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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. SIMPSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 13, 2002.

I hereby appoint the Honorable MICHAEL K. SIMPSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

Dr. Jay Dennis, Senior Pastor, First Baptist Church at the Mall, Lakeland, Florida, offered the following prayer:

Our Heavenly Father, with issues facing this body that are historically significant, we pause to acknowledge You and to thank You. Thank You that our communication with You is a lifeline of hope. I ask Your hedge of protection, Your divine wisdom, and Your daily guidance upon each of these honorable men and women of the U.S. House of Representatives along with their families.

For our great country, we ask that You would hear our prayer for peace, protection, power over the enemies of freedom, and provision for our every need.

May Your plan become our purpose, may Your book become our guide, and may Your presence be our ever-encouraging assurance.

May You bless these Members indeed. May You increase their influence and opportunities to change the world and make it better, and may You keep them and the United States in the hollow of Your hand.

In Jesus' name, Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Jersey (Mr. PALLONE) come forward and lead the House in the Pledge of Allegiance.

Mr. PALLONE 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.

WELCOMING DR. JAY DENNIS, SENIOR PASTOR, FIRST BAPTIST CHURCH AT THE MALL, LAKELAND, FLORIDA

(Mr. PUTNAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PUTNAM. Mr. Speaker, today's Guest Chaplain, Dr. Jay Dennis, is a constituent of mine serving the First Baptist Church at the Mall in Lakeland, Florida. I would like to take a moment to speak of his ministry, not only in central Florida, but around this Nation as well.

Throughout his tenure as pastor, Dr. Dennis' congregation has experienced extraordinary spiritual and physical growth, and has been identified by the Southern Baptist Theological Seminary as being among the top 4 percent of growing churches in America today. He is a gifted lecturer and author and broadcasts a daily radio and a weekly television show. Dr. Dennis is immediate past President of the Florida Baptist Convention.

But Dr. Dennis is in Washington on another matter today. In furtherance of their mission and ministry, Dr. Dennis and members of his congregation will be distributing a leather-bound study Bible to every Member of Congress, the Supreme Court and the administration.

We often speak in this Chamber about the dedication of individuals to their community and to their country. Dr. Dennis is making a difference in the lives of the people of central Florida and in so doing serves as an example for all of us to follow. I would like to take this moment to commend and thank Dr. Dennis on behalf of Congress for his ministry and commitment to the United States of America.

NOTICE

Effective January 1, 2003, the subscription price of the Congressional Record will be $434 per year or $217 for six months. Individual issues may be purchased for $6.00 per copy. Subscriptions in microfiche format will be $141 per year with single copies priced at $1.50. This price increase is necessary based upon the cost of printing and distribution.

Michael F. DiMario, *Public Printer*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Printed on recycled paper.

May God continue to bless and guide these United States, Mr. Speaker.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will receive 10 one-minute speeches on each side.

CONGRESS SHOULD FINISH ITS WORK

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, the Republicans are about to take up a CR that keeps the government going until January 11. What they are not saying is that they are abdicating their responsibility to govern.

The Republican leadership in Congress has achieved one of the worst legislative breakdowns in the Nation's history. Of the 13 fiscal year 2003 appropriations bills, Congress will complete before the end of this session only Defense and Military Construction. Everything else is being carried over until the next year.

A review of the past half century of legislative calendars shows nothing close to such nonfeasance. Even in 2000 when Congress approved 21 continuing resolutions before completing its work December 15, the House at least had passed each of the 13 appropriations bills.

What is happening now is we are simply abdicating our responsibility. The Republicans do not want to do anything. They simply want to wait until the new session of Congress. But the fact of the matter is that we have a responsibility to pass the budget, to pass the appropriations bills, to deal with them now, and to work between now in November as well as in December, not simply wait until the next session of Congress to address all of these issues.

REMEMBER THE MISSING AND EXPLOITED CHILDREN

(Mr. LAMPSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMPSON. Mr. Speaker, I rise today to welcome our colleagues back and to remind everyone that while the media fervor of missing children has died down it does not mean that the cases have gone away.

It is my hope that we will continue in this body to focus and work on the issue of missing and exploited children. There is much that is going to be done. It is going to be years before we will address all of the problems that face children, so it will not be accomplished during this session or even the next Congress as well.

I would like to invite the new freshmen Members joining us to join the Congressional Caucus on Missing and Exploited Children. Children from every walk of life and every circumstance imaginable, stranger abduction, parental abduction, international abduction, runaways, and children being exploited, all deserve the attention we can give them.

Today as many of us return from the campaign trail where we have talked about our future and our children, I challenge my colleagues in Congress to move toward more proactive and helpful positions on missing kids, all missing kids.

HONORING THE ANAHEIM ANGELS FOR THEIR VICTORY IN THE 2002 WORLD SERIES

(Ms. SANCHEZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SANCHEZ. Mr. Speaker, I rise today to congratulate the Anaheim Angels for winning the 2002 Major League Baseball World Series. I, for one, have been waiting for them to win this since 1966, the day I attended the first game when we built the Anaheim Stadium.

Under American League Manager of the Year Mike Scioscia, the Angels won a franchise record 99 games during the regular season on their way to the world championship. The Angels demonstrated their courage in a ''never say die'' attitude during their championship run, which included an incredible game number six of the World Series where they came five runs from behind to win and be in that World Series for the seventh game.

Although there were many outstanding individual contributions, it was the team's collective efforts that made the difference in the post season.

And I would like to recognize in particular the Rally Monkey for keeping the crowds excited and helping the Angels to come back and win time after time in the season.

With most of the players from this year's team returning next year, I bet we will win again.

NOTICE

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

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

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Sec.Senate.gov''.

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman.*

PROVIDING FOR CONSIDERATION OF H.J. RES. 124, FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2003, AND FOR CONSIDERATION OF H.R. 5708, REDUCING PREEXISTING PAYGO BALANCES

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 602 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 602

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the joint resolution (H.J. Res. 124) making further continuing appropriations for the fiscal year 2003, and for other purposes. The joint resolution shall be considered as read for amendment. The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except: (1) one hour of debate on the joint resolution equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations; and (2) one motion to recommit.

SEC. 2. Upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5708) to reduce preexisting PAYGO balances, and for other purposes. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget; and (2) one motion to recommit.

The SPEAKER pro tempore. The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. Mr. Speaker, during consideration of this resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, House Resolution 602 is a closed rule making in order the consideration of two measures. The rule provides that H.J. Res. 124 shall be debatable for 1 hour in the House with the time equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations.

