compliance;

(2) describes the nature of the violations found;

(3) includes the number of voluntary recalls, and their classifications, requested by the Secretary of foods with undeclared major food allergens;

(4) assesses the extent of use of advisory language found and the appropriateness of that use; and

(5) assesses the extent to which the Secretary and the food industry have effectively addressed cross-contact issues.

SEC. 6. LABELING OF GLUTENS AND CELIAC DISEASE.

(a) CONTRACT WITH INSTITUTE OF MEDICINE.—The Secretary of Health and Human Services (in this section, the ''Secretary'') shall enter into a contract with the Institute of Medicine for—

(1) the conduct of a review of the science relating to—

(A) the glutens in food that are associated with celiac disease;

(B) the means of preventing and treating celiac disease; and

(C) the methodologies for detecting such glutens in foods; and

(2) the submission to the Secretary, the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, not later than 2 years after the date of enactment of this Act, of a report concerning the review conducted under paragraph (1).

(b) REQUIREMENTS OF EXPERTISE.—The Institute of Medicine shall conduct the review under subsection (a)(1) and make the report under subsection (a)(2) in conjunction with experts in celiac disease, including experts in the pathogenesis, epidemiology, and biochemistry of celiac disease, the sensitivity to, and tolerance of, the glutens in food that are associated with celiac disease, and the clinical aspects of celiac disease, including prevention and treatment.

(c) GLUTEN LABELING.—Considering the review conducted under paragraph (a)(1), the Secretary shall, not later than 4 years after the date of enactment of this Act, issue a proposed rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods. Not later than 6 years after the date of enactment of this Act, the Secretary shall issue a final rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods.

(d) REPORT.—Not later than 2 years after submission to the Secretary of the report under subsection (a)(2), the Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that assesses whether additional requirements for the labeling of gluten are warranted and necessary to better inform individuals with celiac disease, and if other labeling is warranted and necessary, identifies the types of such labeling.

SEC. 7. DATA ON FOOD-RELATED ALLERGIC RESPONSES.

(a) STUDY.—Not later than one year after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary''), in consultation with consumers, providers, State governments, and other relevant parties, shall complete a study for the purposes of—

(1) determining whether existing systems for the reporting, collection and analysis of national data accurately capture information on—

(A) the prevalence of food allergies;

(B) the incidence of clinically significant or serious adverse events related to food allergies; and

(C) the use of different modes of treatment for and prevention of allergic responses to foods; and

(2) identifying new or alternative systems or enhancements to existing systems (including by educating physicians and other health care providers), for the reporting collection and analysis of national data on—

(A) the prevalence of food allergies;

(B) the incidence of clinically significant or serious adverse events related to food allergies; and

(C) the use of different modes of treatment for and prevention of allergic responses to foods.

(b) IMPROVEMENT AND PUBLICATION OF DATA.—On completion of, and consistent with the findings of, the study conducted under subsection (a), the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Commissioner of Foods and Drugs, shall improve the collection of, and publish as it becomes available, national data on—

(1) the prevalence of food allergies;

(2) the incidence of clinically significant or serious adverse events related to food allergies; and

(3) the use of different modes of treatment for and prevention of allergic responses to foods.

(c) REPORT TO CONGRESS.—Not later than 30 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the progress made with respect to subsections (a) and (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

SEC. 8. FOOD ALLERGIES RESEARCH.

(a) IN GENERAL.—The Secretary of Health and Human Services, through the National Institutes of Health, shall convene a panel of nationally recognized experts to review current basic and clinical research efforts related to food allergies. The panel shall develop a plan for expanding, intensifying, and coordinating research activities concerning food allergies.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a plan under subsection (a) to the Committee on Energy and Commerce in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate.

SEC. 9. FOOD ALLERGENS IN THE FOOD CODE.

The Secretary of Health and Human Services shall, in the Conference for Food Protection, as part of its cooperative activities between the States under section 311 of the Public Health Service Act (42 U.S.C. 243), pursue revision of the Food Code to provide guidelines for preparing allergen-free foods in food establishments, including in restaurants, grocery store delicatessens and bakeries, and elementary and secondary school cafeterias. The Secretary shall consider public and private guidelines and recommendations for preparing allergen-free foods in pursuing this revision.

SEC. 10. RECOMMENDATIONS REGARDING RESPONDING TO FOOD-RELATED ALLERGIC RESPONSES.

The Secretary of Health and Human Services shall, in providing technical assistance relating to trauma care and emergency medical services to State and local agencies under section 1202(b)(3) of the Public Health Service Act (42 U.S.C. 300d–2(b)(3)), include technical assistance relating to the use of different modes of treatment for and prevention of allergic responses to foods.

By Ms. LANDRIEU:

S. 3002. A bill to provide for the preservation and restoration of historic buildings an structures at historically black colleges and universities; to the Committee on Energy and Natural Resources.

Ms. LANDRIEU. Mr. President, I rise today to introduce the ''Historically Black Colleges and Universities Historic Preservation Act of 2002,'' legislation to revise and extend certain provisions of the Omnibus Parks and Public Lands Management Act of 1996.

I want to begin by acknowledging the important role played by the Nation's Historically Black Colleges and Universities, HBCUs, in educating young people of all races and nationalities in America. HBCUs are in the vanguard of providing access and some measure of choice in higher education, and of opening the doors to educational opportunity for all students, regardless of family income and traditional measures of academic readiness for college study. In Louisiana, we have a strong family of HBCUs: Grambling State University in Grambling, Southern University's three campuses in Baton Rouge, Shreveport and New Orleans, as well as Dillard and Xavier universities in New Orleans.

While similar bills have been introduced this Congress, my bill takes a different and, I believe, a necessarily strategic approach in identifying, prioritizing and providing the funds necessary to restore all of the historic buildings and sites on black colleges and campuses. This historic preservation bill provides an orderly process for identifying and assessing the degree of deterioration of all properties; for determining the capacity of the HBCU to provide ''matching'' funds to assist in the cost of restoration; and for prioritizing Congressional funding and the Interior Department's determination of properties eligible for restoration funding.

This legislation is not only needed, it is also timely. In 1998, the National Trust for Historic Preservation placed the historic buildings of the nation's HBCUs on its list of ''11 Most Endangered Historic Places''. The Trust cited a General Accounting Office study that found that the estimated cost of restoring and preserving the 712 historic properties, including dormitories, chapels, gymnasiums and classroom buildings, owned by the schools is $755 million, of which a mere $60 million, or 8 percent, has been set aside in school budgets. If we in Congress fail to help, the cost of restoration will only continue to rise while these historic buildings continue to deteriorate.

I urge my colleagues to co-sponsor this important legislation. Without it, we may not be able to ensure that these buildings will survive into the new millennium and beyond to welcome future generations of scholars.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 3003. A bill to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I rise today to introduce an important bill that will facilitate Forest Service land management on Prince of Wales Island and help community expansion and development. The City of Craig is one of the fastest growing cities in the State of Alaska. It is the economic center of Prince of Wales Island, the third largest island in the United States and home to a vibrant population of rural Alaskans. The only clinic or hospital on the island is located in Craig. The town contains the major retail shopping and service outlets on the island and Prince of Wales residents drive up to a hundred miles round trip to come to town for medical services and shopping.

One of the Forest Service's main administrative facilities, the Craig Ranger District Office is located in Craig and the Craig District Ranger has management authority over much of the island. It is critical that the Forest Service has the tools it needs to provide good management for that part of the island. One of these tools is the presence of some Federal land near the Craig Ranger Station. Right now, there is no Forest Service land near the Ranger Station. In an unusual situation for Alaska, the Ranger Station is an inholding in private, State, and City owned land. This legislation would provide for a three-way conveyance process which would result in a parcel of land now owned by the City being conveyed into the National Forest and a private inholding now owned by a private owner being acquired by the City.

This is one of those situations people like to describe as ''win-win.'' Providing a new recreational opportunity in the Tongass National Forest at Craig benefits the public, and the residents of Craig would obtain land vital to future community development.

What this legislation does, is authorize the Federal Government to accept conveyance of land from the City of Craig which will enable the City to acquire a private inholding near the City. The City would convey to the Federal Government up to 348.68 acres of land it now owns to the National Forest. This land is highly prized for local recreation and would provide the Craig Ranger District with a missing piece of its management scheme by providing a recreation site within short walking distance of the Ranger Station.

Right now, visitors to the Forest come to the Craig Ranger Office to orient themselves to the Forest. One of the things they look for is onsite recreation in the Forest from the Ranger Station. But presently there is no such opportunity. Because of the land conveyance status directly around Craig, there is no Forest land in that area. Visitors are disappointed that they must arrange transportation for at least a 20 mile trip before they can take even a short walk on the Forest.

However, the City of Craig owns almost 350 acres of prime recreational land including a dedicated trail from the Ranger Station. The object of this legislation would be for that land to be conveyed by the City to the Forest and for the City to obtain a much smaller 10 acres site in the town now owned by a private party. That property is a cannery site dating from the early 1900's which has not been used since the early 1980's. It is prime land for the city to develop to improve its community management plan and to provide economic development in Craig. The parcel include both uplands and tidelands and could be used by Craig to develop a good port and harbor and to provide first class locations for retail merchants and other community services.

I strongly support meeting the needs of Craig in developing its local economy. The entire island is in transition. When I was first elected to the Senate in 1980, Craig and Prince of Wales Island were the center of a vibrant timber based economy that provided thousands of direct and indirect jobs to the Island. Much of that is now gone as a result of unfortunate Federal policies which have devastated the timber economy on Prince of Wales Island and much of Southeastern Alaska.

The Congress must help Craig in its transition to another economy. The City leaders are dynamic and visionary people who have provided real leadership on the island. They have worked hard to help maintain the remaining timber plant at Klawock which provides year round employment to city and island residents. They have organized, along with their neighbors, the Prince of Wales Community Council, an association of municipalities and Native and non Native communities to work as a team on islandwide projects.

The most recent product of this effort is the InterIsland Ferry Authority composed of members from Wrangell, Petersburg, Ketchikan, Craig, Throne

Bay, and Coffman Cove. The Authority has built and put into service a day ferry from Hollis, a neighboring community to Craig, and my home town of Ketchikan. This ferry replaces the State ferry, which has been forced to cut back its service. The InterIsland Ferry service will increase to twice a day during the summer and will provide a terrific boost to the local economy of Craig and the island.

Passage of this legislation is critical to the future of the City of Craig. It will increase recreational opportunities for the local and visiting public. I urge my colleagues to join me in moving forward on this legislation. All the conveyances will be subject to appraisals as required by this Act. The Federal Government will receive equal value in land from the City for any funding which it provides under this Act. The passage of this Act is good for the public and for the residents of Craig. I yield the floor.

By Mr. AKAKA:

S. 3005. A bill to revise the boundary of the Kaloko-Honokōhau National Historical Park in the State of Hawaii, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I rise today to introduce the Kaloko-Honokōhau National Historical Park Addition Act of 2002. This bill provides for the adjustment of Park boundaries to permit the development of permanent Park operational facilities for administrative purposes and to provide the public with a visitor's center and interpretative facilities.

Kaloko-Honokōhau National Historical Park is located along the Kona coast on the island of Hawaii. It was designated as a National Historic Landmark in 1962 and was established as a National Historical Park in 1978. The Park was created to preserve, interpret, and perpetuate traditional Native Hawaiian culture. The ocean makes up over half of this 1160-acre Park, and the boundaries include the culturally significant Kaloko and 'Aimakapa fishponds and 'Ai'opio fish trap. There are also several heiau, or Hawaiian religious sites, found in the Park.

The Kaloko-Honokōhau National Historical Park is currently leasing office space outside the Park to carry out its necessary administrative, interpretive, resource management and maintenance functions. This office space is woefully inadequate. The amount of visitor parking available is limited to four spaces, and its location presents a challenge for visitor access.

The National Park Service has considered the possibility of constructing new operational facilities within the Park boundaries. However, such action would be inconsistent with current National Park Service management policies because of its adverse impacts on Park resources and values. Building within the boundary of Kaloko-Honokōhau Park would intrude on the Park's historic setting and has the potential to harm the fishponds, which are considered to be some of the Park's most valuable resources.

Acquiring an additional two parcels of land adjacent to the Park makes sense. An existing two-story building will provide an easy and inexpensive retrofit for use as Park headquarters. The building has never been occupied, and contains offices, lab and storage areas, as well as a reception lobby that would be ideal to host visitor orientation and interpretive programs. The building has the capacity for artifact storage that meets curatorial standards for historical and archaeological items. More than 90 percent of the two acres remains undeveloped, thereby providing enough space for visitor parking and future Park operations. It is important to note that no additional staffing would be required to support the proposed expansion.

Last year, 54,000 people visited Kaloko-Honokōhau National Historical Park. We need a facility there that offers administrative personnel the resources they need to carry out their management functions, and visitors the opportunity to learn about this important part of Hawaiian history. I look forward to working with my colleagues and the Park Service to make this possible.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3005

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Kaloko-Honokōhau National Historical Park Addition Act of 2002.''

SEC. 2. ADDITIONS TO KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK.

Section 505(a) of P.L. 95–625 (16 U.S.C. 396D(a)) is amended—

(1) by striking ''(a) In order'' and inserting ''(a)(1) In order'';

(2) by striking ''1978,'' and all that follows and inserting ''1978.''; and

(3) by adding at the end the following new paragraphs: comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Tract A' on the map entitled 'Kaloko-Honokōhau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

''(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.''.

SEC. 3. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4732. Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4733. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4734. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4735. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4736. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4737. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4738. Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4739. Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4740. Mr. NELSON, of Nebraska (for himself, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra.

SA 4741. Mr. SMITH, of New Hampshire submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4742. Mr. DASCHLE proposed an amendment to the bill H.R. 5005, supra.

SA 4743. Mr. DASCHLE (for himself, Mr. NELSON, of Nebraska, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4742 proposed by Mr. DASCHLE to the bill H.R. 5005, supra.

SA 4744. Mr. DASCHLE submitted an amendment intended to be proposed to the language proposed to be stricken by amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H .R. 5005, supra; which was ordered to lie on the table.

SA 4745. Mr. DASCHLE submitted an amendment intended to be proposed to amendment SA 4744 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4746. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4747. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4748. Mr. KENNEDY submitted an amendment intended to be proposed by him

to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4749. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4750. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4751. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4752. Mr. HOLLINGS (for Mr. GRAHAM) proposed an amendment to the bill S. 2506, to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

TEXT OF AMENDMENTS

SA 4732. Mr. FEINGOLD (for himself, Mr. KENNEDY, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103–322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SA 4733. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

SEC. ___. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. ___. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. ___. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), 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—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SEC. ___. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SA 4734. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

SEC. ___. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. ___. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner

that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. ___. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), 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—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SEC. ___. REPEAL OF IMMUNITY FOR CUSTOMS OFFICERS IN CONDUCTING CERTAIN SEARCHES.

(a) IN GENERAL.—Section 3061 of the Revised Statutes is amended—

(1) in subsection (a), by striking ''(a)''; and

(2) by striking subsection (b).

(b) TRADE ACT OF 2002.—The Trade Act of 2002 is amended—

(1) by striking section 341; and

(2) in the table of contents, by striking the item relating to section 341.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in chapter 4 of title III of the Trade Act of 2002.

SA 4735. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

SEC. ___. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. ___. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. ___. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), 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—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a

power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SA 4736. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

SEC. ___. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. ___. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. ___. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) REVIEW OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), 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—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve the national security; or

''(C) prevent significant impairment to the national interests of the United States.

''(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General in writing (appropriately classified, if necessary) within

7 calendar days 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, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

''(A) the President of the Senate;

''(B) the Speaker of the House of Representatives;

''(C) the Committee on Governmental Affairs of the Senate;

''(D) the Committee on Government Reform of the House of Representatives; and

''(E) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (c)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

SA 4737. Mr. FEINGOLD (for himself and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page ____, strike line ____ and all that follows through page ____, line ____, and insert the following:

SEC. ___. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the programs and activities of the Department; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.

SEC. ___. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.

SEC. ___. INSPECTOR GENERAL.

(a) IN GENERAL.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) ESTABLISHMENT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting ''Homeland Security,'' after ''Health and Human Services,''; and

(2) in paragraph (2), by inserting ''Homeland Security,'' after ''Health and Human Services,''.

(c) ASSISTANT INSPECTOR GENERAL FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—

(1) IN GENERAL.—There shall be in the Office of Inspector General an Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the ''Assistant Inspector General''), who shall be appointed without regard to political affiliation and solely on the basis of demonstrated ability in civil rights and civil liberties, law, management analysis, investigations, and public relations.

(2) RESPONSIBILITIES OF THE ASSISTANT INSPECTOR GENERAL.—The Assistant Inspector General shall—

(A) review information and receive complaints from any source alleging abuses of civil rights and civil liberties by—

(i) employees and officials of the Department;

(ii) independent contractors retained by the Department; or

(iii) grantees of the Department;

(B) conduct such investigations as the Assistant Inspector General considers necessary, either self-initiated or in response to complaints, to determine the policies and practices to protect civil rights and civil liberties of—

(i) the Department;

(ii) any unit of the Department;

(iii) independent contractors employed by the Department; or

(iv) grantees of the Department;

(C) conduct investigations of the programs and operations of the Department to determine whether the Department's civil rights and civil liberties policies are being effectively implemented, except that the Assistant Inspector General shall not have any responsibility for the enforcement of the Equal Employment Opportunities Act;

(D) inform the Secretary and Congress of weaknesses, problems, and deficiencies within the Department relating to civil rights and civil liberties;

(E) provide prompt notification to the Civil Rights Officer of any complaints of violations of civil rights or civil liberties, and consult with the Civil Rights Officer regarding the investigation of such complaints, upon request or as appropriate ;

(F) publicize, in multiple languages, through the Internet, radio, television, and newspaper advertisements—

(i) information on the responsibilities and functions of the Assistant Inspector General; and

(ii) instructions on how to contact the Assistant Inspector General; and

(G) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(i) describing the implementation of this subsection, including the number of complaints received and a general description of any complaints received and investigations undertaken either in response to a complaint or on the initiative of the Assistant Inspector General;

(ii) detailing any civil rights abuses under subparagraph (A); and

(iii) accounting for the expenditure of funds to carry out this subsection.

(d) ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8I as section 8J; and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the ''Inspector General'') shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the ''Secretary'') with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

''(A) intelligence or counterintelligence matters;

''(B) ongoing criminal investigations or proceedings;

''(C) undercover operations;

''(D) the identity of confidential sources, including protected witnesses;

''(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—

''(i) section 3056 of title 18, United States Code;

''(ii) section 202 of title 3, United States Code; or

''(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

''(F) other matters the disclosure of which would constitute a serious threat to national security.

''(2) With respect to the information described under paragraph (1), 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—

''(A) prevent the disclosure of any information described under paragraph (1);

''(B) preserve vital national security interests; or

''(C) prevent significant impairment to the national interests of the United States.

''(3)(A) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General or, with respect to investigations relating to civil rights or civil liberties, the Assistant Inspector General for Civil Rights and Civil Liberties (in this section referred to as the 'Assistant Inspector General'), in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise.

''(B) Within 30 days after receipt of any notice under subparagraph (A), the Inspector General or Assistant Inspector General, as appropriate, shall prepare a copy of such notice and a written response that states whether the Inspector General or Assistant Inspector General, as appropriate, agrees or disagrees with the Secretary's exercise of a power under paragraph (1) and describes the reasons for any disagreement, to—

''(i) the President of the Senate;

''(ii) the Speaker of the House of Representatives;

''(iii) the Committee on Governmental Affairs of the Senate;

''(iv) the Committee on Government Reform of the House of Representatives; and

''(v) other appropriate committees or subcommittees of Congress.

''(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security. With respect to investigations relating to civil rights or civil liberties, the Inspector General's responsibilities under this section shall be exercised by the Assistant Inspector General.

''(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector General the significant activities being carried out by such office.

''(3)(A) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

''(B) If the Inspector General initiates an audit or investigation under subparagraph (A) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation.

''(C) If the Inspector General issues a notice under subparagraph (B), no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

''(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

''(1) the President of the Senate;

''(2) the Speaker of the House of Representatives;

''(3) the Committee on Governmental Affairs of the Senate; and

''(4) the Committee on Government Reform of the House of Representatives.

''(d)(1) The Assistant Inspector General shall inform the complainant regarding what actions were taken in response to a complaint.

''(2) With respect to any complaints received or investigations undertaken by the Assistant Inspector General, any person employed by an independent contractor, or grantee, of the Department shall be entitled to the same protections as are provided to employees of the Department under section 7.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking ''8F'' each place it appears and inserting ''8G''; and

(2) in section 8J (as redesignated by subsection (d)(1)), by striking ''or 8H'' and inserting '', 8H, or 8I''.

(f) DEFINITION.—In this Act, the term ''civil rights and civil liberties'' means rights and liberties, which—

(1) are or may be protected by the Constitution or implementing legislation; or

(2) are analogous to the rights and liberties under paragraph (1), whether or not secured by treaty, statute, regulation or executive order.

SEC. ___. STANDARDS FOR CLOSING REMOVAL HEARINGS.

Section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

''(e) STANDARDS FOR CLOSING REMOVAL HEARINGS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a removal proceeding under this section shall be open to the public.

''(2) EXCEPTIONS.—Portions of a removal proceeding under this section may be closed to the public, on a case by case basis, when necessary—

''(A) and with the consent of the alien, to preserve the confidentiality of applications for—

''(i) asylum;

''(ii) withholding of removal;

''(iii) relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984;

''(iv) relief under the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1902); or

''(v) other applications for relief involving confidential personal information or where portions of the removal hearing involve minors or issues relating to domestic violence; or

''(B) to protect the national security by preventing the disclosure of—

''(i) classified information; or

''(ii) the identity of a confidential informant.''.

SA 4738. Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) proposed an amendment to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

Strike all after the first word in amendment #4471 and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

(c) 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.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

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. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.
Sec. 307. Miscellaneous authorities relating to national laboratories.
Sec. 308. Homeland Security Institute.
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. Clearinghouse.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Coordination of information and information technology.

Sec. 406. Visa issuance.
Sec. 407. Border security and immigration working group.
Sec. 408. Information on visa denials required to be entered into electronic data system.
Sec. 409. Study on use of foreign national personnel in visa processing.

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.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Responsibilities.
Sec. 603. Chief Financial Officer.
Sec. 604. Chief Information Officer.
Sec. 605. Chief Human Capital Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.
Sec. 711. Law enforcement powers of Inspector General Agents.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of Human Resources Management System.
Sec. 731. Labor-management relations.
Sec. 732. Advisory committees.
Sec. 733. Acquisitions.
Sec. 734. Reorganization authority.
Sec. 735. Miscellaneous provisions.
Sec. 736. Authorization of appropriations.
Sec. 737. Regulatory authority.
Sec. 738. Use of appropriated funds.
Sec. 739. Future Year Homeland Security Program.
Sec. 739A. Bioterrorism Preparedness and Response Division.
Sec. 739B. Coordination with the Department of Health and Human Services under the Public Health Service Act.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

Sec. 741. Application of indemnification authority.
Sec. 742. Application of indemnification authority to State and local government contractors.
Sec. 743. Procurements of anti-terrorism technologies and anti-terrorism services by State and local governments through Federal contracts.
Sec. 744. Congressional notification.
Sec. 745. Definitions.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 751. Definition.
Sec. 752. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 753. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 754. Increased micro-purchase threshold for certain procurements.
Sec. 755. Application of certain commercial items authorities to certain procurements.
Sec. 756. Use of streamlined procedures.
Sec. 757. Review and report by Comptroller General.
Sec. 758. Identification of new entrants into the Federal marketplace.

Subtitle G—Coast Guard

Sec. 761. Preserving Coast Guard mission performance.

TITLE VIII—TRANSITION

Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act.
Sec. 902. Executive schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.
Sec. 908. Military activities.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title.
Sec. 1002. Definitions.
Sec. 1003. Transfer of Immigration and Naturalization Service functions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of Immigration and Naturalization Service.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Other authorities not affected.
Sec. 1119. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION

Sec. 1201. Unaccompanied alien juveniles.