The rule waives all points of order against consideration of H.J. Res. 124 and provides for one motion to recommit.

The rule further provides that H.R. 5708 shall be debateable for 1 hour in the House with the time equally divided and controlled by the chairman and ranking member of the Committee on the Budget. The rule waives all points of order against consideration of H.R. 5708 and provides for one motion to recommit.

Mr. Speaker, H.J. Res. 124 is a resolution providing continuing appropriations to fund ongoing activities of the Federal Government through January 11, 2003. It does not allow initiation of new activities and, with certain exceptions, the resolution continues activities under applicable fiscal year 2002 terms and conditions.

The resolution limits obligations on programs with high initial sped out rates so that the funding levels included in final appropriation actions will not be jeopardized. It continues authorizations for otherwise expiring programs and funding anomalies included in previous continuing resolutions and extends funding for the Temporary Assistance for Needy Families, or TANF, and related welfare programs.

Finally, H.J. Res. 124 provides authority to transfer up to $500 million to establish the new Department of Homeland Security and for unforeseen homeland security requirements. Such authority would expire on September 30, 2004.

Mr. Speaker, section 2 of this rule provides for consideration of a bill that removes balances on the Pay-As-You-Go, or PAYGO, scorecard for the current fiscal year. This legislation is necessary in order to avoid automatic across the board cuts in a number of mandatory programs after Congress adjourns for this year.

In past years, Congress has routinely voted on a bipartisan basis to pass similar legislation, and this rule simply will permit that to occur again. Failing to enact H.R. 5798 would force reductions in a number of programs including Medicare, Veterans Administration medical care, Indian Health Services, Migrant Health Centers, Community Health Centers, State Children's Health Insurance, Child Tax Credits, and the Commodity Credit Corporation, among others.

Mr. Speaker, the measures made in order under these rules are necessary to permit the vital functions of the Federal Government to continue without interruption until a new Congress convenes again in January. Accordingly, I encourage all of my colleagues to support both the rule and the two underlying measures.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Washington (Mr. HASTINGS) for yielding me time.

Mr. Speaker, I rise today in opposition to this rule and the underlying resolution. Tax cuts to well-off people in our country, environmental rollbacks by the dozen, awarding corporate irresponsibility and neglecting the needs of America's senior citizens and veterans are only a few of the highlights that the 107th Congress has to speak of. As one colleague put it yesterday, ''It's been an awfully long day to do nothing.''

Mr. Speaker, simply put, America has needs and today's continuing resolution does not meet them. The spirit in which the resolution is coming to the floor and the message that it sends is cut and run politics of the highest kind. There is a reason that this is called a Lame Duck Congress, because legislation like this is just lame.

As my colleagues know, today's CR funds the Federal budget until January 11, or thereabouts, 2003, without increasing spending in areas that we know we need increases.

□ 1015

With a possible war with Iraq on the horizon, should not this body, which is led by the President's party, spend time figuring out a way to pay for a war that the President has been asking for and that many Members voted for?

In a few hours, many expect that the House and Senate will each pass a bill establishing a new Department of Homeland Security. Listen up America, one caveat though: we are not going to fund the new Department until, according to the CR, January 11, 2003, at the earliest.

Additionally, the CR does nothing to protect the thousands of Member projects that cities and counties and constituents are depending on, including projects in the appropriations bills that Congress has already passed, the two of them.

Finally, the CR provides no PAYGO provisions, thus solidifying what the minority has been saying for more than 1 year: good bye, surplus; hello, deficit spending.

To date, Congress has neglected its constitutionally mandated responsibility of funding the Federal Government and has passed, as I earlier stated, a meager two of the 13 appropriation bills; and now we want to go home.

Mr. Speaker, what about homeland security and our national defense? What about prescription drugs? What about Social Security? What about extending unemployment benefits? What about an energy bill? What about the veterans measures that are not passed? How many of those measures have gone by the board? What other health considerations are we not considering?

Long-term unemployment is at an 8-year high in this Nation, and nearly 2 million Americans have lost their jobs. Consumer confidence is at its lowest levels since mid-2001, and prescription drug prices are still sky high. Mr. Speaker, I do not have to look around for anybody about that. I have been dealing with my mom's failing stages of her health; and on two different occasions since we were in recess, I paid $983 for prescriptions, and all she has is Social Security and Medicare.

So, firsthand, I think we should do for the American citizens what is needed in the area of prescription drug

prices. We leave seniors unable to afford their vital prescription medicine.

Think about it, the House took most of January off this year, all of August, most of October; and now we are poised to give ourselves a month-and-a-half Christmas vacation. The American people are not paying us to work 2- or 3-day work weeks, and they are certainly not paying us to work 8 out of 12 months.

Could my colleagues imagine if we tried to run a business this way? No wonder the American people have such dismal opinions of the Federal Government. When the going gets tough, the tough get out of town.

Mr. Speaker, we were elected by the American people to Congress to do a job. Evidence today and every other CR that the House has been forced to pass in the last month are not the way that we should be going.

I am convinced that the Republican leadership is really in the final analysis not interested in doing the job having to do with the things I spoke of earlier, or at the least doing them right. The leadership of this body for the most part is not going to change very much in the 108th Congress. Republicans are still going to be in the majority, and I congratulate my friends in that regard. And Democrats are going to still be in the minority. With or without recriminations, those that were elected and reelected are to be congratulated as well.

So why is the majority trying to go home when the work of the 107th Congress is not done? Perhaps the American people need to be asking the same question. Now is not the time to go home and leave today's problems for tomorrow's Congress.

The American people cannot run a budget like this in their house, and we should not be trying to run one like it in America's House.

Mr. Speaker, I urge my colleagues to oppose this rule and to reject the underlying resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I continue to reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 6 minutes to the gentleman from Wisconsin (Mr. OBEY), the distinguished ranking member of the Committee on Appropriations and my good friend.

Mr. OBEY. Mr. Speaker, this is a pitiful exercise. Its arrogance is matched only by its futility and its hypocrisy. I think we ought to recount what is happening here and how we got here.

Early last year, the majority party, at the insistence of the Committee on the Budget and the House Republican leadership, passed a budget which even their own Republican leadership on the Committee on Appropriations indicated fell at least $10 billion short of the amount that we would need to meet our own obligations on the domestic front for education, for transportation, for veterans' health care, for National Institutes of Health, homeland security, and a number of other items.