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Sec. 1301. Legal status of EOIR.
Sec. 1302. Authorities of the Attorney General.
Sec. 1303. Statutory construction.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.

TITLE XXIV—ACADEMIC TRAINING

Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensation time off for travel.
Sec. 2404. Customs User Fees Extension

DIVISION D—NATIONAL COMMISSION

SEC. 2. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—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.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

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 thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

DIVISION A—HOMELAND SECURITY

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) PRIMARY 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; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) APPOINTMENT.—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) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including 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 his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, 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 chapter 33, subchapter 3, 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) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

SEC. 104. 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 appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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 under section 101 (b)(2)(A) and (d).

(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, intelligence-related 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 threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; 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 measures and to support protective 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 agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect 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 threat advisories; 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 section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, 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 and obtain 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 under section 101, 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 VIII, 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 Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) 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.

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

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

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 and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 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 under section 101;

(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.

SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

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.

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for 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 joint sponsorship 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 in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the 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); and

(10) supporting United States leadership in science and technology.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title VIII, 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.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the 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).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

SEC. 306. 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 under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in 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 under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) 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 in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, 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 nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel 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) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that 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.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—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 direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

SEC. 308. HOMELAND SECURITY INSTITUTE.

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) 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 in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—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.

(c) ARRANGEMENTS.—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.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section 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 subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy 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 such Act (15 U.S.C. 3710, 3710a).

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title VIII, 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 801(2)).

SEC. 311. CLEARINGHOUSE.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(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 governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

SEC. 403. FUNCTIONS TRANSFERRED.

(a) IN GENERAL.—In accordance with title VIII, 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; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—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 paragraph (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.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

SEC. 404. 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) The first section 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 laws specified in subsection (b) at the locations referred to in subsection (a).

(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 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 801(2), 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 agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant 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).

(D) Authority under which the Secretary of Agriculture may use employees of the Department 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.—Subject to paragraph (2), out of any funds collected as fees 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 periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department 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 2002 (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:

''(i) 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.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 405. 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. 406. 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 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;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) 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 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 subsection 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)).

(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:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) 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.

(iii) 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, 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.

SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

SEC. 408. 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. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

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.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for 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 VIII, 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 Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(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 the Assistant Secretary for Public Health Emergency Preparedness (including 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 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), 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.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

SEC. 602. RESPONSIBILITIES.

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(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; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 603. 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. 604. 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. 605. 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.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 701. RESPONSIBILITIES.

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(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;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

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

Subtitle B—Inspector General

SEC. 710. 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 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 COMPLETION OF AUDIT OR INVESTIGATION.—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.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

SEC. 711. 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 seizures 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) Powers authorized for an Office of Inspector General under paragraph (1) shall 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).

''(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. 720. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities 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—General Provisions

SEC. 730. 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 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.

''(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); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) 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. 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; and

''(C) 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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. 731. 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(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.

SEC. 732. ADVISORY COMMITTEES.

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.

SEC. 733. ACQUISITIONS.

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he 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 (h) of such 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) 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.

SEC. 734. REORGANIZATION AUTHORITY.

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

SEC. 735. MISCELLANEOUS PROVISIONS.

(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. 736. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 737. REGULATORY AUTHORITY.

Except as specifically provided in this Act, this Act vests 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 does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

SEC. 738. USE OF APPROPRIATED FUNDS.

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph 2(A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph 2(B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) 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.

(g) 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.

(h) 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. 739. FUTURE YEARS 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. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

SEC. 739B. 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 Secretary under sections 102(b)(14) and 134(b)(7) 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.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the

Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

SEC. 744. CONGRESSIONAL NOTIFICATION.

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

SEC. 745. DEFINITIONS.

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 751. DEFINITION.

In this title, 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. 752. 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. 753. 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 752 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, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(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. 754. 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 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 755. 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 752 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. 756. 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 752, 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 752.

SEC. 757. 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. 758. 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—Coast Guard

SEC. 761. 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 (e.g., 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, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies 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 to the national emergency 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 Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly 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.

TITLE VIII—TRANSITION

SEC. 801. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 802. TRANSFER OF AGENCIES.

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

SEC. 803. 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 or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—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.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed 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—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities 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

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

SEC. 804. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—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) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' 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.

(e) 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.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

SEC. 805. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under 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. 806. 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.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 901. INSPECTOR GENERAL ACT.

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking ''.;'' each place it appears and inserting a semicolon in each such place.

SEC. 902. EXECUTIVE SCHEDULE.

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) 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. 904. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, 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''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 905. 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 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'' after ''in coordination with''; 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. 906. SELECT AGENT REGISTRATION.

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (l)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(l), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

SEC. 907. 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. 908. MILITARY ACTIVITIES.

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting **"CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES"** after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

"SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration'

means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

"SEC. 114. BUREAU OF ENFORCEMENT.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information

to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), 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 of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) 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 pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight

and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1119. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—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''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION

SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, 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 juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles 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 juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile 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 juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles 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 Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(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 exploitative 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 juveniles 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 consider the use of 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 juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement 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, as the case may be.

(e) 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 and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(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 (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 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.—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) 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.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present 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.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. 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 1302.

SEC. 1302. 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. 1303. 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 1302, 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.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. 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. 2103. 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. 2104. 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. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. 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. 2202. 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. 2203. 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 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 he 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. 2204. 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''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. 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. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. 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. 2402. 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''.

SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

SEC. 2404. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007''.

TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 3101. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 3102. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3103. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 3104. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 3105. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the vice chairperson of the Commission, the chairperson of any subcommittee created by

a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 3106. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

TITLE XXXII

SEC. . PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER.

''Notwithstanding any other provision in this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attacks on September 11, 2001.''

SA 4739. Mrs. CARNAHAN submitted an amendment intended to be proposed to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. GRANTS FOR FIREFIGHTING PERSONNEL.

(a) Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively;

(2) by inserting after subsection (b) the following:

''(c) PERSONNEL GRANTS.—

''(1) IN GENERAL.—In addition to the grants authorized under subsection (b)(1), the Director may award grants to fire departments of a State for the purpose of hiring 'employees engaged in fire protection' as that term is defined in section 3 of the Fair Labor Standards Act (29 U.S.C. 203).

''(2) DURATION.—Grants awarded under this subsection shall be for a 3-year period.

''(3) MAXIMUM AMOUNT.—The total amount of grants awarded under this subsection shall not exceed $100,000 per firefighter, indexed for inflation, over the 3-year grant period.

''(4) FEDERAL SHARE.—

''(A) IN GENERAL.—The Federal share of a grant under this subsection shall not exceed 75 percent of the total salary and benefits cost for additional firefighters hired.

''(B) WAIVER.—The Director may waive the 25 percent non-Federal match under subparagraph (A) for a jurisdiction of 50,000 or fewer residents or in cases of extreme hardship.

''(5) APPLICATION.—An application for a grant under this subsection, shall—

''(A) meet the requirements under subsection (b)(5);

''(B) include an explanation for the applicant's need for Federal assistance; and

''(C) contain specific plans for obtaining necessary support to retain the position following the conclusion of Federal support.

''(6) MAINTENANCE OF EFFORT.—Grants awarded under this subsection shall only be used to pay the salaries and benefits of additional firefighting personnel, and shall not be used to supplant funding allocated for personnel from State and local sources.''; and

(3) in subsection (f) (as redesignated by paragraph (1)), by adding at the end the following:

''(3) $1,000,000,000 for each of fiscal years 2003 and 2004, to be used only for grants under subsection (c).''.

SA 4740. Mr. NELSON of Nebraska (for himself, Mr. CHAFFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4738 proposed by Mr. GRAMM (for himself, Mr. MILLER, Mr. MCCONNELL, Mr. THOMPSON, Mr. STEVENS, Mr. HAGEL, Mr. HUTCHINSON, and Mr. BUNNING) to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes, as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

SEC. 730. 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 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.

''(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); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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, 71, 72, 73, 77, 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) 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. 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; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. 731. 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 title 5, United States Code; 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 title 5, United States Code, 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) 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.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

SA 4741. Mr. SMITH of New Hampshire submitted an amendment intended to be proposed to amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place add the following:

( ) SEC.—.

Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1542) is amended—

(1) in subsection (a)(2)(A)(ii)—

(A) by striking ''February 17, 1999,'' and inserting ''May 17, 1996, May 7, 1997, February 17, 1999, December 15, 1999 (or who has or could have been subsequently joined in a suit filed on December 15, 1999 pursuant to Fed. R. Civ. P. 20(a)),'' and

(B) by striking ''or July 27, 2000'' and inserting ''April 3, 2000, October 27, 2000, or July 27, 2000'';

(2) by amending subsection (b)(1) to read as follows:

''(b)(1) JUDGMENTS AGAINST DESIGNATED STATE SPONSORS OF TERRORISM.—For purposes of funding the payments under subsection (a) in the case of judgments and sanctions entered against a government of a designated state sponsor of terrorism or its entities, the President shall vest and liquidate up to and not exceeding the amount of property of such government (including the agencies or instrumentalities controlled in fact by such government or in which such government owns directly or indirectly controlling interest) and sanctioned entities in the United States or any commonwealth, territory, or possession thereof that has been blocked pursuant to section 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1707–1702), or any other proclamation, order, or regulation issued thereunder.''

(3) by amending subsection (b)(2)(B) to read as follows:

''(B) the Iran Foreign Military Sales Program Account within the Foreign Military Sales Fund on the date of enactment of this Act (less amounts therein as to which the United States has an interest in subrogation arising prior to the date of enactment of this Act);''; and

(4) in subsection (c)—

(A) by inserting after the phrase ''to the extent of the payments'' the phrase ''made prior to the date of enactment of this Act''.

SA 4742. Mr. DASCHLE proposed an amendment to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

Strike all after the first word in amendment contained in the motion's instructions and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

(c) 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.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

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. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.

Sec. 307. Miscellaneous authorities relating to national laboratories.
Sec. 308. Homeland Security Institute.
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. Clearinghouse.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Coordination of information and information technology.
Sec. 406. Visa issuance.
Sec. 407. Border security and immigration working group.
Sec. 408. Information on visa denials required to be entered into electronic data system.
Sec. 409. Study on use of foreign national personnel in visa processing.

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.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Responsibilities.
Sec. 603. Chief Financial Officer.
Sec. 604. Chief Information Officer.
Sec. 605. Chief Human Capital Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.
Sec. 711. Law enforcement powers of Inspector General Agents.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of Human Resources Management System.
Sec. 731. Labor-management relations.
Sec. 732. Advisory committees.
Sec. 733. Acquisitions.
Sec. 734. Reorganization authority.
Sec. 735. Miscellaneous provisions.
Sec. 736. Authorization of appropriations.
Sec. 737. Regulatory authority.
Sec. 738. Use of appropriated funds.
Sec. 739. Future Year Homeland Security Program.
Sec. 739A. Bioterrorism Preparedness and Response Division.
Sec. 739B. Coordination with the Department of Health and Human Services under the Public Health Service Act.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

Sec. 741. Application of indemnification authority.
Sec. 742. Application of indemnification authority to State and local government contractors.
Sec. 743. Procurements of anti-terrorism technologies and anti-terrorism services by State and local governments through Federal contracts.
Sec. 744. Congressional notification.
Sec. 745. Definitions.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 751. Definition.
Sec. 752. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 753. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 754. Increased micro-purchase threshold for certain procurements.
Sec. 755. Application of certain commercial items authorities to certain procurements.
Sec. 756. Use of streamlined procedures.
Sec. 757. Review and report by Comptroller General.
Sec. 758. Identification of new entrants into the Federal marketplace.

Subtitle G—Coast Guard

Sec. 761. Preserving Coast Guard mission performance.

TITLE VIII—TRANSITION

Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act.
Sec. 902. Executive schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.
Sec. 908. Military activities.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title.
Sec. 1002. Definitions.
Sec. 1003. Transfer of Immigration and Naturalization Service functions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of Immigration and Naturalization Service.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Other authorities not affected.
Sec. 1119. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION

Sec. 1201. Unaccompanied alien juveniles.

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Sec. 1301. Legal status of EOIR.
Sec. 1302. Authorities of the Attorney General.
Sec. 1303. Statutory construction.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.

TITLE XXIV—ACADEMIC TRAINING

Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensation time off for travel.
Sec. 2404. Customs User Fees Extension

DIVISION D—NATIONAL COMMISSION

SEC. 2. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—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.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

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 thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

DIVISION A—HOMELAND SECURITY

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) PRIMARY 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; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) APPOINTMENT.—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) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including 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 his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, 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 chapter 33, subchapter 3, 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) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

SEC. 104. 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 appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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 under section 101 (b)(2)(A) and (d).

(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, intelligence-related 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 threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; 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 measures and to support protective 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 agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect 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 threat advisories; 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 section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, 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 and obtain 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 under section 101, 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 VIII, 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 Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) 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.

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

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

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 and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 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 under section 101;

(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.

SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

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.

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for 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 joint sponsorship 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 in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the 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); and

(10) supporting United States leadership in science and technology.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title VIII, 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.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the 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).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

SEC. 306. 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 under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in 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 under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) 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 in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, 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 nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel 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) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that 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.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—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 direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

SEC. 308. HOMELAND SECURITY INSTITUTE.

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) 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 in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—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.

(c) ARRANGEMENTS.—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.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section 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 subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy 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 such Act (15 U.S.C. 3710, 3710a).

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title VIII, 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 801(2)).

SEC. 311. CLEARINGHOUSE.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other

matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(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 governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

SEC. 403. FUNCTIONS TRANSFERRED.

(a) IN GENERAL.—In accordance with title VIII, 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; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—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 paragraph (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.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

SEC. 404. 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) The first section 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 laws specified in subsection (b) at the locations referred to in subsection (a).

(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 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 801(2), 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 agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant 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).

(D) Authority under which the Secretary of Agriculture may use employees of the Department 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.—Subject to paragraph (2), out of any funds collected as fees 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 periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department 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 2002 (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:

''(i) 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.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 405. 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. 406. 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 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;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) 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 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 subsection 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)).

(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:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) 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.

(iii) 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, 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.

SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

SEC. 408. 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. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

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.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for 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 VIII, 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 Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(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 the Assistant Secretary for Public Health Emergency Preparedness (including 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 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), 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.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

SEC. 602. RESPONSIBILITIES.

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(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; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 603. 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. 604. 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. 605. 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.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 701. RESPONSIBILITIES.

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(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;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

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

Subtitle B—Inspector General

SEC. 710. 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 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 COMPLETION OF AUDIT OR INVESTIGATION.—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.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

SEC. 711. 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 seizures 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) Powers authorized for an Office of Inspector General under paragraph (1) shall 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).

''(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. 720. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities 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—General Provisions

SEC. 730. 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 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.

''(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); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) 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. 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; and

''(C) 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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. 731. 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(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.

SEC. 732. ADVISORY COMMITTEES.

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.

SEC. 733. ACQUISITIONS.

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he 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 (h) of such 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) 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.

SEC. 734. REORGANIZATION AUTHORITY.

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The

term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

SEC. 735. MISCELLANEOUS PROVISIONS.

(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. 736. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 737. REGULATORY AUTHORITY.

Except as specifically provided in this Act, this Act vests 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 does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

SEC. 738. USE OF APPROPRIATED FUNDS.

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) 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.

(g) 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.

(h) 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. 739. 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. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

SEC. 739B. 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 Secretary under sections 102(b)(14) and 134(b)(7) 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.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

SEC. 744. CONGRESSIONAL NOTIFICATION.

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

SEC. 745. DEFINITIONS.

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 751. DEFINITION.

In this title, 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. 752. 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. 753. 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 752 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, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(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. 754. 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 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 755. 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 752 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. 756. 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 752, 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 752.

SEC. 757. 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. 758. 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—Coast Guard

SEC. 761. 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 (e.g., 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, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies 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 to the national emergency 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 Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly 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.

TITLE VIII—TRANSITION

SEC. 801. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 802. TRANSFER OF AGENCIES.

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

SEC. 803. 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 or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—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.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed 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—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities 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

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

SEC. 804. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—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) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' 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.

(e) 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.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

SEC. 805. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under 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. 806. 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.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 901. INSPECTOR GENERAL ACT.

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking '';;'' each place it appears and inserting a semicolon in each such place.

SEC. 902. EXECUTIVE SCHEDULE.

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) 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. 904. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, 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''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 905. 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 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'' after ''in coordination with''; 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. 906. SELECT AGENT REGISTRATION.

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (1)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(1), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services''

and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

SEC. 907. 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. 908. MILITARY ACTIVITIES.

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the

location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

"SEC. 114. BUREAU OF ENFORCEMENT.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), 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 of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) 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 pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further

measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1119. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—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''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the

United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

''SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION

SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, 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 juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles 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 juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile 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 juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles 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 Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(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 exploitative 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 juveniles 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 consider the use of 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 juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement 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, as the case may be.

(e) 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 and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(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 (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 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.—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) 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.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present 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.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. 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 1302.

SEC. 1302. 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. 1303. 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 1302, 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.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. 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. 2103. 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. 2104. 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. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. 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. 2202. 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. 2203. 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 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 he 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. 2204. 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''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. 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. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. 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. 2402. 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''.

SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

SEC. 2404. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007''.

TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 3101. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 3102. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3103. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 3104. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 3105. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses

and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission the Vice Chairperson the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 3106. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

TITLE XXXII

SEC. ____. PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER

''Notwithstanding any other provision of this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and consideration as existed on the day of the terrorist attacks on September 11, 2001.

These sections shall take effect one day after date of enactment.

SA 4743. Mr. DASCHLE (for himself, Mr. NELSON of Nebraska, Mr. CHAFEE, and Mr. BREAUX) proposed an amendment to amendment SA 4742 proposed by Mr. DASCHLE to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

SEC. 730. 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 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.

''(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); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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, 71, 72, 73, 77, 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) 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. 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; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. 731. 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 title 5, United States Code; 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 title 5, United States Code, 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) 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.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

SA 4744. Mr. DASCHLE submitted an amendment intended to be proposed to the language proposed to be stricken by amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word in H.R. 5005 and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

(b) DIVISIONS.—This Act is organized into three divisions as follows:

(1) DIVISION A.—Homeland Security.

(2) DIVISION B.—Immigration Reform, Accountability, and Security Enhancement Act of 2002.

(3) DIVISION C.—Federal Workforce Improvement.

(c) 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.

DIVISION A—HOMELAND SECURITY

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. Office of International Affairs.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.
Sec. 203. Protection of voluntarily furnished confidential information.

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. Research in conjunction with the Department of Health and Human Services and other departments.
Sec. 306. Homeland Security Advanced Research Projects Agency.
Sec. 307. Miscellaneous authorities relating to national laboratories.
Sec. 308. Homeland Security Institute.
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. Clearinghouse.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Coordination of information and information technology.
Sec. 406. Visa issuance.
Sec. 407. Border security and immigration working group.
Sec. 408. Information on visa denials required to be entered into electronic data system.
Sec. 409. Study on use of foreign national personnel in visa processing.

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.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Responsibilities.
Sec. 603. Chief Financial Officer.
Sec. 604. Chief Information Officer.
Sec. 605. Chief Human Capital Officer.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 701. Responsibilities.

Subtitle B—Inspector General

Sec. 710. Authority of the Secretary.
Sec. 711. Law enforcement powers of Inspector General Agents.

Subtitle C—United States Secret Service

Sec. 720. Functions transferred.

Subtitle D—General Provisions

Sec. 730. Establishment of Human Resources Management System.
Sec. 731. Labor-management relations.
Sec. 732. Advisory committees.
Sec. 733. Acquisitions.
Sec. 734. Reorganization authority.
Sec. 735. Miscellaneous provisions.
Sec. 736. Authorization of appropriations.
Sec. 737. Regulatory authority.
Sec. 738. Use of appropriated funds.
Sec. 739. Future Year Homeland Security Program.
Sec. 739A. Bioterrorism Preparedness and Response Division.
Sec. 739B. Coordination with the Department of Health and Human Services under the Public Health Service Act.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

Sec. 741. Application of indemnification authority.
Sec. 742. Application of indemnification authority to State and local government contractors.
Sec. 743. Procurements of anti-terrorism technologies and anti-terrorism services by State and local governments through Federal contracts.
Sec. 744. Congressional notification.
Sec. 745. Definitions.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 751. Definition.
Sec. 752. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 753. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 754. Increased micro-purchase threshold for certain procurements.
Sec. 755. Application of certain commercial items authorities to certain procurements.
Sec. 756. Use of streamlined procedures.
Sec. 757. Review and report by Comptroller General.
Sec. 758. Identification of new entrants into the Federal marketplace.

Subtitle G—Coast Guard

Sec. 761. Preserving Coast Guard mission performance.

TITLE VIII—TRANSITION
Sec. 801. Definitions.
Sec. 802. Transfer of agencies.
Sec. 803. Transitional authorities.
Sec. 804. Savings provisions.
Sec. 805. Terminations.
Sec. 806. Incidental transfers.
TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS
Sec. 901. Inspector General Act.
Sec. 902. Executive schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Select agent registration.
Sec. 907. National Bio-Weapons Defense Analysis Center.
Sec. 908. Military activities.
DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002
Sec. 1001. Short title.
Sec. 1002. Definitions.
Sec. 1003. Transfer of Immigration and Naturalization Service functions.
TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS
Subtitle A—Organization
Sec. 1101. Abolition of Immigration and Naturalization Service.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.
Subtitle B—Transition Provisions
Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Other authorities not affected.
Sec. 1119. Transition funding.
Subtitle C—Miscellaneous Provisions
Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.
Subtitle D—Effective Date
Sec. 1131. Effective date.
TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION
Sec. 1201. Unaccompanied alien juveniles.
TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Sec. 1301. Legal status of EOIR.
Sec. 1302. Authorities of the Attorney General.
Sec. 1303. Statutory construction.
DIVISION C—FEDERAL WORKFORCE IMPROVEMENT
TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS
Sec. 2101. Short title.
Sec. 2102. Agency Chief Human Capital Officers.
Sec. 2103. Chief Human Capital Officers Council.
Sec. 2104. Strategic human capital management.
Sec. 2105. Effective date.
TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT
Sec. 2201. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 2202. Reform of the competitive service hiring process.
Sec. 2203. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 2204. Student volunteer transit subsidy.
TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE
Sec. 2301. Repeal of recertification requirements of senior executives.
Sec. 2302. Adjustment of limitation on total annual compensation.
TITLE XXIV—ACADEMIC TRAINING
Sec. 2401. Academic training.
Sec. 2402. Modifications to National Security Education Program.
Sec. 2403. Compensation time off for travel.
Sec. 2404. Customs User Fees Extension.
DIVISION D—NATIONAL COMMISSION

SEC. 2. DEFINITIONS.

Unless the context clearly indicates otherwise, the following shall apply for purposes of this Act:

(1) AMERICAN HOMELAND OR HOMELAND.—Each of the terms ''American homeland'' or ''homeland'' mean the United States, in a geographic sense.

(2) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' means systems and assets, whether physical or virtual, so vital to the United States that the incapacitation or destruction of such systems or assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

(3) ASSETS.—The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(5) EMERGENCY RESPONSE PROVIDERS.—The term ''emergency response providers'' includes Federal, State, and local government emergency public safety, law enforcement, emergency response, emergency medical, and related personnel, agencies, and authorities.

(6) EXECUTIVE AGENCY.—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.

(7) FUNCTIONS.—The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, responsibilities, and obligations.

(8) KEY RESOURCES.—The term ''key resources'' means structures, monuments or items of exceptional historical, social, cultural, or symbolic significance to the United States.

(9) LOCAL GOVERNMENT.—The term ''local government'' has the meaning given in section 102(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(10) MAJOR DISASTER.—The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288).

(11) PERSONNEL.—The term ''personnel'' means officers and employees.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(13) UNITED STATES.—The term ''United States'', when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288)), any possession of the United States, and any waters within the jurisdiction of the United States.

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 thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

DIVISION A—HOMELAND SECURITY

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) PRIMARY 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; and

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

(2) RESPONSIBILITIES.—In carrying out the mission described in paragraph (1), and as further described in this Act, the Department's primary responsibilities shall include—

(A) information analysis and infrastructure protection;

(B) research and development, including efforts to counter chemical, biological, radiological, nuclear, and other emerging threats;

(C) border and transportation security;

(D) emergency preparedness and response; and

(E) coordination (including the provision of training and equipment) with other executive agencies, with State and local government personnel, agencies, and authorities, with the private sector, and with other entities.

(3) OTHER RESPONSIBILITIES.—The Department shall also be responsible for carrying out other functions of entities transferred to the Department as provided by law, and the enumeration of the primary homeland security missions and responsibilities in this section does not impair or diminish the Department's non-homeland security missions and responsibilities.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) APPOINTMENT.—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) VESTED FUNCTIONS.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) may, except as otherwise provided in this Act, delegate any of his functions to any officer, employee, or organizational unit of the Department;

(2) shall have such functions, including 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 his responsibilities under this Act or otherwise provided by law; and

(3) may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—To assist the Secretary in the performance of his functions, 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 chapter 33, subchapter 3, 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) An Under Secretary for Management.

(7) An Under Secretary for Immigration Affairs.

(8) Not more than 16 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the Department.

(b) CHIEF OF IMMIGRATION POLICY.—

(1) IN GENERAL.—There shall be within the office of the Deputy Secretary of Homeland Security a Chief of Immigration Policy, who, under the authority of the Secretary, shall be responsible for—

(A) establishing national immigration policy and priorities; and

(B) coordinating immigration policy between the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security.

(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Immigration Policy shall be a Senior Executive Service position under section 5382 of title 5, United States Code.

(c) INSPECTOR GENERAL.—To assist the Secretary in the performance of his functions, there is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(d) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of his functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code.

(e) OTHER OFFICERS.—To assist the Secretary in the performance of his functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Financial Officer.

(3) A Chief Information Officer.

(4) A Chief Human Capital Officer.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for his office or prescribed by the Secretary.

SEC. 104. 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 appointed by the Secretary.

(b) RESPONSIBILITIES OF THE DIRECTOR.—The Director shall have the following responsibilities:

(1) To promote information and education exchange with foreign nations in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include—

(A) joint research and development on countermeasures;

(B) joint training exercises of first responders; and

(C) exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage activities under this section and other international activities within the Department in consultation with the Department of State and other relevant Federal officials.

(5) To initially concentrate on fostering cooperation with countries that are already highly focused on homeland security issues and that have demonstrated the capability for fruitful cooperation with the United States in the area of counterterrorism.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

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 under section 101 (b)(2)(A) and (d).

(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, intelligence-related 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 threats to the homeland;

(B) detect and identify threats of terrorism against the United States and other threats to homeland security; 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 measures and to support protective 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 agencies, and from State and local governments and private sector entities (pursuant to memoranda of understanding or other agreements entered into for that purpose).

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(6) To take or seek to effect 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 threat advisories; 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 section is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information shared under this section is transmitted, 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 and obtain 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 under section 101, 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 VIII, 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 Computer Security Division of the National Institute of Standards and Technology, including the functions of the Secretary of Commerce relating thereto.

(5) 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.

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

(h) STUDY OF PLACEMENT WITHIN INTELLIGENCE COMMUNITY.—Not later than 90 days after the effective date of this Act, the President shall submit to the Committee on Governmental Affairs and the Select Committee on Intelligence of the Senate and the Committee on Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives a report assessing the advisability of the following:

(1) Placing the elements of the Department concerned with the analysis of foreign intelligence information within the intelligence community under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) Placing such elements within the National Foreign Intelligence Program for budgetary purposes.

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 and intelligence-related information, relating to threats of terrorism against the United States and to other areas of responsibility described in section 101 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 under section 101;

(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.

SEC. 203. PROTECTION OF VOLUNTARILY FURNISHED CONFIDENTIAL INFORMATION.

(a) DEFINITIONS.—In this section:

(1) CRITICAL INFRASTRUCTURE.—The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of the USA PATRIOT Act of 2001 (42 U.S.C. 5195(e)).

(2) FURNISHED VOLUNTARILY.—

(A) DEFINITION.—The term ''furnished voluntarily'' means a submission of a record that—

(i) is made to the Department in the absence of authority of the Department requiring that record to be submitted; and

(ii) is not submitted or used to satisfy any legal requirement or obligation or to obtain any grant, permit, benefit (such as agency forbearance, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government.

(B) BENEFIT.—In this paragraph, the term ''benefit'' does not include any warning, alert, or other risk analysis by the Department.

(b) IN GENERAL.—Notwithstanding any other provision of law, a record pertaining to the vulnerability of and threats to critical infrastructure (such as attacks, response, and recovery efforts) that is furnished voluntarily to the Department shall not be made available under section 552 of title 5, United States Code, if—

(1) the provider would not customarily make the record available to the public; and

(2) the record is designated and certified by the provider, in a manner specified by the Department, as confidential and not customarily made available to the public.

(c) RECORDS SHARED WITH OTHER AGENCIES.—

(1) IN GENERAL.—

(A) RESPONSE TO REQUEST.—An agency in receipt of a record that was furnished voluntarily to the Department and subsequently shared with the agency shall, upon receipt of a request under section 552 of title 5, United States Code, for the record—

(i) not make the record available; and

(ii) refer the request to the Department for processing and response in accordance with this section.

(B) SEGREGABLE PORTION OF RECORD.—Any reasonably segregable portion of a record shall be provided to the person requesting the record after deletion of any portion which is exempt under this section.

(2) DISCLOSURE OF INDEPENDENTLY FURNISHED RECORDS.—Notwithstanding paragraph (1), nothing in this section shall prohibit an agency from making available under section 552 of title 5, United States Code, any record that the agency receives independently of the Department, regardless of whether or not the Department has a similar or identical record.

(d) WITHDRAWAL OF CONFIDENTIAL DESIGNATION.—The provider of a record that is furnished voluntarily to the Department under subsection (b) may at any time withdraw, in a manner specified by the Department, the confidential designation.

(e) PROCEDURES.—The Secretary shall prescribe procedures for—

(1) the acknowledgement of receipt of records furnished voluntarily;

(2) the designation, certification, and marking of records furnished voluntarily as confidential and not customarily made available to the public;

(3) the care and storage of records furnished voluntarily;

(4) the protection and maintenance of the confidentiality of records furnished voluntarily; and

(5) the withdrawal of the confidential designation of records under subsection (d).

(f) EFFECT ON STATE AND LOCAL LAW.—Nothing in this section shall be construed as preempting or otherwise modifying State or local law concerning the disclosure of any information that a State or local government receives independently of the Department.

(g) REPORT.—

(1) REQUIREMENT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the committees of Congress specified in paragraph (2) a report on the implementation and use of this section, including—

(A) the number of persons in the private sector, and the number of State and local agencies, that furnished voluntarily records to the Department under this section;

(B) the number of requests for access to records granted or denied under this section; and

(C) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats.

(2) COMMITTEES OF CONGRESS.—The committees of Congress specified in this paragraph are—

(A) the Committees on the Judiciary and Governmental Affairs of the Senate; and

(B) the Committees on the Judiciary and Government Reform and Oversight of the House of Representatives.

(3) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

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.

In assisting the Secretary with the responsibility specified in section 101(b)(2)(B), the primary responsibilities of the Under Secretary for Science and Technology shall include—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) supporting all elements of the Department in research, development, testing, evaluation and deployment of science and technology that is applicable in the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism;

(3) to support the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting a national scientific research and development program to support the mission of the Department, including developing national policy for and coordinating the Federal Government's civilian efforts to identify, devise, and implement scientific, technological, and other countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including directing, funding and conducting research and development relating to the same;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) for 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 joint sponsorship 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 in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401);

(9) collaborating with the Secretary of Health and Human Services in determining the 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); and

(10) supporting United States leadership in science and technology.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title VIII, 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.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, including the functions of the Secretary of Agriculture relating thereto, as provided in section 310.

(4)(A) Except as provided in subparagraph (B)—

(i) the functions of the Select Agent Registration Program of the Department of Health and Human Services, including all functions of the Secretary of Health and Human Services under title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188); and

(ii) the functions of the Department of Agriculture under the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401 et seq.).

(B)(i) The Secretary shall collaborate with the Secretary of Health and Human Services in determining the 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).

(ii) The Secretary shall collaborate with the Secretary of Agriculture in determining the biological agents and toxins that shall be included on the list of biological agents and toxins required under section 212(a) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401).

(C) In promulgating regulations pursuant to the functions described in subparagraph (A), the Secretary shall act in collaboration with the Secretary of Health and Human Services and the Secretary of Agriculture.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—Except as the President may otherwise direct, the Secretary shall carry out his civilian human health-related biological, biomedical, and infectious disease defense research and development (including vaccine research and development) responsibilities through the Department of Health and Human Services (including the Public Health Service), under agreements with the Secretary of Health and Human Services, and may transfer funds to him in connection with such agreements.

(b) ESTABLISHMENT OF PROGRAM.—With respect to any responsibilities carried out through the Department of Health and Human Services under this subsection, the Secretary, in consultation with the Secretary of Health and Human Services, shall have the authority to establish the research and development program, including the setting of priorities.

SEC. 305. RESEARCH IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND OTHER DEPARTMENTS.

With respect to such other research and development responsibilities under this title, including health-related chemical, radiological, and nuclear defense research and development responsibilities, as the Secretary may elect to carry out through the Department of Health and Human Services (including the Public Health Service) (under agreements with the Secretary of Health and Human Services) or through other Federal agencies (under agreements with their respective heads), the Secretary may transfer funds to the Secretary of Health and Human Services, or to such heads, as the case may be.

SEC. 306. 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 under this section.

(2) HOMELAND SECURITY RESEARCH AND DEVELOPMENT.—The term ''homeland security research and development'' means research and development of technologies that are applicable in 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 under this section.

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology or the designee of that Under Secretary.

(b) PURPOSES.—The purposes of this section are to—

(1) establish the Homeland Security Advanced Research Projects Agency to prioritize and fund homeland security research and development using the acceleration fund; and

(2) establish a fund to leverage existing research and development and accelerate the deployment of technology that will serve to enhance homeland defense.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies.

(2) USE OF FUND.—The Fund may be used to—

(A) accelerate research, development, testing and evaluation, and deployment of critical homeland security technologies; and

(B) support homeland security research and development.

(3) 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 in subsequent years.

(4) TRANSITION OF FUNDS.—With respect to such research, development, testing, and evaluation responsibilities under this section as the Secretary may elect to carry out through agencies other than the Department (under agreements with their respective heads), the Secretary may transfer funds to such heads. Of the funds authorized to be appropriated under paragraph (3) for the Fund, 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 nonhomeland security missions to the ports, waterways, and coastal security mission.

(d) RESPONSIBILITIES OF THE HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.—The Homeland Security Advance Research Project Agency shall have the following responsibilities:

(1) To facilitate effective communication among departments, agencies, and other entities of the Federal Government, with respect to the conduct of research and development related to homeland security.

(2) To identify, by consensus and on a yearly basis, specific technology areas for which the Fund shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities. The identified technology areas shall, as determined by the Homeland Security Advanced Research Projects Agency, be areas in which there exist research and development projects that address identified homeland security vulnerabilities and can be accelerated to the stage of prototyping, evaluating, transitioning, or deploying.

(3) To administer the Fund, including—

(A) issuing an annual multiagency program announcement soliciting proposals from government entities, federally funded research and development centers, industry, and academia;

(B) competitively selecting, on the basis of a merit-based review, proposals that advance the state of deployed technologies in the areas identified for that year;

(C) at the discretion of the HSARPA, assigning 1 or more program managers to oversee, administer, and execute a Fund project as the agent of HSARPA; and

(D) providing methods of funding, including grants, cooperative agreements, joint sponsorship agreements, or any other transaction.

(4) With respect to expenditures from the Fund, exercise acquisition authority consistent with the authority described under section 2371 of title 10, United States Code, relating to authorizing cooperative agreements and other transactions.

(5) In hiring personnel to assist in the administration of the HSARPA, have the authority to exercise the personnel 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) with the stipulation that the Secretary shall exercise such authority for a period of 7 years commencing on the date of enactment of this Act, that a maximum of 100 persons may be hired under such authority, and that 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.

(6) Develop and oversee the implementation of periodic homeland security technology demonstrations, held at least annually, for the purpose of improving contact between technology developers, vendors, and acquisition personnel associated with related industries.

SEC. 307. MISCELLANEOUS AUTHORITIES RELATING TO NATIONAL LABORATORIES.

(a) IN GENERAL.—The limitation of the number of employees of the Department of Energy national laboratories assigned to Washington, D.C. shall not apply to those employees who, at the request of the Secretary, are assigned, on a temporary basis, to assist in the establishment of the Department.

(b) DIRECT TASKING.—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 direct tasking from the Secretary or his designee, consistent with resources provided, and perform such tasking on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

SEC. 308. HOMELAND SECURITY INSTITUTE.

Within the Directorate of Science and Technology there shall be established a Homeland Security Institute as a separate federally funded research and development center under the direction of the Under Secretary to perform policy and systems analysis, assist in the definition of standards and metrics, assist agencies with evaluating technologies for deployment, proposing risk management strategies based on technology developments, and performing other appropriate research and analysis to improve policy and decisionmaking as it relates to the mission of the Department. The Homeland Security Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) 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 in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(b) JOINT SPONSORSHIP.—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.

(c) ARRANGEMENTS.—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.

(d) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement entered into under subsection (a) or (b).

(e) LEAD AGENT.—

(1) IN GENERAL.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(2) FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the policy on the use of federally funded research and development centers under section 35.017(a) (4) of the Federal Acquisition Regulation.

(f) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under this section 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 subsection (b).

(g) AUTHORITIES OF SECRETARY AND UNDER SECRETARY.—In connection with work involving the Department of Energy national laboratories or sites, the Secretary or Under Secretary for Science and Technology—

(1) may enter into joint sponsorship agreements with Department of Energy national laboratories or sites;

(2) may directly fund, task, and manage work at the Department of Energy national laboratories and sites; and

(3) may permit the director of any Department of Energy 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 such Act (15 U.S.C. 3710, 3710a).

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title VIII, 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 801(2)).

SEC. 311. CLEARINGHOUSE.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall provide for a clearinghouse as a central, national point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such clearinghouse shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) SCREENINGS AND ASSESSMENTS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate; and

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate for Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(C), the primary responsibilities of the Under Secretary for Border and Transportation Security shall include—

(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 governmental activities at ports of entry;

(3) administering the immigration and naturalization laws of the United States, including the establishment of rules, in accordance with section 406, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not citizens or lawful permanent residents thereof;

(4) administering the customs laws of the United States;

(5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce;

(6) carrying out the border patrol function; and

(7) administering and enforcing the functions of the Department under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

SEC. 403. FUNCTIONS TRANSFERRED.

(a) IN GENERAL.—In accordance with title VIII, 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; and

(4) the Federal Law Enforcement Training Center of the Department of the Treasury.

(b) EXERCISE OF CUSTOMS REVENUE AUTHORITIES.—

(1) IN GENERAL.—

(A) AUTHORITIES NOT TRANSFERRED.—Notwithstanding subsection (a)(1), authority that was vested in the Secretary of the Treasury by law to issue regulations related to customs revenue functions before the effective date of this section under the provisions of law set forth under paragraph (2) shall not be transferred to the Secretary by reason of this Act. The Secretary of the Treasury, with the concurrence of the Secretary, shall exercise this authority. The Commissioner of Customs is authorized to engage in activities to develop and support the issuance of the regulations described in this paragraph. The Secretary shall be responsible for the implementation and enforcement of regulations issued under this section.

(B) REPORT.—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 paragraph (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.

(C) LIABILITY.—Neither the Secretary of the Treasury nor the Department of the Treasury shall be liable for or named in any legal action concerning the implementation and enforcement of regulations issued under this paragraph after the effective date of this Act.

(2) APPLICABLE LAWS.—The provisions of law referred to under paragraph (1) are those sections of the following statutes that relate to customs revenue functions:

(A) The Tariff Act of 1930.

(B) Section 249 of the Revised Statutes of the United States (19 U.S.C. 3).

(C) Section 2 of the Act of March 4, 1923 (19 U.S.C. 6).

(D) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).

(E) Section 251 of the Revised States of the United States (19 U.S.C. 66).

(F) Section 1 of the Act of June 26, 1930 (19 U.S.C. 68).

(G) The Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(H) Section 1 of the Act of March 2, 1911 (19 U.S.C. 198).

(I) The Trade Act of 1974.

(J) The Trade Agreement Act of 1979.

(K) The North American Free Trade Area Implementation Act.

(L) The Uruguay Round Agreements Act.

(M) The Caribbean Basin Economic Recovery Act.

(N) The Andean Growth and Opportunity Act.

(O) Any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(3) DEFINITIONS OF CUSTOMS REVENUE FUNCTIONS.—In this subsection, the term ''customs revenue functions'' means—

(A) assessing, collecting, and refunding duties (including any special duties), excise taxes, fees, and any liquidated damages or penalties due on imported merchandise, including classifying and valuing merchandise and the procedures for ''entry'' as that term is defined in the United States Customs laws;

(B) administering section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordation for copyrights, patents, and trademarks;

(C) collecting accurate import data for compilation of international trade statistics; and

(D) administering reciprocal trade agreements and trade preference legislation.

SEC. 404. 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) The first section 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 laws specified in subsection (b) at the locations referred to in subsection (a).

(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 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 801(2), 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 agreements required by this subsection shall provide for the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Department to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(C) Authority under which the Secretary may perform functions that are delegated to the Animal and Plant 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).

(D) Authority under which the Secretary of Agriculture may use employees of the Department 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.—Subject to paragraph (2), out of any funds collected as fees 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 periodically transfer to the Secretary, in accordance with the agreement under subsection (e), funds for activities carried out by the Secretary for which the fees were collected.

(2) LIMITATION.—The proportion of fees collected under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) that are transferred to the Secretary under paragraph (1) may not exceed the proportion that—

(A) the costs incurred by the Secretary to carry out activities funded by those fees; bears to

(B) the costs incurred by the Federal Government to carry out activities funded by those fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period (as defined in section 801(2)), the Secretary of Agriculture shall transfer to the Department 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 2002 (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:

''(i) 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.''.

(j) CONFORMING AMENDMENTS.—

(1) Section 501 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e) is amended—

(A) in subsection (a)—

(i) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(ii) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture''; and

(B) by striking ''Secretary'' each place it appears (other than in subsections (a) and (e)) and inserting ''Secretary concerned''.

(2) Section 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8411) is repealed.

SEC. 405. 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. 406. 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 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;

(2) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(3) 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 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 subsection 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)).

(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:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) 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.

(iii) 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, 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.

SEC. 407. BORDER SECURITY AND IMMIGRATION WORKING GROUP.

(a) ESTABLISHMENT.—The Secretary shall establish a border security and immigration working group (in this section referred to as the ''Working Group''), composed of the Secretary or the designee of the Secretary, the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation protection.

(b) FUNCTIONS.—The Working Group shall meet not less frequently than once every 3 months and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distributions of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced security for high-risk traffic, travel, and commerce;

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems; and

(6) coordinate the enforcement of all immigration laws.

(c) RELEVANT AGENCIES.—The Secretary shall consult with representatives of relevant agencies with respect to deliberations under subsection (b), and may include representative of such agencies in working group deliberations, as appropriate.

SEC. 408. 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. 409. STUDY ON USE OF FOREIGN NATIONAL PERSONNEL IN VISA PROCESSING.

The Secretary shall conduct a study on the use of foreign national personnel in visa processing to determine whether such uses are consistent with secure visa processing. The study shall review and make recommendations with respect to—

(1) the effects or possible effects on national security of the use of foreign national personnel in individual countries to perform data entry, process visas or visa applications, or in any way handle visas or visa application documents; and

(2) each United States mission abroad to determine whether United States consular services performed at the United States mission require different regulations on the use of foreign national personnel.

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.

In assisting the Secretary with the responsibilities specified in section 101(b)(2)(D), the primary responsibilities of the Under Secretary for Emergency Preparedness and Response shall include—

(1) helping to ensure the preparedness of emergency response providers for 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 VIII, 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 Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

(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 the Assistant Secretary for Public Health Emergency Preparedness (including 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 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), 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.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

There shall be in the Department a Directorate for Management, headed by an Under Secretary for Management.

SEC. 602. RESPONSIBILITIES.

In assisting the Secretary with the management and administration of the Department, the primary responsibilities of the Under Secretary for Management shall include, for the Department—

(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; and

(7) identification and tracking of performance measures relating to the responsibilities of the Department.

SEC. 603. 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. 604. 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. 605. 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.

TITLE VII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 701. RESPONSIBILITIES.

In discharging his responsibilities relating to coordination (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, the responsibilities of the Secretary shall include—

(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;

(3) directing and supervising grant programs of the Federal Government for State and local government emergency response providers; and

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

Subtitle B—Inspector General

SEC. 710. 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 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 COMPLETION OF AUDIT OR INVESTIGATION.—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.—The Secretary shall notify in writing the President of the Senate, the Speaker of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and other appropriate committees of Congress within thirty days of any exercise of his authority under this section stating the reasons for such exercise.

SEC. 711. 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 seizures 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) Powers authorized for an Office of Inspector General under paragraph (1) shall 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).

''(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. 720. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities 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—General Provisions

SEC. 730. 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 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.

"(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); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

"(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

"(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

"(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

"(C) 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. 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; and

"(C) 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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. 731. 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) HOMELAND SECURITY.—Subsection (a), (b), and (d) of this section shall not apply in circumstances where the President determines in writing that such application would have a substantial adverse impact on the Department's ability to protect homeland security. Whenever the President makes a determination specified under this subsection, the President shall notify the Senate and the House of Representatives of the reasons for such determination not less than 10 days prior to its issuance.

(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.

SEC. 732. ADVISORY COMMITTEES.

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.

SEC. 733. ACQUISITIONS.

(a) RESEARCH AND DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, he 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 (h) of such 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) 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.

SEC. 734. REORGANIZATION AUTHORITY.

(a) REORGANIZATION PLAN.—

(1) IN GENERAL.—Whenever the President determines that changes in the organization of the Department are necessary to carry out any policy set forth in this Act, the President shall prepare a reorganization plan specifying the reorganizations that the President determines are necessary. Any such plan may provide for—

(A) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of the Department;

(B) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, from the Department;

(C) the abolition of all or a part of an agency within the Department;

(D) the creation of a new agency or a new part of an agency within the Department; or

(E) the consolidation or coordination of the whole or a part of an agency within the Department, or of the whole or a part of the functions thereof, with the whole or a part of another agency within the Department.

(2) TRANSMITTAL.—

(A) IN GENERAL.—The President shall transmit the reorganization plan to Congress together with the declaration that, with respect to each organization included in the plan, the President has found that the reorganization is necessary to carry out any policy set forth in this Act.

(B) TIMING.—The reorganization plan shall be delivered to both Houses on the same day and to each House while it is in session, except that no more than 2 plans may be pending before Congress at 1 time.

(3) CONTENT.—

(A) IN GENERAL.—The transmittal message of the reorganization plan shall—

(i) specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function;

(ii) include an estimate of any reduction or increase in expenditures (itemized so far as practicable);

(iii) include detailed information addressing the impacts of the reorganization on the employees of any agency affected by the plan, and what steps will be taken to mitigate any impacts of the plan on the employees of the agency;

(iv) describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan; and

(v) in the case of a transfer to or from the Department, address the impact of the proposed transfer on the ability of the affected agency to carry out its other functions and to accomplish its missions.

(B) IMPLEMENTATION.—In addition, the transmittal message shall include an implementation section which shall—

(i) describe in detail—

(I) the actions necessary or planned to complete the reorganization; and

(II) the anticipated nature and substance of any orders, directives, and other administrative and operations actions which are expected to be required for completing or implementing the reorganization; and

(ii) contain a projected timetable for completion of the implementation process.

(C) BACKGROUND INFORMATION.—The President shall also submit such further background or other information as Congress may require for its consideration of the plan.