The Committee on Appropriations, after that budget resolution was passed, tried to operate under it and tried to bring a number of appropriation bills to the floor. They produced the Department of Defense bill, the military construction bill; and the committee met its obligations in those two areas.

But then, Mr. Speaker, it was prevented from bringing any other appropriation bills to conclusion by an internal fight within the Republican Caucus in this House. What happened is that the hard-line conservatives in the Republican Caucus told their leadership they would not vote for any domestic appropriation bill until the education appropriation bill was passed at a freeze level recommended by the President, which would have brought to a halt the previous increases that we had in the area of education, the increases that we had over the last 5 years that averaged over 13 percent.

The House Republican leadership forbade the Committee on Appropriations to bring appropriation bills to the floor. And they said, ''Oh, no, we will deal with them after the August recess.''

Well, the August recess came and went. We came back on Labor Day and then we were told, ''No, we cannot pass any appropriations bills during this period either. We are going to have to lay it over until a lame-duck session after the election.''

Mr. Speaker, now we are here in a lame-duck session, and now we are being told by this resolution that we are going to kick this down the trail and we are not going to come back until next year, which means that every single appropriation bill is going to have to be introduced anew and have to start from scratch. All that work gets wiped out. Why? Because the majority party has not decided how they want to handle these issues and because they have a lot of Members who want to go on congressional trips.

So now we are being told to forget our duty. But then there is an added wrinkle that is being brought to the floor here today. The appropriations Republican leadership has been begging the House leadership since June to give the Committee on Appropriations at least $8 billion to $10 billion more so we could meet our transportation and our education and our homeland security obligations. They have been denied that. The House Budget Committee has been saying, ''Oh, oh, oh, the Committee on Appropriations, they want to be big spenders. We cannot give them the $10 billion.''

But now what is happening under this rule? We are being asked to wipe out the PAYGO realities. That is an ''inside baseball'' term, but what it means essentially is that this Congress is going to add $30 billion more to the deficit because of that useless farm bill that passed earlier in the year and because of the tax cuts. So the very same people on the Budget Committee who are attacking the gentleman from Florida (Mr. YOUNG) as a big spender because he wants $8 billion to $10 billion more to finish the appropriations bills, the very same people are saying, ''Oh, by the way, we cannot have that money; but by the way, we are going to blow $30 billion, and then we are going to wipe out the scorekeeping and pretend it did not happen.''

Mr. Speaker, that is what we are being asked to vote for on this rule today and on the two bills that will follow.

Mr. Speaker, this is a pitiful performance. What a laugh. What a pity. What a joke. What a poor performance.

Mr. Speaker, I am going to vote against this rule, and I am going to vote against the bill that follow because they epitomize the absolute uselessness and fecklessness of this entire congressional session. They demonstrate that the one thing this House has learned to do better than anything else is to duck its responsibilities, and that is a shame.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 3 minutes to the gentleman from New Jersey (Mr. PALLONE), my good friend.

Mr. PALLONE. Mr. Speaker, this is the ultimate Republican do-nothing Congress. I woke up this morning, and I called the cloakroom; and I could not believe that they are going to simply pass a CR to carry the government over until January with the new Congress and not address all the pressing problems that we need to look at here.

First of all, think about the fact that we have a budget crisis. We have a budget deficit now, it was announced a few weeks ago, of $150 billion. The effect on the economy, the downward trend on the economy that this will contribute to is unbelievable. Now, as the gentleman from Wisconsin (Mr. OBEY) says, we may be adding another $30 billion to that because of the fact that we are wiping out these PAYGO provisions. So more deficits. We are in an economic downturn.

Mr. Speaker, what is the Republican Party going to do here? What is the Republican leadership going to do about the economic slow down? Are they going to deal with the fact that we have a higher unemployment rate, that a lot of people's benefits for unemployment will end sometime in December? Are they going to address that? Are they going to address the fact that seniors are crying out for a prescription drug benefit?

I read in the paper the other day that the President said he wants to address the need for a prescription drug benefit. Then why are we going home? Why are we not dealing with it? Why are we not figuring out how to pay for it?

The energy crisis. We face a major energy crisis. I understand a conference report on the energy bill has been filed. Is it going to be taken up today or tomorrow before we leave town?

Mr. Speaker, so many of these issues are not being tended to. The Republicans have only passed two appropriations bills, the Defense and Military Construction; and I do not mean to suggest that they are not important. Of course, they are very important because the President is saying that we may have to go to war against Iraq. But what about the budget consequences of that? Where is the money going to come from? Why are we not dealing with the budget in general and having some kind of budget conference where we sit down on a bipartisan basis between now and the end of the year and figure out how to pay for defense? How we are going to pay for these other important domestic issues?

Now, the Republican Party does not want to address it. They say, oh, we won the election so we will just wait until January. We will have a majority in both Houses, we will have the Presidency, and we will deal with it then. Mr. Speaker, it is a complete abdication of their responsibility, and it is not what they said during the course of the election when they said they were going to address these things.

We have another 6 or 7 weeks here when we could address these problems, both domestic and international; and it is terribly irresponsible for the Republicans to say, no, we are not going to do that; we are simply going to go home.

No one should be confused about what is going on here today. They are simply passing a continuing resolution so the government does not shut down, and coming back in January with the new Congress. That is completely unacceptable and irresponsible. This Congress under the Republican leadership, this House, has the worst legislative record in the whole history of the United States Congress, and this act today of trying to pass this rule just confirms it.

□ 1030

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are in this extraordinary circumstance for a variety of reasons that we have talked about on the floor many times when we were debating prior continuing resolutions. Part of it, without trying to point fingers because that does not do us any good when we are trying to seek resolutions to point fingers, but nevertheless the fact is the other body has not completed a lot of work that is the basis for us trying to complete our work.

It has been mentioned over and over, but I think it is worth mentioning one more time that the House by law, in fact both the House and the Senate by law, is required to pass a budget in the spring. The House did that and did pass their budget. The Senate did not pass their budget at that time and they have not yet. Maybe there has been talk going back and forth trying to settle on a figure, a spending figure; but the way that it has always been done in the past is that one body passes a budget, the other body passes a budget; and if there is a difference, you work out the differences. That is part of the give and take in the legislative process. That simply did not happen this year. As a result, the appropriation process that follows really did not have a blueprint. That caused us problems all the way throughout.

In addition to that, there are a number of other important pieces of legislation that passed this body that, for a variety of reasons, for whatever, is hung up in the other body as we speak right now. So as a result, we are in this situation of then passing this CR to get us into the first week of the next Congress. By that time, and in fact there are probably ongoing discussions right now with the new majority in the Senate and the majority here in the House to come up with probably an omnibus appropriation bill that will pass and we will have that behind us as we go into the 108th Congress.

I might make an observation, that what we are doing here is not unprecedented. It is not probably the ideal way things should be done; but in 1980 there was a CR that was passed over until the next Congress, so it has been done in the past. The reason why we are in that situation, as I mentioned, is simply that we are facing unprecedented inaction in the Congress in the other body. For that reason, we have to pass these CRs.

Let us get on with our work.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I am sorry, but earlier in my discussions I understated the amount by which the deficit will be expanded with the approval of the Congress with the subsequent motion that will follow from this rule. It is not just $30 billion. I am told it is over $60 billion that will be added to the deficit from the base on mandatories.

MOTION TO ADJOURN

Mr. OBEY. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the motion to adjourn offered by the gentleman from Wisconsin (Mr. OBEY).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 24, nays 338, not voting 69, as follows:

[Roll No. 471]

YEAS—24

Bentsen
Berry
Capuano
Conyers
Coyne
Delahunt
Filner
Frank
Frost
Hastings (FL)
Hilliard
Honda
Jefferson
Johnson, E. B.
Kennedy (RI)
McDermott
Obey
Olver
Pallone
Slaughter
Stark
Towns
Velazquez
Woolsey

NAYS—338

Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barcia
Barrett
Bartlett
Barton
Bass
Becerra
Bereuter
Berkley
Biggert
Bilirakis
Bishop
Blumenauer
Blunt
Boehlert
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clyburn
Coble
Collins
Combest
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Deal
DeFazio
DeGette
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Doggett
Dooley
Doolittle
Dreier
Duncan
Edwards
Ehlers
Ehrlich
Emerson
English
Eshoo
Etheridge
Evans
Everett
Farr
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goss
Graham
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hostettler
Hoyer
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jenkins
John
Johnson (CT)
Johnson (IL)
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Maloney (NY)
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Napolitano
Nethercutt
Ney
Norwood
Nussle
Oberstar
Ortiz
Osborne
Ose
Otter
Pascrell
Pastor
Paul
Pelosi
Pence
Peterson (MN)
Peterson (PA)

Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Putnam
Quinn
Rahall
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stenholm
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—69

Abercrombie
Baldacci
Barr
Berman
Blagojevich
Boehner
Bonior
Brown (OH)
Burr
Callahan
Clay
Clement
Condit
Cooksey
Cubin
Davis, Tom
Dingell
Doyle
Dunn
Engel
Fattah
Fossella
Gilchrest
Gordon
Granger
Grucci
Gutierrez
Hansen
Hill
Hilleary
Hinchey
Hooley
Horn
Houghton
Hulshof
Johnson, Sam
Kleczka
Lipinski
Lynch
Maloney (CT)
Manzullo
Markey
McGovern
McKinney
Meehan
Meek (FL)
Miller, George
Murtha
Nadler
Neal
Northup
Owens
Oxley
Payne
Pryce (OH)
Radanovich
Rangel
Roukema
Sawyer
Saxton
Schaffer
Stearns
Stump
Tancredo
Taylor (NC)
Waters
Watkins (OK)
Weiner
Wexler

□ 1101

Messrs. COMBEST, KENNEDY of Minnesota, CANNON, THOMPSON of California, FLAKE, BRADY of Texas, OTTER, CROWLEY, and BISHOP changed their vote from ''yea'' to ''nay.''

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. MANZULLO. Mr. Speaker, on rollcall No. 471 the bells in my office failed to work. Had I been present, I would have voted ''nay.''

PROVIDING FOR CONSIDERATION OF H.J. RES. 124, FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2003, AND FOR CONSIDERATION OF H.R. 5708, REDUCING PREEXISTING PAYGO BALANCES

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 1 minute to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader, for the purpose of making an announcement.

(Mr. ARMEY asked and was given permission to speak out of order.)

LEGISLATIVE PROGRAM

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, on the subject of today's schedule, we are about 30 minutes away from completing our consideration of the CR and PAYGO rule. We would obviously have a vote if it is requested. We would then try to move on to the CR and complete that work. From that it would be our desire to take up the Homeland Security rule and move on to the Homeland Security bill. We would then do the PAYGO bill later today or possibly tomorrow.

But, Mr. Speaker, this is the key point I would like to call Members' attention to: I would like to advise Members that the House will recess from approximately 2 o'clock to 6 o'clock for the Republican organizational conference. As a consequence of the need to do so, I should mention that if we are unable to complete the Homeland Security bill before 2 o'clock p.m., we would be asking Members to resume business tonight at the completion of the Republican conference at approximately 6 o'clock this evening.

It is obviously, I think, probably a desire for most of us if we can expedite completion of Homeland Security by 2. It is my duty to advise Members as early as possible to consider their plans for tonight with respect to the possibility that we may be reconvening for business for the completion of Homeland Security's consideration tonight beginning at 6 o'clock.

Ms. PELOSI. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Speaker, I thank the distinguished majority leader for presenting the schedule for today.

Mr. Speaker, is it the gentleman's view that we will have the PAYGO vote today as well, or will that vote be rolled until tomorrow?

Mr. ARMEY. Mr. Speaker, I appreciate the gentlewoman's request. It is essentially a matter of priority. Our first priority, obviously, is to complete the continuing resolution. We would put Homeland Security as a priority ahead of PAYGO. If we did not get PAYGO done today, we would do it tomorrow.

Ms. PELOSI. Mr. Speaker, if the gentleman will continue to yield, if we debated it today, is there a possibility that we would vote on it tomorrow, or has that decision been made?

Mr. ARMEY. Reclaiming my time, no, we have not made that decision. Frankly, we understand that Members do have points they would like to make. We would like to make sure that debate time is available to everybody with respect to these issues. We will be working our way around these two very important organizational conferences. The gentlewoman understands the importance of them.

Ms. PELOSI. Mr. Speaker, if the gentleman will continue to yield, I would ask the gentleman, Mr. Leader, could you inform us of the schedule for tomorrow, and would that be the last day of the session?

Mr. ARMEY. Mr. Speaker, we would be addressing any available conference reports tomorrow. We would try to complete our work by tomorrow night sometime. We do have some very good legislative opportunities in the presence of some of those conference reports. But I believe we will be in recess, and no votes would be requested during the Democrat organizational conference.