(4) AMENDMENTS TO PLAN.—Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution has been ordered reported in either House, the President, or the designee of the President, may make amendments or modifications to the plan, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this section. The President, or the designee of the President, may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(b) ADDITIONAL CONTENTS OF REORGANIZATION PLAN.—A reorganization plan—

(1) may change the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and 1 or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as necessary by reason of the reorganization for use in connection with the

functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan containing provisions authorized by paragraph (2) may provide that the head of an agency be an individual or a commission or board with more than 1 member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than 4 years, the pay may not be at a rate in excess of that found to be applicable to comparable officers in the executive branch, by and with the advice and consent of the Senate. Any reorganization plan containing provisions required by paragraph (4) shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(c) EFFECTIVE DATE AND PUBLICATION OF REORGANIZATION PLANS.—

(1) EFFECTIVE DATE.—Except as provided under paragraph (3), a reorganization plan shall be effective upon approval by the President of a resolution (as defined in subsection (f)) with respect to such plan, only if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress.

(2) SESSION OF CONGRESS.—For the purpose of this chapter—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(3) LATER EFFECTIVE DATE.—Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(4) PUBLICATION OF PLAN.—A reorganization plan which is effective shall be printed—

(A) in the Statutes at Large in the same volume as the public laws; and

(B) in the Federal Register.

(d) EFFECT ON OTHER LAWS; PENDING LEGAL PROCEEDINGS.—

(1) EFFECT ON LAWS.—

(A) DEFINITION.—In this paragraph, the term ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(B) EFFECT.—A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this section, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed in the plan.

(2) PENDING LEGAL PROCEEDINGS.—A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in the officer's official capacity or in relation to the discharge of the officer's official duties, does not abate by reason of the taking effect of a reorganization plan under this section. On motion or supplemental petition filed at any time within 12 months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(e) RULES OF SENATE AND HOUSE OF REPRESENTATIVES ON REORGANIZATION PLANS.—Subsections (f) through (i) are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with subsection (a)(3) of this section); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(f) TERMS OF RESOLUTION.—For the purposes of subsections (e) through (i), ''resolution'' means only a joint resolution of Congress, the matter after the resolving clause of which is as follows: ''That Congress approves the reorganization plan transmitted to Congress by the President on _____, 20____.'', and includes such modifications and revisions as are submitted by the President under subsection (a)(4). The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than 1 reorganization plan.

(g) INTRODUCTION AND REFERENCE OF RESOLUTION.—

(1) INTRODUCTION.—No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under subsection (a), a resolution, as defined in subsection (f), shall be—

(A) introduced (by request) in the House by the chairman of the Government Reform Committee of the House, or by a Member or Members of the House designated by such chairman; and

(B) introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(2) REFERRAL.—A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(h) DISCHARGE OF COMMITTEE CONSIDERING RESOLUTION.—If the committee to which is referred a resolution introduced pursuant to subsection (g)(1) has not reported such a resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(i) PROCEDURE AFTER REPORT OR DISCHARGE OF COMMITTEES; DEBATE; VOTE ON FINAL PASSAGE.—

(1) PROCEDURE.—When the committee has reported, or has been deemed to be discharged (under subsection (h)) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to any motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(2) DEBATE.—Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) APPEALS.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(5) PRIOR PASSAGE.—If, prior to the passage by 1 House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(B) the vote on final passage shall be on the resolution of the other House.

SEC. 735. MISCELLANEOUS PROVISIONS.

(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. 736. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 737. REGULATORY AUTHORITY.

Except as specifically provided in this Act, this Act vests 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 does not alter or diminish the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

SEC. 738. USE OF APPROPRIATED FUNDS.

(a) APPLICABILITY OF THIS SECTION.—Notwithstanding any other provision of this Act or any other law, this section shall apply to the use of any funds, disposal of property, and acceptance, use, and disposal of gifts, or donations of services or property, of, for, or by the Department, including any agencies, entities, or other organizations transferred to the Department under this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO CREATE DEPARTMENT.—There is authorized to be appropriated $160,000,000 for the Office of Homeland Security in the Executive Office of the President to be transferred without delay to the Department upon its creation by enactment of this Act, notwithstanding subsection (c)(1)(C) such funds shall be available only for the payment of necessary salaries and expenses associated with the initiation of operations of the Department.

(c) USE OF TRANSFERRED FUNDS.—

(1) IN GENERAL.—Except as may be provided in this subsection or in an appropriations Act in accordance with subsection (e), balances of appropriations and any other funds or assets transferred under this Act—

(A) shall be available only for the purposes for which they were originally available;

(B) shall remain subject to the same conditions and limitations provided by the law originally appropriating or otherwise making available the amount, including limitations and notification requirements related to the reprogramming of appropriated funds; and

(C) shall not be used to fund any new position established under this Act.

(2) TRANSFER OF FUNDS.—

(A) IN GENERAL.—After the creation of the Department and the swearing in of its Secretary, and upon determination by the Secretary that such action is necessary in the national interest, the Secretary is authorized to transfer, with the approval of the Office of Management and Budget, not to exceed $140,000,000 of unobligated funds from organizations and entities transferred to the new Department by this Act.

(B) LIMITATION.—Notwithstanding paragraph (1)(C), funds authorized to be transferred by subparagraph (2)(A) shall be available only for payment of necessary costs, including funding of new positions, for the initiation of operations of the Department and may not be transferred unless the Committees on Appropriations are notified at least 15 days in advance of any proposed transfer and have approved such transfer in advance.

(C) NOTIFICATION.—The notification required in subparagraph (2)(B) shall include a detailed justification of the purposes for which the funds are to be used and a detailed statement of the impact on the program or organization that is the source of the funds, and shall be submitted in accordance with reprogramming procedures to be established by the Committees on Appropriations.

(D) USE FOR OTHER ITEMS.—The authority to transfer funds established in this section may not be used unless for higher priority items, based on demonstrated homeland security requirements, than those for which funds originally were appropriated and in no case where the item for which funds are requested has been denied by Congress.

(d) NOTIFICATION REGARDING TRANSFERS.—The President shall notify Congress not less than 15 days before any transfer of appropriations balances, other funds, or assets under this Act.

(e) ADDITIONAL USES OF FUNDS DURING TRANSITION.—Subject to subsections (c) and (d), amounts transferred to, or otherwise made available to, the Department may be used during the transition period, as defined in section 801(2), for purposes in addition to those for which such amounts were originally available (including by transfer among accounts of the Department), but only to the extent such transfer or use is specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(f) 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.

(g) 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.

(h) 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. 739. FUTURE YEARS 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. 739A. BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.

Section 319D of the Public Health Service Act (42 U.S.C. 2472–4) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b), the following:

''(c) BIOTERRORISM PREPAREDNESS AND RESPONSE DIVISION.—

''(1) ESTABLISHMENT.—There is established within the Office of the Director of the Centers for Disease Control and Prevention a Bioterrorism Preparedness and Response Division (in this subsection referred to as the 'Division').

''(2) MISSION.—The Division shall have the following primary missions:

''(A) To lead and coordinate the activities and responsibilities of the Centers for Disease Control and Prevention with respect to countering bioterrorism.

''(B) To coordinate and facilitate the interaction of Centers for Disease Control and Prevention personnel with personnel from the Department of Homeland Security and, in so doing, serve as a major contact point for 2-way communications between the jurisdictions of homeland security and public health.

''(C) To train and employ a cadre of public health personnel who are dedicated full-time to the countering of bioterrorism.

''(3) RESPONSIBILITIES.—In carrying out the mission under paragraph (2), the Division shall assume the responsibilities of and budget authority for the Centers for Disease Control and Prevention with respect to the following programs:

''(A) The Bioterrorism Preparedness and Response Program.

''(B) The Strategic National Stockpile.

''(C) Such other programs and responsibilities as may be assigned to the Division by the Director of the Centers for Disease Control and Prevention.

''(4) DIRECTOR.—There shall be in the Division a Director, who shall be appointed by the Director of the Centers for Disease Control and Prevention, in consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security.

''(5) STAFFING.—Under agreements reached between the Director of the Centers for Disease Control and Prevention and the Secretary of Homeland Security—

''(A) the Division may be staffed, in part, by personnel assigned from the Department of Homeland Security by the Secretary of Homeland Security; and

''(B) the Director of the Centers for Disease Control and Prevention may assign some personnel from the Division to the Department of Homeland Security.''.

SEC. 739B. 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 Secretary under sections 102(b)(14) and 134(b)(7) 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.

Subtitle E—Risk Sharing and Indemnification for Contractors Supplying Anti-Terrorism Technology and Services

SEC. 741. APPLICATION OF INDEMNIFICATION AUTHORITY.

(a) IN GENERAL.—The President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—In exercising the authority under subsection (a), the President may include, among other things—

(1) economic damages not fully covered by private liability insurance within the scope of the losses or damages of the indemnification coverage;

(2) a requirement that an indemnification provision included in a contract or subcontract be negotiated prior to the commencement of the performance of the contract;

(3) the coverage of information technology used to prevent, detect, identify, otherwise deter, or recover from acts of terrorism; and

(4) the coverage of the United States Postal Service.

SEC. 742. APPLICATION OF INDEMNIFICATION AUTHORITY TO STATE AND LOCAL GOVERNMENT CONTRACTORS.

(a) IN GENERAL.—Subject to the limitations of subsection (b), the President may exercise the discretionary authority to indemnify contractors and subcontractors under Public Law 85–804 (50 U.S.C. 1431 et seq.) for a procurement by a State or unit of local government of an anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(b) EXERCISE OF AUTHORITY.—The authority of subsection (a) may be exercised only—

(1) for procurements of a State or unit of local government that are made by the Secretary under contracts awarded by the Secretary pursuant to the authorities of section 743;

(2) with written approval from the Secretary, or any other official designated by the President, for each procurement in which indemnification is to be provided; and

(3) with respect to—

(A) amounts of losses or damages not fully covered by private liability insurance and State or local government-provided indemnification; and

(B) liabilities arising out of other than the contractor's willful misconduct or lack of good faith.

SEC. 743. PROCUREMENTS OF ANTI-TERRORISM TECHNOLOGIES AND ANTI-TERRORISM SERVICES BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL CONTRACTS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which States and units of local government may procure through contracts entered into by the Secretary anti-terrorism technology or an anti-terrorism service for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) AUTHORITIES.—For the sole purposes of this program, the Secretary may, but shall not be required to, award contracts using the same authorities provided to the Administrator of General Services under section 309(b)(3) of the Federal Property and Administrative Services Act, 41 U.S.C. 259(b)(3).

(3) OFFERS NOT REQUIRED TO STATE AND LOCAL GOVERNMENTS.—A contractor that sells anti-terrorism technology or anti-terrorism services to the Federal Government shall not be required to offer such technology or services to a State or unit of local government.

(b) RESPONSIBILITIES OF THE SECRETARY.—In carrying out the program established by this section, the Secretary shall—

(1) produce and maintain a catalog of anti-terrorism technologies and anti-terrorism services suitable for procurement by States and units of local government under this program; and

(2) establish procedures in accordance with subsection (c) to address the procurement of anti-terrorism technologies and anti-terrorism services by States and units of local government under contracts awarded by the Secretary.

(c) REQUIRED PROCEDURES.—The procedures required by subsection (b)(2) shall implement the following requirements and authorities:

(1) SUBMISSIONS BY STATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each State desiring to participate in a procurement of anti-terrorism technologies or anti-terrorism services through a contract entered into by the Secretary shall submit to the Secretary in such form and manner and at such times as the Secretary prescribes, the following:

(i) REQUEST.—A request consisting of an enumeration of the technologies or services, respectively, that are desired by the State and units of local government within the State.

(ii) PAYMENT.—Advance payment for each requested technology or service in an amount determined by the Secretary based on estimated or actual costs of the technology or service and administrative costs incurred by the Secretary.

(B) AWARD BY SECRETARY.—The Secretary may award and designate contracts under which States and units of local government may procure anti-terrorism technologies and anti-terrorism services directly from the contract holders. No indemnification may be provided under the authorities set forth in section 742 for procurements that are made directly between contractors and States or units of local government.

(2) PERMITTED CATALOG TECHNOLOGIES AND SERVICES.—A State may include in a request submitted under paragraph (1) only a technology or service listed in the catalog produced under subsection (b)(1).

(3) COORDINATION OF LOCAL REQUESTS WITHIN STATE.—The Governor of a State (or the Mayor of the District of Columbia) may establish such procedures as the Governor (or the Mayor of the District of Columbia) considers appropriate for administering and coordinating requests for anti-terrorism technologies or anti-terrorism services from units of local government within the State.

(4) SHIPMENT AND TRANSPORTATION COSTS.—A State requesting anti-terrorism technologies or anti-terrorism services shall be responsible for arranging and paying for any shipment or transportation costs necessary to deliver the technologies or services, respectively, to the State and localities within the State.

(d) REIMBURSEMENT OF ACTUAL COSTS.—In the case of a procurement made by or for a State or unit of local government under the procedures established under this section, the Secretary shall require the State or unit of local government to reimburse the Department for the actual costs it has incurred for such procurement.

(e) TIME FOR IMPLEMENTATION.—The catalog and procedures required by subsection (b) of this section shall be completed as soon as practicable and no later than 210 days after the enactment of this Act.

SEC. 744. CONGRESSIONAL NOTIFICATION.

(a) IN GENERAL.—Notwithstanding any other law, a Federal agency shall, when exercising the discretionary authority of Public Law 85–804, as amended by section 742, to indemnify contractors and subcontractors, provide written notification to the Committees identified in subsection (b) within 30 days after a contract clause is executed to provide indemnification.

(b) SUBMISSION.—The notification required by subsection (a) shall be submitted to—

(1) the Appropriations Committees of the Senate and House;

(2) the Armed Services Committees of the Senate and House;

(3) the Senate Governmental Affairs Committee; and

(4) the House Government Reform Committee.

SEC. 745. DEFINITIONS.

In this subtitle:

(1) ANTI-TERRORISM TECHNOLOGY AND SERVICE.—The terms ''anti-terrorism technology'' and ''anti-terrorism service'' mean any product, equipment, or device, including information technology, and any service, system integration, or other kind of service (including a support service), respectively, that is related to technology and is designed, developed, modified, or procured for the purpose of preventing, detecting, identifying, otherwise deterring, or recovering from acts of terrorism.

(2) ACT OF TERRORISM.—The term ''act of terrorism'' means a calculated attack or threat of attack against any person, property, or infrastructure to inculcate fear, or to intimidate or coerce a government, the civilian population, or any segment thereof, in the pursuit of political, religious, or ideological objectives.

(3) INFORMATION TECHNOLOGY.—The term ''information technology'' has the meaning such term in section 11101(6) of title 40, United States Code.

(4) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia Government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 751. DEFINITION.

In this title, 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. 752. 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. 753. 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 752 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, $250,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $500,000.

(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. 754. 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 752, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $10,000.

SEC. 755. 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 752 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. 756. 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 752, 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 752.

SEC. 757. 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. 758. 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—Coast Guard

SEC. 761. 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 (e.g., 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, assets, organizational structure, units, personnel, and non-homeland security missions of the Coast Guard shall be maintained intact and without reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts. Nothing in this paragraph shall prevent the Coast Guard from replacing or upgrading any asset with an asset of equivalent or greater capabilities.

(d) CERTAIN TRANSFERS PROHIBITED.—

(1) IN GENERAL.—None of the missions, functions, personnel, and assets (including ships, aircraft, helicopters, and vehicles) of the Coast Guard may be transferred to the operational control of, or diverted to the principal and continuing use of, any other organization, unit, or entity of the Department.

(2) APPLICABILITY.—The restrictions in paragraph (1) shall not apply—

(A) to any joint operation of less than 90 days between the Coast Guard and other entities and organizations of the Department; or

(B) to any detail or assignment of any individual member or civilian employee of the Coast Guard to any other entity or organization of the Department for the purposes of ensuring effective liaison, coordination, and operations of the Coast Guard and that entity or organization, except that the total number of individuals detailed or assigned in this capacity may not exceed 50 individuals during any fiscal year.

(e) CHANGES TO NON-HOMELAND SECURITY MISSIONS.—

(1) PROHIBITION.—The Secretary may not make any substantial or significant change to any of the non-homeland security missions of the Coast Guard, or to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, without the prior approval of Congress as expressed in a subsequent Act. With respect to a change to the capabilities of the Coast Guard to carry out each of the non-homeland security missions, the restrictions in this paragraph shall not apply when such change shall result in an increase in those capabilities.

(2) WAIVER.—The President may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the President to Congress that a clear, compelling, and immediate state of national emergency exists that justifies 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 to the national emergency 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 Inspector General shall submit the detailed results of the annual review and assessment required by paragraph (1) not later than March 1 of each year directly 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.

TITLE VIII—TRANSITION

SEC. 801. DEFINITIONS.

In this title:

(1) AGENCY.—The term ''agency'' includes any entity, organizational unit, or function; and

(2) TRANSITION PERIOD.—The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 802. TRANSFER OF AGENCIES.

The transfer of an agency to the Department shall occur when the President so directs, but in no event later than the end of the transition period. When an agency is transferred, the President may also transfer to the Department any agency established to carry out or support adjudicatory or review functions in relation to the agency.

SEC. 803. 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 or nonreimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—

(A) DESIGNATION.—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.

(B) COMPENSATION.—While serving as an acting officer under subparagraph (A), that officer shall receive compensation at the higher of the rate provided—

(i) by this Act for the office in which that officer acts; or

(ii) for the office held at the time of designation.

(2) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed 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—

(A) agency is transferred to the Department under this Act; and

(B) duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, LIABILITIES, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and liabilities 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

(2) the Secretary shall have all functions—

(A) relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer; and

(B) vested in the Secretary by this Act or other law.

SEC. 804. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—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) INCLUDED ACTIONS.—For purposes of paragraph (1), the term ''completed administrative actions'' 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.

(e) 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.

(f) EMPLOYMENT PROVISIONS.—Except as otherwise provided in this Act, or under authority granted by this Act, the transfer under this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

SEC. 805. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred under 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. 806. 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.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 901. INSPECTOR GENERAL ACT.

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraphs (1) and (2)—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears;

(2) by striking ''; and'' each place it appears and inserting a semicolon;

(3) by striking ''.,'' and inserting a coma; and

(4) by striking '';;'' each place it appears and inserting a semicolon in each such place.

SEC. 902. EXECUTIVE SCHEDULE.

Chapter 53 of title 5, United States Code, is amended—

(1) in section 5312, by inserting after the item relating to the Secretary of Veterans Affairs the following:

''Secretary of Homeland Security.'';

(2) in section 5313, by inserting after the item relating to the Deputy Secretary of Transportation the following:

''Deputy Secretary of Homeland Security.'';

(3) in section 5314, by inserting after the item relating to the Under Secretary for Memorial Affairs, Department of Veterans Affairs the following:

''Under Secretaries, Department of Homeland Security.''; and

(4) in section 5315, by inserting at the end the following:

''Assistant Secretaries, Department of Homeland Security.

''General Counsel, Department of Homeland Security.

''Chief Financial Officer, Department of Homeland Security.

''Chief Information Officer, Department of Homeland Security.

''Inspector General, Department of Homeland Security.''.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) UNIFORMED DIVISION.—Section 202 of title 3, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Secretary of Homeland Security''.

(b) REIMBURSEMENT OF STATE AND LOCAL GOVERNMENTS.—Section 208 of title 3, United States Code, is amended by striking ''Secretary of Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(c) POWERS, AUTHORITIES, AND DUTIES.—Section 3056 of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' each place it appears and inserting ''Secretary of Homeland Security'' in each such place.

(d) 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. 904. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14 of the United States Code is amended—

(1) in sections 1, 3, 53, 95, 145, 516, 666, 669, 673 (as added by Public Law 104–201), 673 (as added by Public Law 104–324), 674, 687, and 688, by striking ''of Transportation'', each place it appears, and inserting ''of Homeland Security''; and

(2) after executing the other amendments required by this subsection, by redesignating the section 673 added by Public Law 104–324 as section 673a.

(b) TITLE 10, U.S.C.—Section 801(1) of title 10, United States Code, 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''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 905. 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 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'' after ''in coordination with''; 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. 906. SELECT AGENT REGISTRATION.

(a) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(1) in section 351A(a)(1)(A), by inserting ''(as defined in subsection (l)(9))'' after ''Secretary'';

(2) in section 351A(h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services'';

(3) in section 351A(l), by inserting after paragraph (8) the following:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''; and

(4) in section 352A(i)—

(A) by striking ''(1)'' the first place it appears; and

(B) by striking paragraph (2).

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 is amended by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

SEC. 907. 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. 908. MILITARY ACTIVITIES.

Except as specifically provided in this Act, nothing in this Act shall confer upon the Secretary any authority to engage in war fighting, the military defense of the United States, or other traditional military activities.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the ''Immigration Reform, Accountability, and Security Enhancement Act of 2002''.

SEC. 1002. DEFINITIONS.

In this division:

(1) ENFORCEMENT BUREAU.—The term ''Enforcement Bureau'' means the Bureau of Enforcement established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) FUNCTION.—The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) IMMIGRATION ENFORCEMENT FUNCTIONS.—The term ''immigration enforcement functions'' has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) IMMIGRATION LAWS OF THE UNITED STATES.—The term ''immigration laws of the United States'' has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term ''immigration policy, administration, and inspection functions'' has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term ''immigration service functions'' has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

(9) SERVICE BUREAU.—The term ''Service Bureau'' means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.

(10) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

SEC. 1003. TRANSFER OF IMMIGRATION AND NATURALIZATION SERVICE FUNCTIONS.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the Immigration and Naturalization Service of the Department of Justice, including the functions of the Attorney General relating thereto, to be restructured so as to separate enforcement and service functions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

SEC. 1101. ABOLITION OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service is abolished.

(b) REPEAL.—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) ESTABLISHMENT.—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting ''**CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES**'' after ''**TITLE I—GENERAL**''; and

(2) by adding at the end the following:

"CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

"SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

''(a) ESTABLISHMENT.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

''(b) PRINCIPAL OFFICERS.—The principal officers of the Directorate are the following:

''(1) The Under Secretary for Immigration Affairs appointed under section 112.

''(2) The Assistant Secretary for Immigration Services appointed under section 113.

''(3) The Assistant Secretary for Enforcement appointed under section 114.

''(c) FUNCTIONS.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

''(1) Immigration policy and administration functions, as defined in section 112(b).

''(2) Immigration service and adjudication functions, as defined in section 113(b).

''(3) Immigration enforcement functions, as defined in section 114(b), but does not include the functions described in paragraphs (7) and (8) of section 131(b).

''(d) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

''(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term 'immigration laws of the United States' shall have the same meaning given such term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).''.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

''(34) The term 'Directorate' means the Directorate of Immigration Affairs established by section 111.'';

(B) by adding at the end of section 101(a) the following:

''(51) The term 'Secretary' means the Secretary of Homeland Security.

''(52) The term 'Department' means the Department of Homeland Security.'';

(C) by striking ''Attorney General'' and ''Department of Justice'' each place it appears (other than the proviso in section 103(a)(1) of the Immigration and Nationality Act) and inserting ''Secretary'' and ''Department'', respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking ''The'' and inserting ''Except as otherwise provided in section 111(e), the; and

(E) by striking ''Immigration and Naturalization Service'', ''Service'', and ''Service's'' each place they appear and inserting ''Directorate of Immigration Affairs'', ''Directorate'', and ''Directorate's'', respectively.

(2) Section 6 of the Act entitled ''An Act to authorize certain administrative expenses for the Department of Justice, and for other purposes'', approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking ''Immigration and Naturalization Service'' and inserting ''Directorate of Immigration Affairs'';

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(c) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security of the Department of Homeland Security, as appropriate, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary for Immigration Affairs and the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:

''SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

''(a) UNDER SECRETARY OF IMMIGRATION AFFAIRS.—The Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

''(b) RESPONSIBILITIES OF THE UNDER SECRETARY.—

''(1) IN GENERAL.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

''(2) DUTIES.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

''(A) IMMIGRATION POLICY.—The Under Secretary shall develop and implement policy under the immigration laws of the United States with respect to any function within the jurisdiction of the Directorate. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.

''(B) ADMINISTRATION.—The Under Secretary shall have responsibility for—

''(i) the administration and enforcement of the functions conferred upon the Directorate under section 111(c) of this Act; and

''(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement.

''(3) ACTIVITIES.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

''(A) RESOURCES AND PERSONNEL MANAGEMENT.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.