Ms. PELOSI. I understand that about today. But does the gentleman anticipate that we will be working through the weekend, or will the schedule end tomorrow?

Mr. ARMEY. Mr. Speaker, again, let me thank the gentlewoman for her inquiry. It is my anticipation that we would complete our work sometime tomorrow afternoon or evening. I do not anticipate working on the floor on Friday or the weekend.

However, again, let me just say, if we are all mindful of our own best interests and those of our colleagues and we try to be cooperative and move things along, obviously it will go better. We have some opportunities that are very important for the American people in the person of these conference reports, and we would not want to leave any behind. But I do not see that it is necessary for us to expect to work beyond Thursday night.

Ms. PELOSI. Mr. Speaker, if the distinguished gentleman could continue to yield, I would just like to say, Mr. Leader, that I have expressed to you over and over again my dismay that we have only passed two appropriations bills and that we have a tremendous amount of unfinished business before the Congress.

However, I will use my remaining time to say that from what you have said, this may be your last or among your last colloquies on the floor of this House; and I would like, as the minority whip, to commend you for your service to the Congress, to wish you well in your future endeavors, and to thank you for your many courtesies.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, as the distinguished gentleman knows, I have made an art form of giving you grief on the schedule, so I am going to continue to do that. Is it the gentleman's intention that once we adjourn for this week or weekend, that we do not come back until the next Congress? Is that the intention of the leadership?

Mr. ARMEY. That is our expectation.

Mr. BARTON of Texas. Once we get our work done this week, we are home for the holidays?

Mr. ARMEY. It is our expectation that with the Homeland Security, the continuing resolution, the other conference reports that we can foresee, there would be nothing of such urgency before the Nation to require us to come back before January 7.

Mr. BARTON of Texas. Mr. Speaker, I want to thank the gentleman for his excellent leadership and friendship and join all the others in wishing him well in whatever his future endeavors are.

Mr. ARMEY. Mr. Speaker, I thank the gentleman.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 4 minutes to the distinguished gentleman from Alaska (Mr. YOUNG), the chairman of the Committee on Transportation and Infrastructure.

Mr. YOUNG of Alaska. Mr. Speaker, I do not do this lightly. In my period of time being in the majority, I have never rose opposing a rule, so this is a very serious moment for me. I want my side to understand why I am doing this and this side to understand also why I am doing it, and suggest a ''no'' vote on this rule.

House Joint Resolution 124 will continue to keep in place a spending limit of $27.7 billion on Federal aid to highway programs. Last month I agreed to this limitation; but I was clear that if the continuing resolution ran beyond December 31, I would move to strike the language.

This continuing resolution runs until January 11, 2003. That does not sound like a long time. However, we cannot be certain that the Congress will move quickly to enact appropriation bills in January.

Mr. OBERSTAR. Mr. Speaker, the House is not in order.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman is correct.

Mr. YOUNG of Alaska. I am watching that side, and whoever is talking, you can forget any highway funds.

The SPEAKER pro tempore. The gentleman will suspend.

Would the Members on the minority side in the rear of the Chamber please remove your conversations from the floor so the gentleman can be heard.

Mr. YOUNG of Alaska. However, we cannot be certain that Congress will move quickly to enact appropriation bills in January. In fact, with reorganization activities and a new majority in the Senate, there is a high level of uncertainty about timing for the entire appropriation process.

Because of this uncertainty, it is imperative we absolutely be clear that the highway program will continue at the full enacted funding level of $31.8 billion, as it is cleared today. That is the level we are spending monies today, not $27.7 billion.

It is important to note that except for the highway program, this program, the one that affects every one of your districts, that this continuing resolution continues all activities under the fiscal year of 2002 funding levels, all activities. But they picked out the highway program. It is unfair to cut the highway programs in your district.

Now, Members should keep that in mind very closely when they cast their vote. Every dollar of the $31.8 billion funding level we support comes from the highway trust fund. It does not come from the general budget. It does not come from the general fund. It is the trust fund. It is the money of the users of the highways. It is funded by fuel taxes, it is paid by the highway users; and those highway funds should be used to sustain jobs and reduce congestion and improve our economy.

Mr. Speaker, I cannot for the life of me, I have talked to my appropriations brother, I have talked to the Speaker, I have talked to the majority leader, I have talked to the minority leader. I do not know where this is coming from. If this is coming from the White House, shame on them.

This is not their money, it is our money; and to this have this one program singled out is inappropriate. I have talked to the Committee on Rules chairman, and I talked to the Speaker, and I have talked to the leadership of this House; and I said this is not fair, we ought not to do this. Leave it at $31 billion, as it should be, come back and do the job right and not continue to nip at us. This is the fourth time we have done this.

I want to know who is responsible. Can anybody give me an idea where this is coming from? They cannot do that. I as the chairman of the committee and all of my 75 Members better understand one thing. If we leave it at $27 billion, you can keep one thing in mind: this is an attempt by this administration to use this trust fund money to try to use it for other uses in the budget instead of as highway funds. So for the first time, I am going to ask my people to vote ''no'' on this rule.

Mr. Speaker, I am somewhat embarrassed, because last month the gentleman from Wisconsin (Mr. OBEY) and I had this discussion on the floor, and I had thought I had an agreement to protect this; and I said specifically then to accept the $27.1 billion, the level that was decided, but with the understanding that we would spend it at $31.8 billion if it did not go beyond the first of the year.

What has happened here, again, I have not had anybody tell me where this is coming from. It is not your money. It is not the White House's money. This belongs to the users of the highway. We can come back, pass another rule, and make sure that we do the job right. And, believe me, I will find out where this is coming from.

□ 1115

You are not going to take this money away from the users of the highway. They paid for it. They want the highways. They want the infrastructure. We talk about stimulating the economy. Forget all of these other programs they are talking about. Let us create jobs by building our bridges and our highways. Let us do it. If we want to stimulate something, let us stimulate it with real jobs and not make believe.

So I would just keep in mind, let us put this rule down and come back with the right rule.

Mr. HASTINGS of Florida. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding me this time. I greatly appreciate the remarks delivered with sincerity and passion by the chairman of our committee, the gentleman from Alaska (Mr. YOUNG).

We did have this conversation just prior to the election. We did have a discussion of what would be the level of funding for the Federal Aid Highway Program in the continuing resolution. We were assured by the Committee on Appropriations leadership, by the leadership of the House, the gentleman from Alaska had specific assurances from the Office of Management and Budget that funding would be at the level of $31.8 billion through the beginning of the year and would continue at that level until probably August, if there were no further changes made in the appropriation bill, underlying appropriation bill itself, and at that point then the funding level would drop down to $27.1 billion. The resolution before us breaks all of those agreements, discards all of those understandings, throws it all aside.

The reality is today this is a raid on the Highway Trust Fund. We have a $15 billion surplus in the Highway Trust Fund today. That surplus was anticipated in 1998 when the Committee on Transportation and Infrastructure wrote what we know today as TEA–21, moved it through conference and back to the House, with a commitment of increased levels of funding. We knew the trust fund was going to grow because of increased revenues into the trust fund. We anticipated and we provided for in that authorization legislation a $15 billion surplus to be drawn down and invested in highways, not to offset a deficit, and that is what is happening here. Money is being held back.

In 1998, at the beginning of the year when we crafted TEA–21, there was a $29 billion surplus in the Highway Trust Fund, which our committee agreed to yield for debt reduction. And when the bill was signed into law, I am sure everybody felt a great lift off of their shoulders of that debt, because that $29 billion went to reduce public debt. But the commitment was that in exchange for giving up the surplus and giving up interest on revenues paid into the Highway Trust Fund year-to-year, that we would have a guaranteed account, a dedicated revenue stream with which to invest in highways and bridges and transit systems in America. And we did it, and it worked wonderfully for 5 years. In those 5 years we invested $120 billion of Federal funds in

the Federal Aid Highway Program. By comparison, in the 42 years of the Interstate Highway Program, we invested $114 billion of Federal funds in the interstate system. It took 42 years because we had a dedicated account, a guaranteed revenue stream.

This breaks that commitment. This resolution draws it all down. We will lose millions, billions of dollars in investments and thousands and thousands of jobs. If you want to come to the desk, I have a list of what each State will lose if this resolution passes.

Mr. HASTINGS of Washington. Mr. Speaker, I would advise my friend I have no further speakers.

Mr. HASTINGS of Florida. Mr. Speaker, I have one final speaker, and I yield 1 minute to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I would simply point out to both of the gentlemen who have just spoken from the Committee on Transportation and Infrastructure that I warned the Committee on Transportation and Infrastructure before the election when we debated this that they were going to be shortsheeted on this continuing resolution, and that has now, unfortunately, come to pass. So I would say that I agree with the observations of the gentleman from Alaska (Mr. YOUNG), all but one of them.

I would also say that it is not true that only highways are being hurt by this continuing resolution. The National Institutes of Health will encounter a severe problem in issuing their grants for the year. Veterans will not be able to have the backlogs dealt with in terms of veterans health care. The Securities and Exchange Commission is not going to be funded at the level that was promised in the authorization bill before the election. We are not going to see the Medicare give-backs that our providers around the country were looking for. There are going to be all kinds of other problems as well as the highway problem. So I think there are a good many reasons, including the highway problem, to vote against this rule and against this resolution.

Mr. HASTINGS of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. HASTINGS of Washington. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 215, nays 189, not voting 27, as follows:

[Roll No. 472]

YEAS—215

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—189

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Doggett
Dooley
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Green (TX)
Hall (TX)
Harman
Hastings (FL)
Hill
Hilliard
Hinojosa
Hoeffel
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Wexler
Woolsey
Wu
Wynn

NOT VOTING—27

Blagojevich
Clement
Condit
Cubin
Dingell
Doyle
Fattah
Gordon
Grucci
Gutierrez
Hinchey
Hooley
Houghton
Lipinski
Manzullo
McKinney
Miller, George
Murtha
Neal
Oxley
Payne
Rangel
Roukema
Sawyer
Strickland
Stump
Weiner

□ 1152

Mr. ABERCROMBIE changed his vote from ''yea'' to ''nay.''

Mrs. KELLY and Messrs. HEFLEY, REGULA, QUINN, DOOLITTLE, MICA, LOBIONDO, LATOURETTE, HERGER, YOUNG of Alaska, BAKER, BEREUTER, and PETRI changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. MANZULLO. Mr. Speaker, on rollcall No. 472 the bells in my office failed to work. Had I been present, I would have voted ''yea.''

GENERAL LEAVE

Mr. YOUNG of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.J. Res. 124 and that I may include tabular and extraneous material.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Florida?

There was no objection.

FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2003

Mr. YOUNG of Florida. Mr. Speaker, pursuant to the rule just adopted, I call up the joint resolution (H.J. Res. 124) making further continuing appropriations for the fiscal year 2003, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The text of H.J. Res. 124 is as follows:

H.J. RES. 124

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 107–229 is further amended by striking the date specified in section 107(c) and inserting in lieu thereof ''January 11, 2003''

SEC. 2. Section 114 of Public Law 107–229 is amended—

(1) by striking ''December 31, 2002'' and inserting ''the date specified in section 107(c) of this joint resolution''; and

(2) by striking the first proviso and inserting the following: '': *Provided,* That grants and payments may be made pursuant to this authority at the beginning of any included quarter or other period of fiscal year 2003, for such quarter or other period, at the level provided for such activities for the corresponding quarter or other period of fiscal year 2002''.

SEC. 3. Upon determination by the Secretary of Homeland security that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $500,000,000 of funds made available to the Department of Homeland Security and be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided,* That such authority to transfer may not be used unless for higher priority items, based on unforeseen homeland security requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further,* That during fiscal year 2003, the Office of Management and Budget may transfer not to exceed $140,000,000 for unobligated balances of appropriations enacted prior to October 1, 2002 for organizations and entities that will be transferred to the new Department for the salaries and expenses associated with the initiation of the Department: *Provided further,* That of amounts authorized for transfer by this section, except as otherwise specifically authorized by law, not to exceed two percent of any appropriation available to the secretary may be transferred between such appropriations: *Provided further,* That not less than 15 days' notice shall be given to the Committee on Appropriations of the Senate and House of Representatives before any such transfer is made: *Provided further,* That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen homeland security requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by Congress: *Provided further,* That the authority provided in this section shall expire on September 30, 2004.

The SPEAKER pro tempore. Pursuant to House Resolution 602, the gentleman from Florida (Mr. YOUNG) and the gentleman from Wisconsin (Mr. OBEY) each will control 30 minutes.

The Chair recognizes the gentleman from Florida (Mr. YOUNG).

Mr. YOUNG of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first let me welcome all the Members back from their election-day activities and suggest that we do have a lot of work to do, especially a lot of appropriations bills that need to be concluded.