''(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

''(4) DEFINITION.—In this chapter, the term 'immigration policy and administration' means the duties, activities, and powers described in this subsection.

''(c) GENERAL COUNSEL.—

''(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

''(2) FUNCTION.—The General Counsel shall—

''(A) serve as the chief legal officer for the Directorate; and

''(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

''(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

''(1) CHIEF FINANCIAL OFFICER.—

''(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

''(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, supervising, and coordinating all budget formulas and execution for the Directorate.

''(2) DEPUTY CHIEF FINANCIAL OFFICER.—The Directorate shall be deemed to be an agency for purposes of section 903 of such title (relating to Deputy Chief Financial Officers).

''(e) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

''(1) IN GENERAL.—There shall be within the Directorate a Chief of Congressional, Intergovernmental, and Public Affairs. Under the authority of the Under Secretary, the Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

''(A) providing to Congress information relating to issues arising under the immigration laws of the United States, including information on specific cases;

''(B) serving as a liaison with other Federal agencies on immigration issues; and

''(C) responding to inquiries from, and providing information to, the media on immigration issues.

''(2) WITHIN THE SENIOR EXECUTIVE SERVICE.—The position of Chief of Congressional, Intergovernmental, and Public Affairs shall be a Senior Executive Service position under section 5382 of title 5, United States Code.''.

(b) COMPENSATION OF GENERAL COUNSEL AND CHIEF FINANCIAL OFFICER.—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

''General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

''Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.''.

(c) REPEALS.—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) CONFORMING AMENDMENTS.—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:

''(8) The term 'Under Secretary' means the Under Secretary for Immigration Affairs who is appointed under section 103(c).''.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(i) by striking ''The Commissioner of Immigration and Naturalization'' and ''The Commissioner'' each place they appear and inserting ''The appropriate Under Secretary of the Department of Homeland Security''; and

(ii) except as provided in paragraph (1), by striking ''Commissioner of Immigration and Naturalization'' and ''Commissioner'' each place they appear and inserting ''appropriate Under Secretary of the Department of Homeland Security''.

(C) The amendments made by subparagraph (B) do not apply to references to the ''Commissioner of Social Security'' in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking ''Commissioner'' and inserting ''Under Secretary'';

(B) in subsection (d), by striking ''Commissioner'' and inserting ''Under Secretary''; and

(C) in subsection (e), by striking ''Commissioner'' and inserting ''Under Secretary''.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking ''Director'' each place it appears and inserting ''Assistant Secretary of State for Consular Affairs''.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking ''Passport Office, a Visa Office,'' and inserting ''a Passport Services office, a Visa Services office, an Overseas Citizen Services office,''; and

(B) in the second sentence, by striking ''the Passport Office and the Visa Office'' and inserting ''the Passport Services office and the Visa Services office''.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

''Commissioner of Immigration and Naturalization, Department of Justice.''.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary for Immigration Affairs or the Under Secretary for Border and Transportation Security, as appropriate.

SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

''SEC. 113. BUREAU OF IMMIGRATION SERVICES.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the 'Service Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Service Bureau shall be the Assistant Secretary for Immigration Services (in this chapter referred to as the 'Assistant Secretary for Immigration Services'), who—

''(A) shall be appointed by the Secretary, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall administer the immigration service functions of the Directorate.

''(2) IMMIGRATION SERVICE FUNCTIONS DEFINED.—In this chapter, the term 'immigration service functions' means the following functions under the immigration laws of the United States:

''(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

''(B) Adjudications of applications for adjustment of status and change of status.

''(C) Adjudications of naturalization applications.

''(D) Adjudications of asylum and refugee applications.

''(E) Adjudications performed at Service centers.

''(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.

''(G) All other adjudications under the immigration laws of the United States.

''(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

''(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to the immigration service functions of the Directorate are properly implemented; and

''(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

''(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.''.

(b) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location's proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase in the population to be served. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Service Bureau offices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining the location of Service Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability of establishing new Service Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103 and 1104, is further amended by adding at the end the following:

''SEC. 114. BUREAU OF ENFORCEMENT.

''(a) ESTABLISHMENT OF BUREAU.—

''(1) IN GENERAL.—There is established within the Directorate a bureau to be known as the Bureau of Enforcement (in this chapter referred to as the 'Enforcement Bureau').

''(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary for Enforcement (in this chapter referred to as the 'Assistant Secretary for Immigration Enforcement'), who—

''(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

''(B) shall report directly to the Under Secretary.

''(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

''(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

''(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

''(A) The detention function, except as specified in section 113(b)(2)(F).

''(B) The removal function.

''(C) The intelligence function.

''(D) The investigations function.

''(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

''(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

''(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

''(1) ensure that the Directorate's policies with respect to immigration enforcement functions are properly implemented; and

''(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.

''(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.''.

(b) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Enforcement Bureau offices, the Under Secretary shall make selections according to trends in unlawful entry and unlawful presence, alien smuggling, national security concerns, the number of Federal prosecutions of immigration-related offenses in a given geographic area, and other enforcement considerations. The Under Secretary shall conduct periodic reviews to assess whether the location and size of the respective Enforcement Bureau offices adequately serve enforcement needs.

(2) TRANSITION PROVISION.—In determining the location of Enforcement Bureau offices, including suboffices and satellite offices, the Under Secretary shall first consider maintaining and upgrading offices in existing geographic locations that satisfy the provisions of paragraph (1). The Under Secretary shall also explore the feasibility and desirability

of establishing new Enforcement Bureau offices, including suboffices and satellite offices, in new geographic locations where there is a demonstrated need.

SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS.

''(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

''(b) OMBUDSMAN.—

''(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

''(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.

''(c) FUNCTIONS OF OFFICE.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

''(1) to assist individuals in resolving problems with the Directorate or any component thereof;

''(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

''(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

''(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

''(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

''(d) PERSONNEL ACTIONS.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and rectify problems.

''(e) ANNUAL REPORT.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

''(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

''(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

''(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

''(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

''(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

''(6) recommendations as may be appropriate to resolve problems encountered by the public;

''(7) recommendations as may be appropriate to resolve problems encountered by the public, including problems created by backlogs in the adjudication and processing of petitions and applications;

''(8) recommendations to resolve problems caused by inadequate funding or staffing; and

''(9) such other information as the Ombudsman may deem advisable.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Office of the Ombudsman such sums as may be necessary to carry out its functions.

''(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.''.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

"SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

''(a) ESTABLISHMENT.—There is established within the Directorate an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review.

''(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

''(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

''(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review.

''(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

''(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigration Review, respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

''(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review to permit the Director of the Office to perform the duties of such office.''.

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review, on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the item relating to the heading for title I the following:

''CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES'';

(2) by striking the item relating to section 103 and inserting the following:

''Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.'';

and

(3) by inserting after the item relating to section 106 the following:

''CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

''Sec. 111. Establishment of Directorate of Immigration Affairs.
''Sec. 112. Under Secretary of Homeland Security for Immigration Affairs.
''Sec. 113. Bureau of Immigration Services.
''Sec. 114. Bureau of Enforcement.
''Sec. 115. Office of the Ombudsman for Immigration Affairs.
''Sec. 116. Office of Immigration Statistics.''.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—Except as provided in subsection (c) and title XIII, all functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—Except as provided in subsection (c), all functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), 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 of the transfer of the function under this title.

(c) SPECIAL RULE FOR BORDER PATROL AND INSPECTION FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the border patrol function, and primary and secondary immigration inspection functions, vested by statute in, or exercised by, the Attorney General, the Commissioner of Immigration and Naturalization, or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Under Secretary for Border and Transportation in accordance with paragraphs (7) and (8) of section 131(b).

(2) REFERENCES.—With respect to the border patrol function and primary and secondary immigration inspection functions, references in this subtitle to—

(A) the Directorate shall be deemed to be references to the Directorate of Border and Transportation Security; and

(B) the Under Secretary shall be deemed to be references to the Under Secretary for Border and Transportation Security.

SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the appropriate Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred under this title; and

(2) 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 pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

The Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this title)—

(1) which of the functions transferred under section 1111 are—

(A) immigration policy and administration functions;

(B) immigration service functions;

(C) immigration enforcement functions (excluding the border patrol function and primary and secondary immigration inspection functions); and

(D) the border patrol function and primary and secondary immigration inspection functions; and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) DELEGATION TO THE DIRECTORATES.—The Secretary shall delegate—

(1) through the Under Secretary and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103)—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and

(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement; and

(2) the border patrol function and primary and secondary immigration inspection functions to the Under Secretary for Border and Transportation Security.

(b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—Delegations made under subsection (a) may be made on a nonexclusive basis as the Secretary may determine may be necessary to ensure the faithful execution of the Secretary's responsibilities and duties under law.

(c) EFFECT OF DELEGATIONS.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary for Immigration Affairs, and the Under Secretary for Border and Transportation Security, respectively, as the Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.

(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

(c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred under this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred under this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF PARTIES.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and such function is transferred under this title to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred under this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred.

SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103.

SEC. 1118. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1119. TRANSITION FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Services, and the Bureau of Enforcement (except for the border patrol function and primary and secondary immigration inspection functions);

(iii) the transfer to the Directorate of Border and Transportation Protection of the border patrol function and primary and secondary immigration inspection functions; and

(iv) the transfer of such other functions as are required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs and the Directorate of Border and Transportation Security, as appropriate, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;

(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) TRANSITION ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Directorate of Immigration Affairs Transition Account'' (in this section referred to as the ''Account'').

(2) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) REPORT TO CONGRESS ON TRANSITION.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c), the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect 1 year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—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''.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of similar services provided without charge to asylum and refugee applicants.

(2) PROHIBITION.—No fee may be used to fund adjudication- or naturalization-related audits that are not regularly conducted in the normal course of operation.

(c) REFUGEE AND ASYLUM ADJUDICATION SERVICES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to such sums as may be otherwise available for such purposes, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(d) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other collections available for the Bureau of Immigration Services and the Bureau of Enforcement.

(2) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under paragraph (1) that is for the bureau with jurisdiction over the function to which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Immigration Services and the Bureau of Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act, as amended by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2006 to carry out the Immigration Services and Infrastructure Improvement Act of 2000 (title II of Public Law 106–313).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) are authorized to remain available until expended.

(3) INFRASTRUCTURE IMPROVEMENT ACCOUNT.—Amounts appropriated under paragraph (1) shall be deposited into the Immigration Services and Infrastructure Improvements Account established by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF ON-LINE DATABASE.—

(1) IN GENERAL.—Not later than 2 years after the effective date of division A, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) PRIVACY CONSIDERATIONS.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) MEANS OF ACCESS.—The on-line information under the Internet system described in paragraph (1) shall be accessible to the persons described in paragraph (1) through a personal identification number (PIN) or other personalized password.

(4) PROHIBITION ON FEES.—The Under Secretary shall not charge any immigrant, nonimmigrant, employer, or other person described in paragraph (1) a fee for access to the information in the database that pertains to that person.

(b) FEASIBILITY STUDY FOR ON-LINE FILING AND IMPROVED PROCESSING.—

(1) ON-LINE FILING.—

(A) IN GENERAL.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) STUDY ELEMENTS.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;

(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than 2 years after the effective date of division A, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than 1 year after the effective date of division A, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

"SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

''(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—

''(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

''(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

''(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

''(1) Parole from detention.

''(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

''(c) REGULATIONS.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

''(d) DEFINITION.—In this section, the term 'asylum seeker' means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.''.

(b) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

''Sec. 236B. Alternatives to detention of asylum seekers.''.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—UNACCOMPANIED ALIEN JUVENILE PROTECTION

SEC. 1201. UNACCOMPANIED ALIEN JUVENILES.

(a) CUSTODY DETERMINATIONS.—

(1) IN GENERAL.—

(A) INITIAL CUSTODY AND CARE.—The custody and care of an unaccompanied alien juvenile shall be the responsibility of the Under Secretary of Immigration Affairs in the Department of Homeland Security or the Under Secretary of Border and Transportation Security, as determined under guidelines to be promulgated by the Secretary.

(B) TRANSFER OF CUSTODY AND CARE.—Unless the juvenile is described in subsection (b), the Department of Homeland Security shall transfer custody and care of that juvenile to the Office of Refugee Resettlement of the Department of Health and Human Services.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Directorate of Immigration Affairs shall retain or assume the custody and care of an unaccompanied alien juvenile—

(A) who has been charged with a felony;

(B) who has been convicted of a felony;

(C) who exhibits a violent or criminal behavior that endangers others; or

(D) with respect to whom the Secretary of Homeland Security has a substantial evidence to conclude that such juvenile endangers the national security of the United States.

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to subsection (a)(2), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the custody and care of unaccompanied alien juveniles who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such juvenile, 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 juvenile are considered in decisions and actions relating to the custody and care of an unaccompanied alien juvenile;

(C) making placement determinations for all unaccompanied alien juveniles who are in Federal custody by reason of their immigration status;

(D) implementing placement determinations for such unaccompanied alien juveniles;

(E) implementing policies with respect to the care and placement of unaccompanied alien juveniles;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien juveniles;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien juveniles are housed;

(H) reuniting unaccompanied alien juveniles 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 juveniles;

(J) maintaining statistical information and other data on unaccompanied alien juveniles for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a juvenile's name, sex, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the juvenile came into Federal custody by reason of his or her immigration status;

(iii) information relating to the juvenile's placement, removal, or release from each facility in which the juvenile has resided;

(iv) in any case in which the juvenile is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the juvenile 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 juveniles; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien juveniles 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 Immigration Affairs of the Department of Homeland Security to ensure that the unaccompanied alien juveniles with respect to whom the placement determinations are made—

(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 exploitative 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 juveniles 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 consider the use of 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 juveniles.

(c) APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN JUVENILES.—

(1) IN GENERAL.—An unaccompanied alien juvenile described in subsection (a)(2) may be placed in a facility appropriate for delinquent juveniles under conditions appropriate to the behavior of such juvenile.

(2) RESTRICTION ON DETENTION IN ADULT DETENTION FACILITIES.—To the maximum extent practicable, and consistent with the protection of the juvenile and others, an unaccompanied alien juvenile shall not be placed in an adult detention facility.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations or making enforcement 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, as the case may be.

(e) 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 and nationality laws of the United States with respect to the custody and care of unaccompanied alien juveniles that were vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (i).

(f) OTHER TRANSITION MATTERS.—

(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 (i).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 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.—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) 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.

(h) DEFINITIONS.—In this section:

(1) LAWFULLY PRESENT IN THE UNITED STATES.—The term ''lawfully present in the United States'' means, with respect to an alien, an alien who is—

(A) an alien who is lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act);

(B) an alien who is a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act;

(C) an alien who is a special immigrant described in section 101(a)(27) of the Immigration and Nationality Act;

(D) an alien who is granted asylum under section 208 of that Act;

(E) a refugee who is admitted to the United States under section 207 of that Act;

(F) an alien who is paroled into the United States under section 212(d)(5) of that Act; or

(G) an alien whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect before April 1, 1997) or section 241(b)(3) of the Immigration and Nationality Act.

(2) PLACEMENT.—The term ''placement'' means the placement of an unaccompanied alien juvenile in either a detention facility or an alternative to such a facility.

(3) UNACCOMPANIED ALIEN JUVENILE.—The term ''unaccompanied alien juvenile'' means an alien who—

(A) is not lawfully present 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.

(i) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. 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 1302.

SEC. 1302. 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. 1303. 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 1302, 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.

DIVISION C—FEDERAL WORKFORCE IMPROVEMENT

TITLE XXI—CHIEF HUMAN CAPITAL OFFICERS

SEC. 2101. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 2102. 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. 2103. 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. 2104. 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. 2105. EFFECTIVE DATE.

This title shall take effect 180 days after the date of enactment of this division.

TITLE XXII—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 2201. 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. 2202. 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. 2203. 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 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 he 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. 2204. 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''.

TITLE XXIII—REFORMS RELATING TO THE SENIOR EXECUTIVE SERVICE

SEC. 2301. 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. 2302. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:

''(3) Notwithstanding paragraph (1), the total payment referred to under such paragraph with respect to an employee paid under section 5372, 5376, or 5383 of title 5 or section 332(f), 603, or 604 of title 28 shall not exceed the total annual compensation payable to the Vice President under section 104 of title 3. Regulations prescribed under subsection (c) may extend the application of this paragraph to other equivalent categories of employees.''.

TITLE XXIV—ACADEMIC TRAINING

SEC. 2401. 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. 2402. 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''.

SEC. 2403. COMPENSATION TIME OFF FOR TRAVEL.

Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) An employee shall receive 1 hour of compensatory time off for each hour spent by the employee in travel status away from the official duty station of the employee, to the extent that the time spent in travel status is not otherwise compensable.

''(b) Not later than 30 days after the date of enactment of this section, the Office of Personnel Management shall prescribe regulations to implement this section.''.

SEC. 2404. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking ''September 30, 2003'' and inserting ''December 31, 2007.''.

TITLE XXXI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 3101. ESTABLISHMENT OF COMMISSION.

There is established the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the ''Commission'').

SEC. 3102. PURPOSES.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of

September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001;

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3103. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 3 members shall be appointed by the majority leader of the Senate;

(2) 3 members shall be appointed by the Speaker of the House of Representatives;

(3) 2 members shall be appointed by the minority leader of the Senate; and

(4) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) CHAIRPERSON; VICE CHAIRPERSON.—

(1) IN GENERAL.—Subject to paragraph (2), the Chairperson and Vice Chairperson of the Commission shall be elected by the members.

(2) POLITICAL PARTY AFFILIATION.—The Chairperson and Vice Chairperson shall not be from the same political party.

(c) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.

(4) INITIAL MEETING.—If 60 days after the date of enactment of this Act, 6 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff.

(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

SEC. 3104. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation; and

(vii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 3105. POWERS OF THE COMMISSION.

(a) IN GENERAL.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1)(B) may be issued under the signature of the chairperson of the Commission, the vice chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the chairperson, subcommittee chairperson, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(B), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) ADDITIONAL ENFORCEMENT.—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) CLOSED MEETINGS.—

(1) IN GENERAL.—Meetings of the Commission may be closed to the public under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App.) or other applicable law.

(2) ADDITIONAL AUTHORITY.—In addition to the authority under paragraph (1), section 10(a)(1) and (3) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the requirements relating to a determination under section 10(d) of that Act shall apply.

(c) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States are authorized to provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(g) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 3106. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Commission who

are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 3107. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 3108. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.

The appropriate executive departments and agencies shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

SEC. 3109. REPORTS OF THE COMMISSION; TERMINATION.

(a) INITIAL REPORT.—Not later than 6 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress an initial report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) ADDITIONAL REPORTS.—Not later than 1 year after the submission of the initial report of the Commission, the Commission shall submit to the President and Congress a second report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the second report is submitted under subsection (b).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SEC. 3110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Commission to carry out this title $3,000,000, to remain available until expended.

TITLE XXXII

SEC. . PRESERVATION OF THE PRESIDENTIAL NATIONAL SECURITY POWER.

''Notwithstanding any other provision in this Act, nothing in this Act shall be construed to take away the statutory authority of the President to act in a manner consistent with national security requirements and considerations as existed on the day of the terrorist attacks on September 11, 2001.''

These provisions shall take effect two days after the date of enactment.

SA 4745. Mr. DASCHLE submitted an amendment intended to be proposed to amendment SA 4744 submitted by Mr. DASCHLE and intended to be proposed to the amendment SA 4471 proposed by Mr. LIEBERMAN to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 96, strike line 2 and all that follows through page 109, line 13, and insert the following:

SEC. 730 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 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.

''(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); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) 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, 71, 72, 73, 77, 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 direct participation of employee representatives in the planning development, and implementation of any human resources management system or adjustments under this section, the Secretary 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 at least 60 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) PREIMPLEMENTATION REQUIREMENTS.—If the Secretary and the Director decide to implement a proposal described in subparagraph (A), they shall before implementation—

''(i) give each representative details of the decision to implement the proposal, together with the information upon which the decision is based;

''(ii) give each representative an opportunity to make recommendations with respect to the proposal; and

''(iii) give such recommendation full and fair consideration, including the providing of reasons to an employee representative if any of its recommendations are rejected.

''(C) 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. 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; and

''(C) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(3) WRITTEN AGREEMENT.—Notwithstanding any other provision of this part, employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any system provided under this section unless the exclusive representative and the Secretary have entered into a written agreement, which specifically provides for the inclusion of such employees within such system. Such written agreement may be imposed by the Federal Service Impasses Panel under section 7119, after negotiations consistent with section 7117.

''(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) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 801 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) CLERICAL 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 pursuant to 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 one 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. ____. 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 title 5, United States Code; 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 title 5, United States Code, 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 employee first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) 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.

(d) SAVINGS CLAUSE.—Notwithstanding any other provision of this Act, Title XXXII is null and void.

These provisions shall take effect one day after enactment.

SA 4746. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 232, strike lines 2 through 10 and insert the following:

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act as may be necessary to carry out the authorities and functions of immigration judges, appellate immigration judges, and the chief administrative hearing officer under this Act through the Executive Office of Immigration Review of the Department of Justice.

SA 4747. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 55, lines 11 and 12, strike '', including the establishment of rules,''.

SA 4748. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 55, line 16, before the semicolon insert the following: '', except that this paragraph shall be restricted to functions transferred by this Act to the Directorate for Border and Transportation Security''.

SA 4749. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

At the end of section 1103 of the amendment, add the following:

(c) INSPECTIONS.—The Under Secretary of Immigration Affairs shall assign officers, with expertise and training in immigration and nationality law, to major ports of entry in the United States to assist in the inspection of aliens. For other ports of entry, the Under Secretary shall take steps to ensure such officers participate in the inspections process.

(d) TRAINING FOR BORDER PATROL AND INSPECTORS.—The Under Secretary of Immigration Affairs, in consultation with the Under Secretary of Border and Transportation Protection, will provide training in immigration and nationality law to personnel performing the border patrol and inspections functions in the Border and Transportation Protection Directorate.

SA 4750. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike title XIII and insert the following:

TITLE XIII—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

SEC. 1301. ESTABLISHMENT.

(a) IN GENERAL.—There is within the Department of Justice the Executive Office for Immigration Review.

(b) STATUTORY CONSTRUCTION.—Nothing in title XI, or any amendment made by that title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by, the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof, immediately prior to the effective date of title XI.

SEC. 1302. DIRECTOR OF THE AGENCY.

(a) APPOINTMENT.—There shall be at the head of the Executive Office for Immigration Review a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Executive Office for Immigration Review and be responsible for the promulgation of rules and regulations affecting the agency; and

(2) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1303. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the ''Board'') shall perform the appellate functions of the Executive Office for Immigration Review. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Attorney General, in consultation with the Director and the Chair of the Board of Immigration Appeals.

(c) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(d) JURISDICTION.—

(1) IN GENERAL.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) DE NOVO REVIEW.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(e) INDEPENDENCE OF BOARD MEMBERS.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

(f) REFERRAL OF CASES TO THE ATTORNEY GENERAL.—

(1) IN GENERAL.—The Board shall refer to the Attorney General for review of any case that—

(A) the Attorney General directs the Board to refer to the Attorney General;

(B) the Chairman or a majority of the Board believes should be referred to the Attorney General for review; or

(C) the Under Secretary of Homeland Security for Immigration Affairs requests be referred to the Attorney General for review.

(2) DECISION OF THE ATTORNEY GENERAL.—In any case in which the Attorney General reviews the decision of the Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided by regulations.

SEC. 1304. CHIEF IMMIGRATION JUDGE.

(a) ESTABLISHMENT OF OFFICE.—There shall be within the Executive Office for Immigration Review the position of Chief Immigration Judge, who shall administer the immigration courts.

(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—The Chief Immigration Judge shall be responsible for the general supervision, direction, and procurement of resource and facilities and for the general management of immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Immigration judges shall be appointed by the Attorney General, in consultation with the Director and the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 7 years of pertinent legal expertise.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION COURTS.—The immigration courts shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the immigration courts within the Executive Office for Immigration Review of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The immigration judges shall exercise their independent judgment and discretion in the cases coming before the Immigration Court.

SEC. 1305. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) ESTABLISHMENT OF POSITION.—There shall be within the Executive Office for Immigration Review the position of Chief Administrative Hearing Officer.

(b) DUTIES OF THE CHIEF ADMINISTRATIVE HEARING OFFICER.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1306. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Executive Office for Immigration Review such sums as may be necessary to carry out this title.

SA 4751. Mr. KENNEDY submitted an amendment intended to be proposed by him to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

On page 232, line 10, before the period insert the following: '', except that the Attorney General may not exercise the authorities and functions in this paragraph in a manner that does not respect the independence of immigration judges''.

SA 4752. Mr. HOLLINGS (for Mr. GRAHAM) proposed an amendment to the bill S. 2506, to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2003''.

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

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Incorporation of reporting requirements.
Sec. 106. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Restriction on conduct of intelligence activities.
Sec. 303. Definition of congressional intelligence committees in National Security Act of 1947.
Sec. 304. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.
Sec. 305. Modification of authority to make funds for intelligence activities available for other intelligence activities.
Sec. 306. Clarification of authority to furnish information on intelligence activities to Congress.
Sec. 307. Standardized transliteration of names into the Roman alphabet.
Sec. 308. Standards and qualifications for the performance of intelligence activities.
Sec. 309. Modification of David L. Boren National Security Education Program.
Sec. 310. Scholarships and work-study for pursuit of graduate degrees in science and technology.
Sec. 311. National Virtual Translation Center.
Sec. 312. Foreign Terrorist Asset Tracking Center.
Sec. 313. Terrorist Identification Classification System.
Sec. 314. Annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets.

Sec. 315. Two-year extension of Central Intelligence Agency Voluntary Separation Pay Act.
Sec. 316. Additional one-year suspension of reorganization of Diplomatic Telecommunications Service Program Office.

TITLE IV—REPORTING REQUIREMENTS

Subtitle A—Submittal of Reports to Intelligence Committees

Sec. 401. Dates for submittal of various annual and semi-annual reports to the congressional intelligence committees.

Subtitle B—Recurring Annual Reports

Sec. 411. Annual assessment of satisfaction of intelligence community with collection, analysis, and production of intelligence.
Sec. 412. Annual report on threat of attack on the United States using weapons of mass destruction.
Sec. 413. Annual report on covert leases.
Sec. 414. Annual report on improvement of financial statements of certain elements of the intelligence community for auditing purposes.
Sec. 415. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.
Sec. 416. Annual reports of inspectors general of the intelligence community on proposed resources and activities of their offices.
Sec. 417. Annual report on counterdrug intelligence matters.

Subtitle C—Other Reports

Sec. 431. Report on effect of country-release restrictions on allied intelligence-sharing relationships.
Sec. 432. Evaluation of policies and procedures of Department of State on protection of classified information at department headquarters.
Sec. 433. Study of Department of State Consular Services.

Subtitle D—Repeal of Certain Report Requirements

Sec. 441. Repeal of certain report requirements.

TITLE V—COUNTERINTELLIGENCE ACTIVITIES

Sec. 501. Short title; purpose.
Sec. 502. National Counterintelligence Executive.
Sec. 503. National Counterintelligence Policy Board.
Sec. 504. Office of the National Counterintelligence Executive.

TITLE VI—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

Sec. 601. Findings.
Sec. 602. National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.
Sec. 603. Powers of Commission.
Sec. 604. Staff of Commission.
Sec. 605. Compensation and travel expenses.
Sec. 606. Treatment of information relating to national security.
Sec. 607. Final report; termination.
Sec. 608. Assessments of final report.
Sec. 609. Inapplicability of certain administrative provisions.
Sec. 610. Funding.
Sec. 611. Definitions.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2003 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The National Reconnaissance Office.
(11) The National Imagery and Mapping Agency.
(12) The Coast Guard.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2003, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill _____ of the One Hundred Seventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, to Members of Congress who so request, and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2003 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Community Management Account of the Director of Central Intelligence for fiscal year 2003 the sum of $157,979,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2004.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 309 full-time personnel as of September 30, 2003. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2003 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2004.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2003, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2003 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $32,100,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2004, and funds provided for procurement purposes shall remain available until September 30, 2005.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill _____ of the One Hundred Seventh Congress, in the classified annex to this Act, in the report of the Senate to accompany the bill S.___ of the 107th Congress, or in the report of the House of Representatives to accompany the bill H.R.___ is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) SUBMITTAL DATE.—The date for the submittal to the congressional intelligence committees of any report referred to in subsection (a), whether an annual report, semi-annual report, or non-recurring report, shall be as provided for a report of that type in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term

''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 106. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations or a classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2003 the sum of $223,300,000.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 303. DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES IN NATIONAL SECURITY ACT OF 1947.

(a) IN GENERAL.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by adding at the end the following new paragraph:

''(7) The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.''.

(b) CONFORMING AMENDMENTS.—(1) That Act is further amended by striking ''Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 104(d)(4) (50 U.S.C. 403–4(d)(4)).

(B) Section 603(a) (50 U.S.C. 423(a)).

(2) That Act is further amended by striking ''Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 113(c) (50 U.S.C. 404h(c)).

(B) Section 301(j) (50 U.S.C. 409a(j)).

(C) Section 801(b)(2) (50 U.S.C. 435(b)(2)).

(D) Section 903 (50 U.S.C. 441b).

(3) That Act is further amended by striking ''intelligence committees'' and inserting ''congressional intelligence committees'' in each of the following provisions:

(A) Section 501 (50 U.S.C. 413).

(B) Section 502 (50 U.S.C. 413a).

(C) Section 503 (50 U.S.C. 413b).

(D) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(4) Section 104(d)(5) of that Act (50 U.S.C. 403–4(d)(5)) is amended by striking ''Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''congressional intelligence committees''.

(5) Section 105C(a)(3)(C) of that Act (50 U.S.C. 403–5c(a)(3)(C)) is amended—

(A) by striking clauses (i) and (ii) and inserting the following new clause (i):

''(i) The congressional intelligence committees.''; and

(B) by redesignating clauses (iii), (iv), (v), and (vi) as clauses (ii), (iii), (iv), and (v), respectively.

(6) Section 114 of that Act (50 U.S.C. 404i) is amended by striking subsection (c) and inserting the following new subsection (c):

''(c) CONGRESSIONAL LEADERSHIP DEFINED.—In this section, the term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''.

(7) Section 501(a) of that Act (50 U.S.C. 413(a)), as amended by paragraph (3) of this subsection, is further amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

(8) Section 503(c)(4) of that Act (50 U.S.C. 413b(c)(4)) is amended by striking ''intelligence committee'' and inserting ''congressional intelligence committee''.

(9) Section 602(c) of that Act (50 U.S.C. 422(c)) is amended by striking ''the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives'' and inserting ''either congressional intelligence committee''.

(10) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking ''intelligence committees of Congress'' and inserting ''congressional intelligence committees''.

SEC. 304. SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by adding at the end the following new section:

''SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

''SEC. 506. (a) IN GENERAL.—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

''(1) Counterterrorism.

''(2) Counterproliferation.

''(3) Counternarcotics.

''(4) Counterintelligence.

''(b) ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.''.

(b) CLERICAL AMENDMENT.—The table of sections for that Act is amended by inserting after the item relating to section 505 the following new item:

''Sec. 506. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.''.

SEC. 305. MODIFICATION OF AUTHORITY TO MAKE FUNDS FOR INTELLIGENCE ACTIVITIES AVAILABLE FOR OTHER INTELLIGENCE ACTIVITIES.

(a) NATURE OF UNFORSEEN REQUIREMENTS.—Section 504(a) of the National Security Act of 1947 (50 U.S.C. 414(a)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) in subparagraph (C), as so redesignated—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(B) by striking the semicolon at the end and inserting a period;

(3) by inserting ''(1)'' after ''(a)'';

(4) by striking ''(4) nothing'' and inserting ''(2) Nothing'';

(5) by indenting paragraph (2), as designated by paragraph (4) of this section, two ems from the left margin; and

(6) by adding at the end the following new paragraph:

''(3) For purposes of paragraph (1)(C)(ii), an unforseen requirement may not include a requirement arising under statute or the request of a committee or Member of Congress.''.

(b) CERTIFICATION REQUIREMENT FOR REPROGRAMMING.—Paragraph (1)(C)(iii) of that section, as redesignated by subsection (a) of this section, is further amended by striking ''has notified'' and all that follows and inserting ''submits to the appropriate congressional committees, before obligation of funds for such activity, a certification that the requirements of clauses (i) and (ii) are met with respect to such activity.''.

SEC. 306. CLARIFICATION OF AUTHORITY TO FURNISH INFORMATION ON INTELLIGENCE ACTIVITIES TO CONGRESS.

(a) IN GENERAL.—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by inserting after section 503 the following new section:

''AUTHORITY TO FURNISH INFORMATION ON INTELLIGENCE ACTIVITIES TO CONGRESS

''SEC. 503A. Notwithstanding any other provision of law, and consistent with the obligations of the Director of Central Intelligence to protect intelligence sources and methods, it shall not be unlawful for the Director, or a designee of the Director, to furnish to the congressional intelligence committees information in the possession of an element of the intelligence community on intelligence activities in furtherance of the reporting responsibilities of such element under sections 501, 502, and 503 or any other

provision of law requiring the reporting of information on intelligence activities to Congress.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 503 the following new item:

''Sec. 503A. Authority to furnish information on intelligence activities to Congress.''.

SEC. 307. STANDARDIZED TRANSLITERATION OF NAMES INTO THE ROMAN ALPHABET.

(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall establish a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

(b) USE BY INTELLIGENCE COMMUNITY.—The Director shall ensure the use of the method established under subsection (a) in—

(1) all communications among the elements of the intelligence community; and

(2) all intelligence products of the intelligence community.

SEC. 308. STANDARDS AND QUALIFICATIONS FOR THE PERFORMANCE OF INTELLIGENCE ACTIVITIES.

Section 104 of the National Security Act of 1947 (50 U.S.C. 403–4) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

''(g) STANDARDS AND QUALIFICATIONS FOR PERFORMANCE OF INTELLIGENCE ACTIVITIES.—The Director, acting as the head of the intelligence community, shall, in consultation with the heads of effected agencies, prescribe standards and qualifications for persons engaged in the performance of intelligence activities within the intelligence community.''.

SEC. 309. MODIFICATION OF DAVID L. BOREN NATIONAL SECURITY EDUCATION PROGRAM.

(a) TERMINATION OF SCHOLARSHIP PROGRAM.—Paragraph (1) of subsection (a) of section 802 of the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1902) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraph (B) as subparagraph (A).

(b) SUBSTITUTION OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE FOR GRANT PROGRAM.—That subsection is further amended—

(1) in paragraph (1), by striking subparagraph (C) and inserting the following new subparagraph (B):

''(B) carrying out activities under paragraph (2) relating to proficiency in foreign languages.'';

(2) by striking paragraph (2);

(3) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(4) by inserting after paragraph (1) the following new paragraph (2):

''(2) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

''(A) IN GENERAL.—As part of the program under paragraph (1), the Secretary shall, in accordance with regulations prescribed by the Secretary, carry out activities at institutions of higher education, which activities shall be designed—

''(i) to produce in professionals an advanced level of proficiency in foreign languages that the Board identifies under section 803(d)(4) as critical to the national security of the United States; and

''(ii) to permit undergraduate and graduate students, and employees of the United States Government, to undertake studies to enhance their foreign language proficiency.

''(B) PARTICIPATION BY FELLOWSHIP RECIPIENTS.—Recipients of fellowships under paragraph (1)(A) may participate in the activities carried out under this paragraph.

''(C) DESIGNATION OF ACTIVITIES.—The activities carried out under this paragraph shall be known as the 'National Flagship Language Initiative'.''.

(c) FUNDING ALLOCATION.—That subsection is further amended by inserting after paragraph (2), as amended by subsection (b) of this section, the following new paragraph (3):

''(3) FUNDING ALLOCATIONS.—Of the amount available for obligation out of the Fund for any fiscal year, the Secretary shall allocate such amount in a manner considered appropriate by the Secretary for purposes of fellowships under paragraph (1)(A) and carrying out activities under paragraph (1)(B).''.

(d) CONFORMING AMENDMENTS.—(1) Section 802 of that Act is further amended—

(A) in subsection (a)(5), as redesignated by subsection (b)(3) of this section, by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and the carrying out of activities,'';

(B) in subsection (b)—

(i) in the matter preceding paragraph (1)—

(I) by striking ''scholarship or''; and

(II) by striking ''or any scholarship''; and

(ii) by striking paragraph (2) and inserting the following new paragraph (2):

''(2) shall, upon completion of such recipient's education under the program, and in accordance with such regulations—

''(A) work in a national security position for a period specified by the Secretary, which period shall be not less than the period for which the fellowship assistance was provided; or

''(B) 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 the field of higher education in a discipline relating to the foreign country, foreign language, area study, counterproliferation study, or international field of study for which the fellowship was awarded for a period specified by the Secretary, which period shall be established in accordance with subparagraph (A); and'';

(C) in subsection (c)—

(i) by striking ''scholarship or'' each place it appears; and

(ii) by striking ''scholarships and'';

(D) in subsection (d)—

(i) by striking ''scholarships, fellowships, or grants'' and inserting ''fellowships, or for the carrying out of activities,''; and

(ii) by striking ''scholarships, fellowships, or grants (as the case may be)'' and inserting ''such fellowships or activities, as the case may be,'';

(E) in subsection (e), by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and carry out activities,'';

(F) in subsection (f), by striking ''grant, scholarship, or''; and

(G) in subsection (g)(1), by striking ''or scholarship''.

(2) Section 803(d) of that Act (50 U.S.C. 1903(d)) is amended—

(A) in paragraph (1), by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships, and carrying out activities,'';

(B) in paragraph (3)—

(i) by striking ''desiring scholarships or fellowships, and institutions of higher education desiring grants under this chapter'' and inserting ''desiring fellowships under section 802(a)(1), and institutions of higher education desiring to carry out activities under section 802(a)(2)''; and

(ii) by striking ''scholarship or'' each place it appears;

(C) in paragraph (4)—

(i) by striking subparagraphs (A) and (C);

(ii) by redesignating subparagraphs (B) and (D) as subparagraphs (A) and (C), respectively;

(iii) in subparagraph (A), as so redesignated, by striking ''section 802(a)(1)(B)'' and inserting ''section 802(a)(1)(A)'';

(iv) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(2); and''; and

(v) in subparagraph (C), as so redesignated, by striking ''scholarships or'';

(D) in paragraph (6), by striking ''scholarship recipients and''; and

(E) in paragraph (7), by striking ''scholarship or''.

(3) Section 804(b)(1) of that Act (50 U.S.C. 1904(b)(1)) is amended by striking ''scholarships, fellowships, and grants'' and inserting ''fellowships and carrying out activities''.

(4) The heading for title VIII of the Intelligence Authorization Act, Fiscal Year 1992 (Public Law 102–183) is amended to read as follows:

''TITLE VIII—NATIONAL SECURITY FELLOWSHIPS AND OTHER EDUCATIONAL SUPPORT''.

(5) The heading of section 802 of that Act is amended to read as follows:

''SEC. 802. PROGRAM OF FELLOWSHIPS AND OTHER EDUCATIONAL SUPPORT.''.

(e) CONSTRUCTION OF AMENDMENTS.—Nothing in the amendments to the David L. Boren National Security Education Act of 1991 made by this section shall affect the validity of any scholarship, fellowship, or grant made or awarded under that Act before the date of the enactment of this Act.

(f) REPORT ON CONVERSION OF FUNDING FROM TRUST FUND TO ANNUAL APPROPRIATIONS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall, in conjunction with the Director of Central Intelligence, submit to the congressional intelligence committees a report on the advisability of converting the funding of the program of fellowships and other educational support under the David L. Boren National Security Education Act of 1991, as amended by this section, from funding through the National Security Education Trust Fund under section 804 of that Act to funding through appropriations.

(2) If the Secretary and the Director determine in the report under paragraph (1) that the conversion of funding referred to in that paragraph is advisable, the report shall include a recommendation for such legislation as the Secretary and the Director consider appropriate to implement the conversion of funding.

(g) REPORT ON MODIFICATION OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE BEFORE IMPLEMENTATION.—If the Secretary, in conjunction with the Director, proposes any modification of the National Flagship Language Initiative under paragraph (2) of section 802(a) of the David L. Boren National Security Education Act of 1991, as amended by subsection (c) of this section, between the date of the enactment of this Act and the date of the implementation of the initiative, the Secretary and the Director shall jointly submit to the congressional intelligence committees a report on the proposed modification.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 310. SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY.

(a) PROGRAM REQUIRED.—The National Security Act of 1947 is amended—

(1) by redesignating title X as title XI;

(2) by redesignating section 1001 as section 1101; and

(3) by inserting after title IX the following new title X:

''TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

''SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY

''SEC. 1001. (a) PROGRAM REQUIRED.—The Director of Central Intelligence shall carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

''(b) ADMINISTRATION.—The Director shall administer the program through the Assistant Director of Central Intelligence for Administration.

''(c) IDENTIFICATION OF FIELDS OF STUDY.—The Director shall identify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

''(d) ELIGIBILITY FOR PARTICIPATION.—An individual eligible to participate in the program is any individual who—

''(1) either—

''(A) is an employee of the intelligence community; or

''(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director;

''(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

''(3) is eligible for a security clearance at the level of Secret or above.

''(e) REGULATIONS.—The Director shall prescribe regulations for purposes of the administration of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by striking the items relating to title X and section 1001 and inserting the following new items:

''TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

''Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

''TITLE XI—OTHER PROVISIONS

''Sec. 1101. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements.''.

SEC. 311. NATIONAL VIRTUAL TRANSLATION CENTER.

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the intelligence community an element with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the National Virtual Translation Center.

(c) ADMINISTRATIVE MATTERS.—(1) The Director shall retain direct supervision and control over the element established under subsection (a).

(2) The element established under subsection (a) shall connect elements of the intelligence community utilizing the most current available information technology that is applicable to the function of the element.

(d) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

SEC. 312. FOREIGN TERRORIST ASSET TRACKING CENTER.

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the Foreign Terrorist Asset Tracking Center.

(c) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

SEC. 313. TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.

(a) REQUIREMENT.—(1) The Director of Central Intelligence, acting as head of the Intelligence Community, shall—

(A) establish and maintain a list of individuals who are known or suspected international terrorists, and of organizations that are known or suspected international terrorist organizations; and

(B) ensure that pertinent information on the list is shared with the departments, agencies, and organizations described by subsection (c).

(2) The list under paragraph (1), and the mechanisms for sharing information on the list, shall be known as the ''Terrorist Identification Classification System''.

(b) ADMINISTRATION.—(1) The Director shall prescribe requirements for the inclusion of an individual or organization on the list required by subsection (a), and for the deletion or omission from the list of an individual or organization currently on the list.

(2) The Director shall ensure that the information utilized to determine the inclusion, or deletion or omission, of an individual or organization on or from the list is derived from all-source intelligence.

(3) The Director shall ensure that the list is maintained in accordance with existing law and regulations governing the collection, storage, and dissemination of intelligence concerning United States persons.

(c) INFORMATION SHARING.—Subject to section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(6)), relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations as the Director considers appropriate.

(d) REPORTING AND CERTIFICATION.—(1) The Director shall review on an annual basis the information provided by various departments and agencies for purposes of the list under subsection (a) in order to determine whether or not the information so provided is derived from the widest possible range of intelligence available to such departments and agencies.

(2) The Director shall, as a result of each review under paragraph (1), certify whether or not the elements of the intelligence community responsible for the collection of intelligence related to the list have provided information for purposes of the list that is derived from the widest possible range of intelligence available to such department and agencies.

(e) REPORT ON CRITERIA FOR INFORMATION SHARING.—(1) Not later then March 1, 2003, the Director shall submit to the congressional intelligence committees a report describing the criteria used to determine which types of information on the list required by subsection (a) are to be shared, and which types of information are not to be shared, with various departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations.

(2) The report shall include a description of the circumstances in which the Director has determined that sharing information on the list with the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) would be inappropriate due to the concerns addressed by section 103(c)(6) of the National Security Act of 1947, relating to the protection of sources and methods, and any instance in which the sharing on information on the list has been inappropriate in light of such concerns.

(f) SYSTEM ADMINISTRATION REQUIREMENTS.—(1) The Director shall, to the maximum extent practicable, ensure the interoperability of the Terrorist Identification Classification System with relevant information systems of the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c).

(2) The Director shall ensure that the System utilizes technologies that are effective in aiding the identification of individuals in the field.

(g) REPORT ON STATUS OF SYSTEM.—(1) Not later than one year after the date of the enactment of this Act, the Director shall, in consultation with the Director of Homeland Security, submit to the congressional intelligence committees a report on the status of the Terrorist Identification Classification System. The report shall contain a certification on the following:

(A) Whether or not the System contains the intelligence information necessary to facilitate the contribution of the System to the domestic security of the United States.

(B) Whether or not the departments and agencies having access to the System have access in a manner that permits such departments and agencies to carry out appropriately their domestic security responsibilities.

(C) Whether or not the System is operating in a manner that maximizes its contribution to the domestic security of the United States.

(D) If a certification under subparagraph (A), (B), or (C) is in the negative, the modifications or enhancements of the System necessary to ensure a future certification in the positive.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 314. ANNUAL REPORT ON FOREIGN COMPANIES INVOLVED IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION THAT RAISE FUNDS IN THE UNITED STATES CAPITAL MARKETS.

(a) ANNUAL REPORT REQUIRED.—The Director of Central Intelligence shall submit to

the appropriate committees of Congress on an annual basis a report setting forth each foreign company described in subsection (b) that raised or attempted to raise funds in the United States capital markets during the preceding year.

(b) COVERED FOREIGN COMPANIES.—A foreign company described in this subsection is any foreign company determined by the Director to be engaged or involved in the proliferation of weapons of mass destruction (including nuclear, biological, or chemical weapons) or the means to deliver such weapons.

(c) SUBMITTAL DATES.—(1) In the case of the appropriate committees of Congress referred to in paragraph (1) of subsection (e), the date each year for the submittal of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(2) In the case of the appropriate committees of Congress referred to in paragraphs (2) and (3) of subsection (e), the date each year for the submittal of the report required by subsection (a) shall be February 1 of such year.

(d) FORM OF REPORTS.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

(2) the Committees on Armed Services, Banking, Housing, and Urban Affairs, and Governmental Affairs of the Senate; and

(3) the Committees on Armed Services, Financial Services, and Government Reform of the House of Representatives.

SEC. 315. TWO-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.

Section 2(i) of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) in subsection (f), by striking ''September 30, 2003'' and inserting ''September 30, 2005''; and

(2) in subsection (i), by striking ''in fiscal year 1998, 1999, 2000, 2001, 2002, or 2003'' and inserting ''in fiscal years 1998 through 2005''.

SEC. 316. ADDITIONAL ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 115 Stat. 1401; 22 U.S.C. 7301 note) is amended by striking ''October 1, 2002'' and inserting ''October 1, 2003''.

TITLE IV—REPORTING REQUIREMENTS

Subtitle A—Submittal of Reports to Intelligence Committees

SEC. 401. DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES.

(a) IN GENERAL.—(1) Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 304 of this Act, is further amended by adding at the end the following new section:

''DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

''SEC. 507. (a) ANNUAL REPORTS.—The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1):

''(1) The annual report on the assessment of the satisfaction of the intelligence community with the collection, analysis, and production of intelligence required by section 102(i).

''(2) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

''(3) The annual report on intelligence required by section 109.

''(4) The annual report on the detail of intelligence community personnel required by section 113.

''(5) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

''(6) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

''(7) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(c).

''(8) The annual report on covert leases required by section 114(d).

''(9) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

''(10) The annual report on the protection of the identities of covert agents required by section 603.

''(11) The annual report on transfers of amounts for acquisition of land by the Central Intelligence Agency required by section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)).

''(12) The annual audit of the Central Intelligence Agency central services program required by section 21(g) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u(g)).

''(13) The annual report on the use of National Security Agency personnel as special policemen required by section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note).

''(14) The annual report of the Inspectors Generals of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

''(15) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

''(16) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

''(17) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

''(18) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. App. 2170b(b)).