Mr. Speaker, this is a continuing resolution to keep the government functioning until such time as all appropriations bills are concluded. It would extend the date of the initial continuing resolution until the 11th of January and includes one additional anomaly that would extend the authorization for the Temporary Assistance for Needy Families, the TANF program, through this same period.

Mr. Speaker, the other anomalies that we had included in the original CRs are all the same, no changes. This is a clean CR. I do not think that there is any real controversy over the content of the CR.

Mr. Speaker, I reserve the balance of my time.

Mr. OBEY. Mr. Speaker, I yield myself 8 minutes.

Mr. Speaker, I think Members will recall when we were sitting around here last February and March waiting for the President to send up the supplemental and talking about starting the appropriations bills after we got back from the spring recess. The dogwoods bloomed and the cherry trees bloomed and, finally, the azaleas; and yet we had no appropriations bills.

So then we had talked about how busy the summer was going to be after we had gotten back from the Memorial Day recess. We had droughts across most of the country. We had forest fires in the West. Tiger Woods won the U.S. Open, and the All Star Game ended in a tie, and nearly three-quarters of the appropriations bills during that time never even got to the House floor.

After all of that transpired, we left for the August recess talking about how impossible the fall would be. We were going to have long nights and late nights, and that was going to be the only way that the House could get its work done before the election. Well, we returned in September and we did not work those long weeks or those long nights. The Republican leadership of the House would not let the chairman of the committee take up the bills that the committee had reported.

And in September we had a continuing of the work style of the previous 3 or 4 months. We would have our first votes occurring on Tuesday evenings for the week, and we would have wheels up at National Airport going back to our districts by noon on Thursday or close to it. And so when we left in October, we had passed only two of 13 appropriations bills. We had funded only one of the 15 departments of the U.S. Government, and not a single domestic agency had a budget for the fiscal year that had already begun.

We left town then for the election, and we said that the lame duck session would be a tough one, that the work load would be enormous, that Congress would be forced to stay in session until Christmas Eve. But guess what? Wrong again. We simply are seeing the magic switch being used one more time. Put the government on automatic pilot and go home.

So what have we accomplished? Well, the Director of the Customs Service will no longer report to an Under Secretary in the Treasury Department. He will report to an Under Secretary in another building in a new bureaucracy. That is our achievement on the Homeland Security front.

I frankly do not think Osama bin Laden will care. He may even realize that all of the moving of desks and phones and computers over the next couple of years in the new Department of Homeland Security is likely to create gaps in our security and give him openings to do his dirty work.

But what will happen to the plan of the Director of the Customs Service to inspect the millions of 40-foot long steel containers that get shipped into the United States each year when they leave Europe or Asia or Latin America? I think Osama will be glad that the Congress did not find time to fund that initiative. What about the money that the FBI Director needs to upgrade his computers, to hire more analysts, to get translators to speak Arabic, Farsi or Pashto. I am sure that Osama will be glad that the Congress did not get around to fixing that problem either.

And how about the money we were supposed to give to local fire and police departments so they could have common communications systems so that the first responders would have protection in dealing with biological and chemical attacks? Well, I guess apparently the judgment of Congress is that that can wait. After all, who knows, maybe the next major attack in this country may not come until next summer or, if we are lucky, even later.

□ 1200

So again, Congress chooses to not deal with the problem.

What about the money for the Public Health Service to buy the anthrax vaccine for first responders and others that would have to cope with an attack? The same answer, no action.

But I guess we need another break. After all, we have had a tough election season. Apparently the Congress has to rest up from all of its recesses and those weeks we had to slave from Tuesday evening through Thursday noon before we went back to our districts. And certainly Congress needs to rest up from all of the promises that it has made during the election, promises about how much we care about the economy and people being squeezed by the economic downturn.

But apparently we are not going to stay here now to deal with the extension of unemployment benefits; we are not going to fix the problems at the National Institutes of Health; we are not going to fix the highway problems; we are not going to fix the problem of the underfunding of the Securities and Exchange Commission. But after all, apparently Members of the House are really worn out from all of the TV ads we all had to run telling our constituents how much we cared for the elderly

and how hard we were going to work to ensure that they got the medical care and the prescription drugs that they needed.

If running those ads had been less arduous, maybe we could have persuaded the majority party to stay around for a few more days to do its work. I know that the chairman of the committee would like to do that, but apparently he has been overruled by his caucus or by his leadership or by the House and Senate leadership combined, if we can call that leadership by walking away from their responsibilities.

Mr. Speaker, I would simply say that this is a pitiful performance by a pitiful Congress walking away from its major responsibility. This Congress has not even found the will to pass the appropriation bills, which is the main job Congress has each year.

I do not know why Members run for reelection for another 2 years if they do not want to do the work that they were elected to do in the previous 2 years. I guess there are a lot of mysteries in this place I do not understand.

This resolution is going to pass. We will come in here on January 7, and we will kick the can down the road again. We will come in long enough to sign up for our new 2-year lease on our paychecks, and then Congress will apparently adjourn again without doing anything to deal with the major problems that Congress is facing on the appropriations side. I guess it is a harbinger of things to come, but it is a disgrace. I for one am not going to vote for this continuing resolution because what it really is is a spectacular abdication of responsibility, which is not worthy of this body.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Florida. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I misspoke when I said there was only one anomaly or change in this CR because there is one other I should call to the attention of the House, and that has to do with the Department of Homeland Security. In the CR we included a provision which provides transfer authority for the establishment of the Department of Homeland Security and for unforeseen homeland security requirements.

This is basically language that we had agreed to when the Homeland Security bill passed the House earlier this year; because that conference report is expected to hit the floor today we included this appropriations provision in the CR. Here is what it does.

Under this provision, the Secretary of Homeland Security may transfer a total of $500 million in appropriations for unforeseen homeland security requirements.

In addition, unobligated balances of not more than $140 million from funds appropriated prior to October 1, 2002, may be transferred for the initiation of the new department.

Now such transfers, Mr. Speaker, may not exceed 2 percent of any appropriation between such appropriations. The provision requires that these transfers, and this is important, are subject to current reprogramming requirements. These transfer authorities would be provided until September 30, 2004.

Mr. Speaker, this language was necessary to provide the President of the United States with the ability to move quickly in dealing with homeland security issues. We had some debate on this during the consideration of the homeland security bill. This is an acceptable provision to the appropriators as we protect the responsibilities under the Constitution of the House and the Senate.

So this is not a controversial item in this continuing resolution, but I thought I had better call it to the attention of the membership.

Mr. Speaker, I reserve the balance of my time.