''(19) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

''(20) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 50 U.S.C. 402a note).

''(21) The annual report on enhancing protection of national security at the Department of Justice required by section 606(b)(2)(B) of the Counterintelligence Reform Act of 2000 (title VI of Public Law 106–567).

''(22) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets required by section 314 of the Intelligence Authorization Act for Fiscal Year 2003.

''(23) The annual report on counterdrug intelligence matters required by section 417 of the Intelligence Authorization Act for Fiscal Year 2003.

''(24) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291–4(c)(2)).

''(25) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

''(26) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

''(b) SEMI-ANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semi-annual reports shall be the dates each year provided in subsection (c)(2):

''(1) The periodic reports on intelligence provided to the United Nations required by section 112(b)(3).

''(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)).

''(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (5 U.S.C. App.) as required by section 13(b) of that Act.

''(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced chemical munitions required by section 721(b) of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 50 U.S.C. 2366(b)).

''(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS–PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

''(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

''(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

''(c) SUBMITTAL DATES FOR REPORTS.—(1) Except as provided in subsection (d), each annual report listed in subsection (a) shall be submitted not later than February 1.

''(2) Except as provided in subsection (d), each semi-annual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

''(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of an annual report listed in subsection (a) may be postponed until March 1, or the date of the submittal of a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be, if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

''(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the

date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

''(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

''(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such paragraph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

''(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.

''(e) CONSTRUCTION.—The provisions of this section shall not affect the date for the submittal of any report covered by this section to a Member or committee of Congress other than the congressional intelligence committees, or to an official of the Executive branch.''.

(2) The table of sections for the National Security Act of 1947, as amended by section 304 of this Act, is further amended by inserting after the item relating to section 506 the following new item:

''Sec. 507. Dates for submittal of various annual and semi-annual reports to the congressional intelligence committees.''.

(b) REPORT OF GENERAL COUNSEL OF CIA ON EFFORTS TO ENSURE COMPLIANCE WITH REPORTING DEADLINES.—(1) Not later than December 1, 2002, the General Counsel of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the efforts of the Office of the General Counsel of the Central Intelligence Agency to ensure compliance by the elements of the intelligence community with the requirements of section 507 of the National Security Act of 1947, as added by subsection (a).

(c) CONFORMING AMENDMENTS TO EXISTING REPORTING REQUIREMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—(A) Subsection (d) of section 105 of the National Security Act of 1947 (50 U.S.C. 403–5) is amended to read as follows:

''(d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the evaluation described in paragraph (3).

''(2) The Director shall submit each year to the Committee on Foreign Intelligence of the National Security Council, and to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the evaluation described in paragraph (3).

''(3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their respective national missions.

''(4) The Director shall submit each evaluation under this subsection in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.''.

(B) Section 109 of that Act (50 U.S.C. 404d) is amended—

(i) in subsection (a), by striking paragraph (1) and inserting the following new paragraph (1):

''(1)(A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

''(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).'';

(ii) in subsection (c), as amended by section 803(a) of the Intelligence Renewal and Reform Act of 1996 (title VIII of Public Law 104–293; 110 Stat. 3475)—

(I) in paragraph (1), by striking ''The Select Committee on Intelligence of the Senate, the Committee on Appropriations,'' and inserting ''The Committee on Appropriations''; and

(II) in paragraph (2), by striking ''The Permanent Select Committee on Intelligence of the Senate, the Committee on Appropriations,'' and inserting ''The Committee on Appropriations''; and

(iii) by striking subsection (c), as added by section 304(a) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2034).

(C) Section 112(b) of that Act (50 U.S.C. 404g(b)) is amended by adding at the end the following new paragraph:

''(3) In the case of periodic reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.''.

(D) Section 113(c) of that Act (50 U.S.C. 404h(c)) is amended by striking ''Not later than'' and all that follows through ''a report'' and inserting ''Not later each year than the date provided in section 507, the Director of Central Intelligence shall submit to the congressional intelligence committees an annual report''.

(E) Section 114 of that Act (50 U.S.C. 404i) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by striking ''the congressional intelligence committees and'';

(II) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(III) by inserting after paragraph (1) the following new paragraph (2):

''(2) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the report required to be submitted under paragraph (1) during the preceding year.'';

and

(ii) in subsection (b)(1), by striking '', on an annual basis'' and all that follows through ''leadership'' and inserting ''submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507,''.

(F) Section 603 of that Act (50 U.S.C. 423) is amended—

(i) in subsection (a), by adding at the end the following new sentence: ''The date for the submittal of the report shall be the date provided in section 507.''; and

(ii) in subsection (b), by striking the second sentence.

(2) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(A) Section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)) is amended—

(i) by striking ''The Director'' and all that follows through ''an annual'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a''; and

(ii) by inserting ''during the preceding year'' after ''paragraph (1)''.

(B) Section 17(d)(1) of that Act (50 U.S.C. 403q(d)(1)) is amended in the second sentence by striking ''Within thirty days of receipt of such reports,'' and inserting ''Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947,''.

(C) Section 21(g) of that Act (50 U.S.C. 403u(g)) is amended by striking paragraph (3) and inserting the following new paragraphs:

''(3) Not later than 30 days after the completion of an audit under paragraph (1), the Inspector General shall submit a copy of the audit to the Director of the Office of Management and Budget and the Director of Central Intelligence.

''(4) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Inspector General shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a copy of the audit completed under paragraph (1) during the preceding year.''.

(3) NATIONAL SECURITY AGENCY ACT OF 1959.—Section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by striking ''Not later than'' and all that follows through ''the Senate'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report''.

(4) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 13 of the Classified Information Procedures Act (5 U.S.C. App.) is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

''(b) In the case of the semiannual reports (whether oral or written) required to be submitted under subsection (a) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.''.

(5) TITLE 10, UNITED STATES CODE.—(A) Section 437 of title 10, United States Code, is amended—

(i) in subsection (c), by striking ''Not later than'' and all that follows through ''of Congress'' and inserting ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))''; and

(ii) by striking subsection (d).

(B) Section 1611(e) of that title is amended—

(i) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraph (3)'';

(ii) by redesignating paragraph (2) as paragraph (3); and

(iii) by inserting after paragraph (1) the following new paragraph (2):

''(2) In the case of a report required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the Senate and the Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.''.

(6) INTELLIGENCE AUTHORIZATION ACTS.—(A) Section 809 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 108 Stat. 3454; 50 U.S.C. 2170b) is amended—

(i) by striking subsection (b) and inserting the following new subsection (b):

''(b) ANNUAL UPDATE.—

''(1) SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the President shall submit to the congressional intelligence committees a report updating the information referred to in subsection (a)(1)(D).

''(2) SUBMITTAL TO CONGRESSIONAL LEADERSHIP.—Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).

''(3) DEFINITIONS.—In this subsection:

''(A) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

''(B) CONGRESSIONAL LEADERSHIP.—The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''; and

(ii) by redesignating subsection (e) as subsection (d).

(B) Paragraph (6) of section 811(c) of that Act (50 U.S.C. 402a(c)) is amended to read as follows:

''(6)(A) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

''(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

''(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense.''.

(C) Section 721 of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104–293; 110 Stat. 3474; 50 U.S.C. 236) is amended—

(i) in subsection (a), by striking ''Not later than'' and all that follows through ''the Director'' and inserting ''The Director'';

(ii) by redesignating subsection (b) as subsection (c);

(iii) by inserting after subsection (a) the following new subsection (b):

''(b) SUBMITTAL DATES.—(1) The report required by subsection (a) shall be submitted each year to the congressional intelligence committees on a semiannual basis on the dates provided in section 507 of the National Security Act of 1947.

''(2) The report required by subsection (a) shall be submitted each year to the congressional leadership on April 11 and October 11 of such year.

''(3) In this subsection:

''(A) The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

''(B) The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.''; and

(iv) in subsection (c), as so redesignated, by striking ''The reports'' and inserting ''Each report''.

(D) Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105–107; 111 Stat. 2253; 50 U.S.C. 402a note) is amended—

(i) in subsection (a)—

(I) by striking ''Not later than'' and all that follows through ''the Director of Central Intelligence'' and inserting ''The Director of Central Intelligence''; and

(II) by inserting ''on an annual basis'' after ''to Congress''; and

(ii) by adding at the end the end the following new subsection (c):

''(c) SUBMITTAL DATE OF REPORT TO LEADERSHIP OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—The date each year for the submittal to the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives and the Chairman and Ranking Member of the Select Committee on Intelligence of the Senate of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.''.

(E) Section 322(a)(6)(D) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 105–567; 114 Stat. 2844; 22 U.S.C. 7302(a)(6)(D)) is amended—

(i) in clause (i), by striking ''Beginning on'' and inserting ''Except as provided in clause (ii), beginning on'';

(ii) by redesignating clause (ii) as clause (iii);

(iii) by inserting after clause (i) the following new clause (ii):

''(ii) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of reports required to be submitted under clause (i) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal dates for such reports shall be as provided in section 507 of that Act.''; and

(iv) in clause (iii), as so redesignated, by striking ''report'' and inserting ''reports''.

(F) Section 606(b)(2) of the Counterintelligence Reform Act of 2000 (title VI of Public Law 106–567; 114 Stat. 2854) is amended—

(i) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'';

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) In the case of a report required to be submitted under subparagraph (A) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(7) PUBLIC LAW 103–337.—Section 1012(c) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291–4(c)) is amended—

(A) in paragraph (1), by striking ''Not later than'' and inserting ''Except as provided in paragraph (2), not later than'';

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph (2):

''(2) In the case of a report required to be submitted under paragraph (1) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(8) DAVID L. BOREN NATIONAL SECURITY EDUCATION ACT OF 1991.—The David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102–183; 50 U.S.C. 1901 et seq.) is amended—

(A) in section 806(a) (50 U.S.C. 1906(a))—

(i) by inserting ''(1)'' before ''The Secretary'';

(ii) in paragraph (1), as so designated, by striking ''the Congress'' and inserting ''the congressional intelligence committees'';

(iii) by designating the second sentence as paragraph (2) and indenting the left margin of such paragraph, as so designated, two ems;

(iv) in paragraph (2), as so designated, by inserting ''submitted to the President'' after ''The report''; and

(v) by adding at the end the following new paragraph (3):

''(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.''; and

(B) in section 808 (50 U.S.C. 1908), by adding at the end the following new paragraph (5):

''(5) The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.''.

(9) FAIR CREDIT REPORTING ACT.—(A) Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(i) in subparagraph (D), by striking ''Not later than'' and inserting ''Except as provided in subparagraph (E), not later than'';

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

''(E) REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of a report to be submitted under subparagraph (D) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.''.

(B) Section 624(h) of that Act (15 U.S.C. 1681u(h)) is amended—

(i) by inserting ''(1)'' before ''On a semiannual basis,''; and

(ii) by adding at the end the following new paragraph:

''(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.''.

(10) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)) is amended by striking ''On a semiannual'' and all that follows through ''the Senate'' and inserting ''On the dates provided in section 507 of the National Security Act of 1947, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))''.

Subtitle B—Recurring Annual Reports

SEC. 411. ANNUAL ASSESSMENT OF SATISFACTION OF INTELLIGENCE COMMUNITY WITH COLLECTION, ANALYSIS, AND PRODUCTION OF INTELLIGENCE.

Section 102 of the National Security Act of 1947 (50 U.S.C. 403) is amended by adding at the end the following new subsection:

''(i) ANNUAL ASSESSMENT OF SATISFACTION OF INTELLIGENCE COMMUNITY WITH COLLECTION, ANALYSIS, AND PRODUCTION OF INTELLIGENCE.—(1) The Assistant Director of Central Intelligence for Collection and the Assistant Director of Central Intelligence for Analysis and Production shall conduct each year a comprehensive review of the satisfaction of the elements of the intelligence community with the collection, analysis, and production of intelligence during the preceding year.

''(2) Each review for a year under paragraph (1) shall include—

''(A) an evaluation of the effectiveness of the intelligence collection, analysis, and production programs of the intelligence community in such year in meeting the requirements of the intelligence community for intelligence, including whether or not gaps exist in such programs; and

''(B) an assessment of the allocation of resources for the collection, analysis, and production of intelligence in such year to determine whether or not an alternative allocation of such resources would better meet the requirements of the intelligence community for intelligence.

''(3) The Assistant Directors shall jointly submit to the Director of Central Intelligence a report on each review conducted under paragraph (1). Each report shall—

''(A) set forth the results of the evaluation and assessment under paragraph (2);

''(B) describe any significant successes or failures in the collection, analysis, or production of intelligence in the year covered by such report; and

''(C) include any recommendations regarding the collection, analysis, or production of intelligence that the Assistant Directors consider appropriate.

''(4) The Director of Central Intelligence shall transmit to the congressional intelligence committees each report submitted under paragraph (3). The Director shall include in the transmittal of such report any comments and recommendations regarding such report that the Director considers appropriate.

''(5) The submittal date for a report under paragraph (4) each year shall be the date provided in section 507.''.

SEC. 412. ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.

Section 114 of the National Security Act of 1947, as amended by section 303(b)(6) of this Act, is further amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection (c):

''(c) ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report assessing the following:

''(A) The current threat of attack on the United States using ballistic missiles or cruise missiles.

''(B) The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

''(2) Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.''.

SEC. 413. ANNUAL REPORT ON COVERT LEASES.

Section 114 of the National Security Act of 1947, as amended by section 412 of this Act, is further amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

''(d) ANNUAL REPORT ON COVERT LEASES.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report on each covert lease of an element of the intelligence community that is in force as of the end of the preceding year.

''(2) Each report under paragraph (1) shall include the following:

''(A) A list of each lease described by that paragraph.

''(B) For each lease—

''(i) the cost of such lease;

''(ii) the duration of such lease;

''(iii) the purpose of such lease; and

''(iv) the directorate or office that controls such lease.''.

SEC. 414. ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS OF CERTAIN ELEMENTS OF THE INTELLIGENCE COMMUNITY FOR AUDITING PURPOSES.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 114 the following new section:

''ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS FOR AUDITING PURPOSES

''SEC. 114A. Not later each year than the date provided in section 507, the Director of Central Intelligence, Director of the National Security Agency, Director of the Defense Intelligence Agency, and Director of the National Imagery and Mapping Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.''.

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 114 the following new item:

''Sec. 114A. Annual report on improvement of financial statements for auditing purposes.''.

SEC. 415. ANNUAL REPORT ON ACTIVITIES OF FEDERAL BUREAU OF INVESTIGATION PERSONNEL OUTSIDE THE UNITED STATES.

(a) ANNUAL REPORT.—Chapter 33 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States

''(a) The Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress each year a report on the activities of personnel of the Federal Bureau of Investigation outside the United States.

''(b) The report under subsection (a) shall include the following:

''(1) For the year preceding the year in which the report is required to be submitted—

''(A) the number of personnel of the Bureau posted or detailed outside the United States during the year;

''(B) a description of the coordination of the investigations, asset handling, liaison, and operational activities of the Bureau during the year with other elements of the intelligence community; and

''(C) a description of the extent to which information derived from activities described in subparagraph (B) was shared with other elements of the intelligence community.

''(2) For the year in which the report is required to be submitted—

''(A) a description of the plans, if any, of the Director—

''(i) to modify the number of personnel of the Bureau posted or detailed outside the United States; or

''(ii) to modify the scope of the activities of personnel of the Bureau posted or detailed outside the United States; and

''(B) a description of the manner and extent to which information derived from activities of the Bureau described in paragraph (1)(B) during the year will be shared with other elements of the intelligence community.

''(c)(1) In the case of the committees of Congress specified in subsection (d)(1), the date of the submittal each year of the report required by subsection (a) shall be February 1 of such year.

''(2) In the case of the committees of Congress specified in subsection (d)(2), the date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.

''(d) In this section, the term 'appropriate committees of Congress' means—

''(1) the Committees on the Judiciary of the Senate and House of Representatives; and

''(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of that title is amended by inserting after the item relating to section 540B the following new item:

''540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.''.

SEC. 416. ANNUAL REPORTS OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY ON PROPOSED RESOURCES AND ACTIVITIES OF THEIR OFFICES.

Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (f), by striking ''this section'' and inserting ''subsections (a) through (e)'';

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following new subsection (g):

''(g)(1) The Inspector General of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

''(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the office of such Inspector General in such fiscal year.

''(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

''(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

''(D) Any matters that such Inspector General considers appropriate regarding the

independence and effectiveness of the office of such Inspector General.

''(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947.

''(3) In this subsection, the term 'congressional intelligence committees' shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).''.

SEC. 417. ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.

(a) ANNUAL REPORT.—The Counterdrug Intelligence Coordinating Group shall submit to the appropriate committees of Congress each year a report on current counterdrug intelligence matters. The report shall include the recommendations of the Counterdrug Intelligence Coordinating Group on the appropriate number of permanent staff, and of detailed personnel, for the staff of the Counterdrug Intelligence Executive Secretariat.

(b) SUBMITTAL DATE.—(1) In the case of the committees of Congress specified in subsection (c)(1), the date of the submittal each year of the report required by subsection (a) shall be February 1 of such year.

(2) In the case of the committees of Congress specified in subsection (c)(2), the date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 401 of this Act.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committees on Appropriations of the Senate and House of Representatives; and

(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).

Subtitle C—Other Reports

SEC. 431. REPORT ON EFFECT OF COUNTRY-RELEASE RESTRICTIONS ON ALLIED INTELLIGENCE-SHARING RELATIONSHIPS.

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall, in consultation with the Secretary of Defense, submit to the congressional intelligence committees a report containing an assessment of the effect of the use of ''NOFORN'' classifications, and of other country-release policies, procedures, and classification restrictions, on intelligence-sharing relationships and coordinated intelligence operations and military operations between the United States and its allies. The report shall include an assessment of the effect of the use of such classifications, and of such policies, procedures, and restrictions, on counterterrorism operations in Afghanistan and elsewhere.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committee'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 432. EVALUATION OF POLICIES AND PROCEDURES OF DEPARTMENT OF STATE ON PROTECTION OF CLASSIFIED INFORMATION AT DEPARTMENT HEADQUARTERS.

(a) EVALUATION REQUIRED.—Not later than December 31 of 2002, 2003, and 2004, the Inspector General of the Department of State shall conduct an evaluation of the policies and procedures of the Department on the protection of classified information at the Headquarters of the Department, including compliance with the directives of the Director of Central Intelligence (DCIDs) regarding the storage and handling of Sensitive Compartmented Information (SCI) material.

(b) ANNUAL REPORT.—Except as provided in subsection (c), not later than February 1 of 2003, 2004, and 2005, the Inspector General shall submit to the congressional intelligence committees a report on the evaluation conducted under subsection (a) during the preceding year.

(c) EXCEPTION.—The date each year for the submittal of a report under subsection (b) may be postponed in accordance with section 507(d) of the National Security Act of 1947, as added by section 401 of this Act.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 433. STUDY OF DEPARTMENT OF STATE CONSULAR SERVICES.

(a) SENSE OF CONGRESS.—Congress compliments the officers of the Consular Service on the important role they perform daily, many times under difficult conditions, at United States embassies throughout the world. However, Congress is concerned that Consular Service officers, who provide the first line of defense against the admission of undesirable persons into the United States, are entry-level personnel and rotate out of Consular Service assignments as soon as possible.

(b) STUDY.—The Secretary of State shall conduct a study of—

(1) the Consular Services program of the Department of State and the organizational structure of the Consular Service within the Department, including promotion and training policies, rotation frequency, level of experience and seniority, level of oversight provided by senior Consular Service personnel, and consistency of consular services provided among the various United States embassies and consulates; and

(2) the feasibility of establishing a separate employment track within the Department of State for employees who would serve in the Consular Service on a permanent basis and not rotate out of Consular Service assignments.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a report containing the findings of the study conducted under subsection (b).

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate; and

(2) the Committee on International Relations and the Permanent Select Committee on Intelligence of the House of Representatives.

Subtitle D—Repeal of Certain Report Requirements

SEC. 441. REPEAL OF CERTAIN REPORT REQUIREMENTS.

(a) ANNUAL REPORT ON EXERCISE OF NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION PAY AUTHORITY.—Section 301(j) of the National Security Act of 1947 (50 U.S.C. 409a(j)), as amended by section 303(b)(2)(B) of this Act, is further amended—

(1) by striking ''REPORTING REQUIREMENTS.—'' and all that follows through ''The Director'' and inserting ''NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director''; and

(2) by striking paragraph (2).

(b) ANNUAL REPORT ON USE OF CIA PERSONNEL AS SPECIAL POLICEMEN.—Section 15(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o(a)) is amended by striking paragraph (5).

TITLE V—COUNTERINTELLIGENCE ACTIVITIES

SEC. 501. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the ''Counterintelligence Enhancement Act of 2002''.

(b) PURPOSE.—The purpose of this title is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

(3) providing for the integration of all the counterintelligence activities of the United States Government.

SEC. 502. NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) ESTABLISHMENT.—(1) There shall be a National Counterintelligence Executive, who shall be appointed by the President.

(2) It is the sense of Congress that the President should seek the views of the Attorney General, Secretary of Defense, and Director of Central Intelligence in selecting an individual for appointment as the Executive.

(b) MISSION.—The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) DUTIES.—Subject to the direction and control of the President, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (c).

(2) To act as chairperson of the National Counterintelligence Policy Board under section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359; 50 U.S.C. 402a), as amended by section 503 of this Act.

(3) To act as head of the Office of the National Counterintelligence Executive under section 504.

(4) To participate as an observer on such boards, committees, and entities of the Executive branch as the President considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 504.

SEC. 503. NATIONAL COUNTERINTELLIGENCE POLICY BOARD.

(a) CHAIRPERSON.—Section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VII of Public Law 103–359; 50 U.S.C. 402a) is amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (a) the following new subsection (b):

''(b) CHAIRPERSON.—The National Counterintelligence Executive under section 502 of the Counterintelligence Enhancement Act of 2002 shall serve as the chairperson of the Board.''.

(b) MEMBERSHIP.—That section is further amended by inserting after subsection (b), as amended by subsection (a)(3) of this section, the following new subsection (c):

''(c) MEMBERSHIP.—The membership of the National Counterintelligence Policy Board shall consist of the following:

''(1) The National Counterintelligence Executive.

''(2) Senior personnel of departments and elements of the United States Government,

appointed by the head of the department or element concerned, as follows:

''(A) The Department of Justice, including the Federal Bureau of Investigation.

''(B) The Department of Defense, including the Joint Chiefs of Staff.

''(C) The Department of State.

''(D) The Department of Energy.

''(E) The Central Intelligence Agency.

''(F) Any other department, agency, or element of the United States Government specified by the President.''.

(c) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—That section is further amended by inserting after subsection (c), as amended by subsection (b) of this section, the following new subsection:

''(d) FUNCTIONS AND DISCHARGE OF FUNCTIONS.—(1) The Board shall—

''(A) serve as the principal mechanism for—

''(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

''(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

''(B) act as an interagency working group to—

''(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

''(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 504(e)(2) of that Act.

''(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.''.

SEC. 504. OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) ESTABLISHMENT.—There shall be an Office of the National Counterintelligence Executive.

(b) HEAD OF OFFICE.—The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) LOCATION OF OFFICE.—The Office of the National Counterintelligence Executive shall be located in the Executive Office of the President.

(d) GENERAL COUNSEL.—(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

(2) The general counsel shall—

(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

(C) carry out such other duties as the Executive may specify.

(e) FUNCTIONS.—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) NATIONAL COUNTERINTELLIGENCE STRATEGY.—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) IMPLEMENTATION OF NATIONAL COUNTERINTELLIGENCE STRATEGY.—To evaluate on an on-going basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) NATIONAL COUNTERINTELLIGENCE STRATEGIC ANALYSES.—As directed by the Director of Central Intelligence and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) NATIONAL COUNTERINTELLIGENCE PROGRAM BUDGET.—In consultation with the Director of Central Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocations plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) NATIONAL COUNTERINTELLIGENCE COLLECTION AND TARGETING COORDINATION.—To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) NATIONAL COUNTERINTELLIGENCE OUTREACH, WATCH, AND WARNING.—

(A) COUNTERINTELLIGENCE VULNERABILITY SURVEYS.—To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) OUTREACH.—To carry out and coordinate outreach programs and activities on counterintelligence to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) RESEARCH AND DEVELOPMENT.—To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) TRAINING AND PROFESSIONAL DEVELOPMENT.—To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.

(f) ADDITIONAL REQUIREMENTS REGARDING NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT AND NATIONAL COUNTERINTELLIGENCE STRATEGY.—(1) A National Threat Identification and Prioritization Assessment under subsection (e)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (e)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, the term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(g) PERSONNEL.—(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or non-reimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d) or any other provision of law limiting the period of the detail of personnel on a non-reimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a non-reimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the personnel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

(4) Positions in the Office shall be excepted service positions for purposes of title 5, United States Code.

(h) SUPPORT.—(1) The Attorney General, Secretary of Defense, and Director of Central Intelligence may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the Director of Central Intelligence, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

(3) Support provided under this subsection may be provided on a reimbursable or non-reimbursable basis, at the election of the official providing such support.

(i) AVAILABILITY OF FUNDS FOR REIMBURSEMENT.—The National Counterintelligence Executive may, from amounts available for the Office, transfer to a department or agency detailing personnel under subsection (g), or providing support under subsection (h), on a

reimbursable basis amounts appropriate to reimburse such department or agency for the detail of such personnel or the provision of such support, as the case may be.

(j) CONTRACTS.—(1) Subject to paragraph (2), the National Counterintelligence Executive may enter into any contract, lease, cooperative agreement, or other transaction that the Executive considers appropriate to carry out the functions of the Office of the National Counterintelligence Executive under this section.

(2) The authority under paragraph (1) to enter into contracts, leases, cooperative agreements, and other transactions shall be subject to any terms, conditions, and limitations applicable to the Central Intelligence Agency under law with respect to similar contracts, leases, cooperative agreements, and other transactions.

(k) TREATMENT OF ACTIVITIES UNDER CERTAIN ADMINISTRATIVE LAWS.—(1) The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Office of the National Counterintelligence Executive.

(2) The files of the Office shall be treated as operational files of the Central Intelligence Agency for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(l) OVERSIGHT BY CONGRESS.—The location of the Office of the National Counterintelligence Executive within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(m) DESIGNATION OF OFFICE AS ELEMENT OF INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) in subparagraph (I), by striking ''and'' at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph (J):

''(J) the Office of the National Counterintelligence Executive; and''.

TITLE VI—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

SEC. 601. FINDINGS.

Congress makes the following findings:

(1) Research and development efforts under the purview of the intelligence community are vitally important to the national security of the United States.

(2) The intelligence community must operate in a dynamic, highly-challenging environment, characterized by rapid technological growth, against a growing number of hostile, technically-sophisticated threats. Research and development programs under the purview of the intelligence community are critical to ensuring that intelligence agencies, and their personnel, are provided with important technological capabilities to detect, characterize, assess, and ultimately counter the full range of threats to the national security of the United States.

(3) There is a need to review the full range of current research and development programs under the purview of the intelligence community, evaluate such programs against the scientific and technological fields judged to be of most importance, and articulate program and resource priorities for future research and development activities to ensure a unified and coherent research and development program across the entire intelligence community.

SEC. 602. NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''National Commission for the Review of the Research and Development Programs of the United States Intelligence Community'' (in this title referred to as the ''Commission'').

(b) COMPOSITION.—The Commission shall be composed of 12 members, as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.

(3) Three members appointed by the Majority Leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

(4) Two members appointed by the Minority Leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

(5) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

(6) Two members appointed by the Minority Leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

(c) MEMBERSHIP.—(1) The individuals appointed from private life as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

(A) research and development programs;

(B) technology discovery and insertion;

(C) use of intelligence information by national policymakers and military leaders; or

(D) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(d) CO-CHAIRS.—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

(e) APPOINTMENT; INITIAL MEETING.—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

(f) MEETINGS; QUORUM; VACANCIES.—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

(g) ACTIONS OF COMMISSION.—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

(h) DUTIES.—The duties of the Commission shall be—

(1) to conduct, until not later than the date on which the Commission submits the report under section 607(a), the review described in subsection (i); and

(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

(i) REVIEW.—The Commission shall review the status of research and development programs and activities within the intelligence community, including—

(1) an assessment of the advisability of modifying the scope of research and development for purposes of such programs and activities;

(2) a review of the particular individual research and development activities under such programs;

(3) an evaluation of the current allocation of resources for research and development, including whether the allocation of such resources for that purpose should be modified;

(4) an identification of the scientific and technological fields judged to be of most importance to the intelligence community;

(5) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of other departments and agencies of the Federal Government; and

(6) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of the private sector.

SEC. 603. POWERS OF COMMISSION.

(a) IN GENERAL.—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony,

receive such evidence, and administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(2) Subpoenas may be issued under subparagraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(d) ASSISTANCE FROM FEDERAL AGENCIES.—(1) The Director of Central Intelligence shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

(e) PROHIBITION ON WITHHOLDING INFORMATION.—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(f) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(g) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

SEC. 604. STAFF OF COMMISSION.

(a) IN GENERAL.—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III or chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(b) CONSULTANT SERVICES.—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

SEC. 605. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SEC. 606. TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.

(a) IN GENERAL.—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) ACCESS AFTER TERMINATION OF COMMISSION.—Notwithstanding any other provision of law, after the termination of the Commission under section 607, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

SEC. 607. FINAL REPORT; TERMINATION.

(a) FINAL REPORT.—Not later than September 1, 2003, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 602(h)(2).

(b) TERMINATION.—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report referred to in that paragraph and disseminating the report.

SEC. 608. ASSESSMENTS OF FINAL REPORT.

Not later than 60 days after receipt of the final report under section 607(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

SEC. 609. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.

(a) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) FREEDOM OF INFORMATION ACT.—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

SEC. 610. FUNDING.

(a) TRANSFER FROM THE COMMUNITY MANAGEMENT ACCOUNT.—Of the amounts authorized to be appropriated by this Act for the Intelligence Technology Innovation Center of the Community Management Account, the Deputy Director of Central Intelligence for Community Management shall transfer to the Director of Central Intelligence $2,000,000 for purposes of the activities of the Commission under this title.

(b) AVAILABILITY IN GENERAL.—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

(c) DURATION OF AVAILABILITY.—Amounts made available to the Commission under subsection (b) shall remain available until expended.

SEC. 611. DEFINITIONS.

In this title:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) INTELLIGENCE COMMUNITY.—The term ''intelligence community'' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DODD. Mr. President, I wise to announce that the Committee on Rules and Administration will meet at 9:00 a.m., in SR–301, Russell Senate Office Building, on Thursday, October 3, 2002, to hold a hearing on the nomination of Bruce R. James, of Nevada, to be Public Printer.

Individuals and organizations wishing to submit a statement for the hearing record are requested to contact Carole Blessington of the Rules Committee staff on 202–224–0278. For further information regarding this hearing, please contact Ms. Blessington.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 9:30 a.m., in open session to continue to receive testimony on U.S. policy on Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet jointly with the Committee on Finance to conduct a hearing entitled, ''Innovative Finance: Beyond the Highway Trust Fund,'' to explore alternatives for financing our surface transportation system.

The hearing will be held on Wednesday, September 25, 2002, at 9:30 a.m., in the Finance Committee's hearing room, SD–215.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 9:30 a.m., to hear testimony on ''Innovative Financing: Beyond the Highway Trust Fund,'' to explore alternatives for financing our surface transportation system.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 25, 2002 at 2:00 p.m. to hold a hearing on Iraq.

AGENDA

Witnesses: The Honorable Richard C. Holbrooke, Former U.S. Ambassador to the United Nations, Counselor, Council on Foreign Relations New York, NY; the Honorable Robert C. McFarlane, Former National Security Advisor, Chairman, Energy and Communications Solutions, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in Executive Session during the session of the Senate on Wednesday, September 25, 2002, at 10:00 a.m. in SD–430. The Committee will consider the following agenda.

AGENDA

S. ___, Reauthorization of the Office of Educational Research and Improvement (OERI)

S. ___, Reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA)

S. 2499, The Food Allergen Consumer Protection Act

S. 830, Breast Cancer and Environmental Research Act of 2001

S. ___, Birth Defects and Developmental Disabilities Prevention Act of 2002

S. 1806, The Pharmacy Education Aid Act of 2001

S. 969, The Lyme and Infectious Disease Information and fairness in treatment (LIFT) Act.

S. ___, Quality of Care for Individuals with Cancer Act

S. ___, the Diabetes Prevention and Treatment Act

S. 2821, The Improved Nutrition and Physical Activity (IMPACT) Act

Nominations:

Maria Mercedes Guillemard, of Puerto Rico, to be a Member on the National Museum services Board;

David Wenzel, of Pennsylvania, to be a Member on the National Council on Disability;

Marco Rodriguez, of California, to be a Member on the National Council on Diability;

Milton Aponte, of Florida, to be a Member on the National Council on Disability;

Michele Guillermin, of Maryland, to be Chief Financial Officer, Corporation for National and Community Service;

Glenn Bernard Anderson, of Arkansas, to be a Member on the National Council on Disability;

Barbara Gillcrist, of New Mexico, to be a Member on the National Council on Disability;

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, September 25, 2002, at 10:00 a.m. in Room 485 of the Russell Senate Office Building to conduct a business meeting to consider S. 958, the Western Shoshone Claims Distribution Act, and H.R. 2880, the Five Nations Citizens Land Reform Act, to be followed immediately by a hearing to receive testimony on the President's appointment of Quanah Crossland stamps to serve as Commission for the Administration for Native Americans, and the appointment of Phil Hogen to serve as Chairman of the National Indian Gaming Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Asbestos Litigation'' on Wednesday, September 25, 2002 in Dirksen Room 106 at 10:00 a.m.

TENTATIVE WITNESS LIST

Panel I: The Honorable Max Baucus, United States Senator (D–MT); The Honorable Ben Nelson, United States Senator (D–NE).

Panel II: David T. Austern, Esq., General Counsel, Manville Personal Injury Settlement Trust, Fairfax, VA; Frederick M. Baron, Esq., Baron & Budd, P.C., Dallas, TX; Walter E. Dellinger, Esq., O'Melveny & Myers LLP, Washington, D.C., Jonathan P. Hiatt, Esq., General Counsel, AFL–CIO, Washington, D.C.; Steven Kazan, Esq., Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farrise, A Professional Law Corporation, Oakland, CA.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CONSUMER AFFAIRS

Mr. REID. Mr. President: I ask unanimous consent that the Subcommittee on Consumer Affairs to be authorized to meet on Wednesday, September 25, 2002, at 2:30 p.m. on State of the Tourism Industry one Year After September 11th.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HOUSING AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Housing and Transportation of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, September 25, 2002, at 2:30 p.m. to conduct an oversight hearing on ''Affordable Housing Production and working families, Part 3.''

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNIZING MARY BAKER EDDY

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 458, just received from the House.

The PRESIDING OFFICER (Mr. DAYTON). The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 458) recognizing and commending Mary Baker Eddy's achievements and the Mary Baker Eddy Library for the Betterment of Humanity.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 458) was agreed to.

The preamble was agreed to.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Calendar No. 490, S. 2506, the intelligence authorization; that the committee-reported amendments be withdrawn; the only amendment in order to be a Graham amendment; that the substitute amendment be agreed to, the bill, as amended, be read three times, and the Intelligence Committee then be discharged from further consideration of H.R. 4628, the House companion, and the Senate then proceed to its consideration; that all after the enacting clause be stricken, and the text of S. 2506, as amended, be inserted in lieu thereof; that the bill be read the third time, passed, and the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate without intervening action or debate; and that S. 2506 be returned to the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, S. 2506, a bill to authorize appropriations for the intelligence community for fiscal year 2003, represents the first intelligence budget for the War on Terrorism—a war where intelligence is our most effective weapon. The Congress historically has considered the annual Intelligence Authorization bill to be important legislation, but now it has become a matter of national survival. Without an enhanced and effective intelligence capability integrated into the significant capabilities of the U.S. military and tightly linked to law enforcement and the new Department of Homeland Security, we will continue be at the mercy of international terrorists bent on the destruction of our society and we may suffer even more devastating attacks.

Since the tragedy of September 11, the men and women of the U.S. intelligence community have worked every day, nonstop to protect us against those who would seek to do us harm. This bill represents an important step in our effort to provide them with the necessary resources and authorities to get the job done. In its budget request for fiscal years 2003 through 2007, the administration proposes significant resource increases for our national intelligence effort. Such increases build upon substantial supplemental appropriations approved for the intelligence community for fiscal years 2001 and 2002 after September 11.

As the community has noted in past years, the challenges confronting the intelligence community have, for too long, received inadequate fiscal attention. I am encouraged by the commitment of resources proposed by the administration for fiscal year 2003 and beyond. The intelligence community is poised to benefit from an infusion of additional people and funding that can provide momentum for a range of intelligence efforts against those individuals, groups, and states—to include al-Qaida and Osama bin Laden—that threaten our security and safety. As the intelligence community is our first line of defense, the administration's fiscal year 2003 request for the National Foreign Intelligence Program is a necessary first step in correcting the deficiencies of the past.

Earlier this year, the Select Committee on Intelligence conducted a thorough review of the administration's budget request for the National Foreign Intelligence Program for fiscal year 2003. This review included an extensive examination of the individual programs and agencies—such as the Central Intelligence Agency and the National Reconnaissance Office—which comprise the U.S. intelligence community. Building on the approach we took last year, our review once again focused on specific priority areas as well as individual agencies and functions.

The committee highlighted five areas that must continue to receive priority attention in the near term if intelligence is to fulfill its role in our overall national security strategy and the ongoing war on terrorism. They are: (1) revitalizing the National Security Agency; (2) correcting deficiencies in human intelligence; (3) addressing the imbalance between intelligence collection and analysis; (4) rebuilding a robust research and development program; and (5) increasing the capabilities of measurements and signatures intelligence to fulfill key intelligence requirements. These priorities address the basic building blocks of intelligence—capabilities that will support the War on Terrorism as well as the multitude of other intelligence requirements. S. 2506 authorizes additional resources for these areas.

While the additional funding for intelligence programs goes a long way towards alleviating existing near term deficiencies, other long term problems remain to be addressed. We face a looming crisis in our ability to collect critical information from key platforms as a result of unexpected failures; a major acquisition program is experiencing significant cost overruns and schedule slippage; and, we have inadequate funding to ensure that information collected by the next generation of space-based sensors will be processed, exploited, and disseminated appropriately to intelligence analysts.

Higher levels or resources, however, will not address all of the important challenges which confront the intelligence community. The intelligence community must overcome an aversion to risk that has crept into the culture since the end of the cold war. The world will be a dangerous and unstable place for foreseeable future. In order to protect our country, we will need to deal with unsavory characters and we will need to operate in unsafe parts of the world. The CIA has suffered casualties in the war in Afghanistan and we must steel ourselves to the inevitability of more loss of life. Some problems, such as the intelligence community's current organization or its ability to exchange information effectively and efficiently with other government agencies, may require additional legislative actions in the future. The bicameral investigation into the events of September 11 is ongoing and I expect that the investigation will result in recommendations for actions to be taken to strengthened our intelligence community.

The bill includes legislative provisions that are important additions to the work the Intelligence Committee did last year—both in the fiscal year 2002 Intelligence Authorization Act and the USA–PATRIOT Act. I will summarize a few of these provisions:

Section 304 is designed to make improvements in the information available to the Committee each year as it prepares its budget authorizations in the areas of counterterrorism, counterproliferation, counternarcotics and counterintelligence. The provision requires the administration each year to specify in its budget submission the aggregate amount requested in each of these four critical areas. Currently, these numbers are spread throughout the budget submission in the requests for particular programs in individual agencies. The committee believes that it is essential to rational decision-making in the budget process—both for the administration and for Congress—to have ''cross-cut'' budget numbers so that it is clear how much money is being requested across the Government in these important areas.

Section 306 is a provision that supplements changes implemented under the USA–PATRIOT Act. Under that act, foreign intelligence information that has been collected by law enforcement agencies in the course of criminal investigations can, and in fact must, be provided to the Director of Central Intelligence to be included in the all-source analytic products prepared by intelligence analysts. In other words, these ''dots'' of foreign intelligence that are collected in criminal cases, including grand jury proceedings and criminal wiretaps, now flow to the intelligence community. The purpose of Section 306 is to clarify that the intelligence committees of the Congress, in the conduct of their oversight of the intelligence community, shall also have access to that law-enforcement-derived information that has been provided to the intelligence agencies. The intelligence committees cannot conduct effective oversight of the intelligence agencies if there are categories of information upon which intelligence operations and analyses are based that is off limits of the committees.

Sections 311 and 312 follow up on provisions that were included in the USA–PATRIOT Act and the FY02 Intelligence Authorization bill. Congress required the Director of Central Intelligence to review and report to the intelligence committees his recommendations of how best to create

two new centers: ''The National Virtual Translation Center'' and the ''Foreign Terrorist Asset Tracking Center.'' We have finally received those reports and Sections 311 and 312 establish those centers in law as part of the intelligence community. We are hopeful that the very difficult problems of translation resources in the intelligence community and the efficient and effective tracking of terrorist finances will be significantly enhanced by the creation of these centers.

Section 313 is similar to S. 2459, a bill introduced by Senator WYDEN. This excellent provision addresses the problem we have all heard so much about in the press: Is there a complete and accurate list of known or suspected international terrorists that is derived from all-source information available to the U.S. Government and that is provided to all agencies whose job is to protect our borders from penetration by terrorists? This provision requires the establishment of a ''Terrorist Identification Classification System'' that will be available to all Federal agencies, State and local governments and, as appropriate, to foreign governments. It will solve a problem that we have identified in our committee of the proliferation of ''watch lists'' in our Government—all with different suspected terrorists names, used by different agencies for different purposes.

Title V of the bill establishes in statute the National Counterintelligence Executive, the ''NCIX''. At the urging of our committee, the President created the NCIX in 2001 to provide the U.S. Government in the counterintelligence area with (1) strong, policy-driven leadership; (2) new and enhanced counterintelligence capabilities; and (3) coherent program, strategies and cooperative approaches. The committee's oversight of this fledging effort revealed problems, however, that Title V is designed to remedy. By establishing the NCIX in statute and placing it in the Executive Office of the President, with oversight by the intelligence committees, the committee believes that the NCIX leadership problems, resource constraints and, overall, lack of sufficient status and visibility within the Government, will be remedied.

Finally, Title VI of the bill establishes a National Commission for Review of Research and Development Programs of the United States Intelligence Community. The committee supports a strong intelligence community R & D program. Research and Development supports virtually all other intelligence community efforts by laying the groundwork for the necessary modernization and innovation of intelligence capabilities. The purpose of the Commission, to be composed of government officials and private sector experts, is to review the current state of research and development in the intelligence community and, in particular, to determine if the level of resources devoted to various efforts across the community is in line with those scientific and technological fields judged to be of the greatest importance to the intelligence needs of the future.

I mentioned earlier the tireless efforts of the men and women of the intelligence community. I am privileged as chairman of the Intelligence Committee to travel to the different agencies around Washington and to visit various installations around the world. I am consistently impressed with competence, professionalism and dedication of these individuals. For years they have been unsung heroes, serving under difficult conditions and often putting their lives on the line. They do this not for money or glory—indeed the nature of their work means that success goes unacknowledged—but because they love their country and they have a profound sense of duty. We owe these people a debt of gratitude of their sacrifices, now more than ever before.

I must mention another group of people who are critical to the process of bringing this legislation to the floor. The staff of the Senate Intelligence Committee has once again done a superb job preparing this bill. The staff is led by Al Cumming the staff director and Bill Duhnke the minority staff director. They have guided the staff through a very difficult year including the anthrax evacuation and the launching of the joint investigation with the House Intelligence Committee into events related to September 11. Through all the turmoil they kept the committee focused on our work and our oversight responsibilities. They are assisted by Kathleen McGhee, Chief Clerk, Bob Filippone, Deputy Staff Director, Jim Hensler, Deputy Minority Staff Director, Vicki Divoll, General Counsel, Chris Ford, Minority Counsel, Melvin Dubee, Budget Director, and the rest of a very talented staff. A special thanks goes to Jim Wolfe, the committee's Security Director for his efforts to ensure the security of our people and our classified materials last fall and winter when the committee was forced to work from temporary offices during the anthrax episode.

Finally and most importantly, I must acknowledge the excellent cooperation and support of Vice Chairman SHELBY. Senator SHELBY has served on the committee for almost 8 years and his experience and commitment have been critical to the success of the committee. We have not agreed on everything but we have agreed on the goal of giving the American people the best intelligence organization possible and have worked together toward that goal. I have appreciated his support and advice.

At this time in our Nation's history, our support for the U.S. intelligence community is vitally important. I urge support for this bill.

Mr. SHELBY. Mr. President, we have before us the Intelligence Authorization bill for fiscal year 2003. This is a bill which we have debated extensively in the Select Committee on Intelligence, and which we reported out in May.

Especially during the global war against terrorism in which our nation is currently engaged, it is important that we give the U.S. intelligence community the support and encouragement it needs to do its vital job—and that we hold it properly accountable for its activities through the oversight process. This bill provides healthy measures of support, encouragement, and accountability, and I urge my colleagues to support it.

While we cannot discuss actual budget figures in an unclassified setting, I can assure my colleagues that this bill provides a significant increase in funding to the U.S. intelligence community, money that it needs and will continue to need as we demand more and better work from it than ever before. Even the world's sole remaining superpower with unchallenged military supremacy cannot be everywhere, and the war on terrorism taxes our capabilities in new and often unprecedented ways. More than anything else, this current conflict is an intelligence-dependent war. We need to do everything we can to ensure that our polilcymakers and our military commanders get the best possible intelligence support. This bill will help ensure that they do.

In addition, our bill also increases the Intelligence Community's accountability to the elected representatives of the American people whose job it is to ensure proper oversight of our intelligence bureaucracy. I would like to mention just a few examples of this.

First, our bill clarifies, rationalizes, and codifies the series of reporting requirements that form such an important part of the process by which Congress obtains information and analyses of intelligence community activities.

The bill also ensures that the intelligence community will be able to continue to fulfill its reporting requirements to the intelligence oversight committees of Congress in the wake of the changes to information-sharing laws contained in the USA PATRIOT Act of 2001.

Our bill also requires that the National Foreign Intelligence Program budget provide specific breakdowns for annual budget aggregates relating to counterterrorism, counterproliferation, counternarcotics, and counterintelligence. This greater specificity, we hope, will enable Congress better to assess intelligence community resourcing decisions and ensure that the right priorities receive our support in years ahead.

The two sides of our committee have not agreed on every detail of the classified appendix that accompanies our report on this bill, but on balance we feel that this is a piece of legislation that will provide much-needed support for—and improve the accountability of—the United States intelligence community.

I urge the Senate to pass this bill promptly.

The committee amendments were withdrawn.

The amendment (No. 4752), in the nature of a substitute, was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 4628), as amended, was read the third time and passed.

The Presiding Officer (Mr. DAYTON) appointed Mr. GRAHAM, Mr. LEVIN, Mr. ROCKEFELLER, Mrs. FEINSTEIN, Mr. WYDEN, Mr. DURBIN, Mr. BAYH, Mr. EDWARDS, Ms. MIKULSKI, Mr. SHELBY, Mr. KYL, Mr. INHOFE, Mr. HATCH, Mr. ROBERTS, Mr. DEWINE, Mr. THOMPSON, and Mr. LUGAR conferees on the part of the Senate.

Mr. HOLLINGS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, SEPTEMBER 26, 2002

Mr. HOLLINGS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m., Thursday, September 26; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business until 11:15 a.m., with Senators permitted to speak for up to 10 minutes each, with the first half of the time under the control of the majority leader or his designee and the second half of the time under the control of the Republican leader or his designee; that at 11:15 a.m., the Senate resume consideration of the homeland security bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HOLLINGS. Mr. President, cloture was filed on the Gramm-Miller amendment to the homeland security bill. Therefore, Senators have until 1 p.m. on Thursday to file first-degree amendments.

ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

Mr. HOLLINGS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:35 p.m., adjourned until Thursday, September 26, 2002, at 9:15 a.m.