Mr. OBEY. Mr. Speaker, I yield 4 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank the gentleman for yielding me this time and for his hard work this year in trying to get these appropriations out.

Many of my colleagues have been local elected officials, and surely they recognize what fix they would be in if their city or county had to run on a day-to-day CR. We cannot pick up garbage on a day-to-day CR. The Federal Government might be able to run HHS or the Department of Labor that way, but I am talking about the Nation's capital, a living, breathing city of 600,000 people which also serves 200,000 Federal workers.

What we are doing with these interminable CRs that puts D.C. right in there, even though there is mostly local money here, what we are doing is crippling good management in the city, which is exactly what the Congress has admonished the District to try to improve.

Major Williams and our City Council deserve a lot better. They have done a spectacular job in renewing city operations. These folks had a balanced budget, and then they had to do a 10 percent cut of the budget raised by local taxes, and they did it in 10 days. Now they are told for an entire quarter they are going to have to live on last year's budget.

Let me give Members two reasons why that is difficult for a city. First, they cannot implement new programs which are necessary. Second, despite the cuts, the District of Columbia has increased its school budget, but since under the CR the city must run at last year's levels, it cannot increase its school budget, and yet that is the budget that Congress has been most concerned about.

Much of that local money would go to special education problems, which are particularly crippling us because we do not have any State to contribute to special education. Indeed, Congress is so concerned about special education that we got $14 million in extra Federal money for special education in this budget, but I am not even asking for that, I am just asking for D.C. to be able to spend her own money on her own special education children.

Yesterday I spoke with the President about it, the Mayor spoke with him about it, and subsequently I called his top staff at the White House. Guess what, neither the President nor his top staff seemed to have any objections. The top staff said they would put it before the OMB. The reason that I think the President and his staff did not have particular objection is that apparently what the President and those who are holding the appropriations want is no Federal spending above a certain level. Voila. The money I am talking about is all money raised in the District of Columbia, $3 billion of it. No Federal spending above a certain level, fits the rule, this money should not even be here in the first place.

If it is here, I would think that there would be some sensitivity to the fact that the city should not be treated as if it were the Department of Labor or some other agency. I had a one-sentence amendment that would have allowed D.C. to spend local taxpayer funds only, leaving all of the Federal money over here.

There are special circumstances in this CR. It is not a clean CR. There are TANF grants and payments, and I thank the leadership. There is an allowance for transfer of $500 million from other agencies to homeland security.

Mr. Speaker, surely keeping the Nation's capital afloat and well-run is just such a special circumstance. I ask that we take all the action we can after this CR expires to see that this never happens to the city again, and pray for the city during this period.

Mr. OBEY. Mr. Speaker, I yield 5 minutes to the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Speaker, I first encountered this thing we call a continuing resolution when I was a young officer in the Army working for the Assistant Secretary of Defense Comptroller. I remember how it was explained to me then by the DOD's General Counsel. He said, in effect, the Congress is saying to us we have not got our job done, we are a little embarrassed, so just keep spending money at the level it is being spent until we can catch up and get things done right.

This year, more than any year I have ever seen or known about, we are deficient in doing our job. Eleven out of 13 appropriation bills have not been passed. Let me just pick out four and point out to Members the consequences of having a continuing resolution in lieu of a properly worked appropriation bill.

Veterans medical care. If Members are not aware that veterans are calling their district offices and saying they cannot get an appointment at veterans hospitals in less than 6 months, Members have not been talking to their

staff. The Veterans Administration is overstretched, overcommitted, and we are not in this resolution providing them a dime more than they got last year to deal with a problem that is getting worse all the time.

So Members are turning a deaf ear to the veterans who are calling and saying what good is health care when it needs to be delayed for 6 months. That is the situation that I am finding in my office, and I dare say it is true all across the country, and this resolution turns a deaf ear to the veterans of this country and their pleas for the health care promised them.

Education. Last year the President made a big deal, and rightly so, out of his signature education bill. Democrats in the House and Senate, the gentleman from California (Mr. GEORGE MILLER) and Senator KENNEDY, joined him in inaugurating the bill called Leave No Child Behind. It was a reauthorization of the Elementary and Secondary Education Act.

When we passed that authorization bill in the House, the price tag on it was $26.4 billion. We said that we recognize that school districts are going to have additional substantial obligations, and we wanted to send money with the mandates we were imposing upon them. We said we need to increase what we are spending on elementary and secondary education so that the school districts will be able to meet their obligations and will be funded at the Federal level for the obligations that the Federal Government is imposing upon them.

Mr. Speaker, 6 weeks later after the authorization had passed, the President sent his budget up and guess what, his budget funded the bill at $4 billion less, $19 million less than we were then spending for elementary and secondary education, and that is the way we will leave it if we pass the CR instead of going back to the Labor-Education appropriation bill and properly funding education as we should.

Education will be shorted. We will leave a lot of children behind. $4 billion would put a lot of our school districts that are already hurting because of statewide budget cuts in dire straits. It is true in my State; I dare say it is true in every State.

Highways. No Member should vote without looking at this list right here. I just looked at it to see what happens to the highway bill, what we will fund compared to what TEA–21 might have provided. South Carolina will get $49.162 million less than we would otherwise get if we did a proper appropriations bill.

□ 1215

We are a small State. If you are larger than South Carolina, and most of you are, you better check this list because you are going to be surprised at how much you will be shorted in highway funding if you vote for a CR over a proper transportation appropriation bill.

Finally, the SEC. The SEC, the Securities and Exchange Commission, makes money for the Federal Government. The SEC charges fees that amount to about $1.2 billion every year. It then spends about $450 million a year, and the $750 million difference goes into the Treasury. They make money for the Federal Government. If there is one agency of the Federal Government that is challenged right now, if there is one thing we need to do for this economy, to restore confidence in the stock markets and corporate accountability, the SEC has to be the watchdog. They have to do it. They need more money. The man who wrote the bill, Sarbanes-Oxley, said they need $776 million. You would still have a $500 million contribution out of their fees to make to the Federal Treasury. Pass this continuing resolution instead of a proper appropriation bill and the SEC will get $450 million, slightly less than that, in fact. It is not right.

I am ready to stay here and do it right. That is what I submit every Member should do. We can do it. We can do it between now and Thanksgiving. We can do it right. We can take care of highways, we can take care of veterans, we can take care of the SEC. We can do it right. We should do it right and not pass this CR.

Mr. OBEY. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, to both of the distinguished gentlemen, the chairman of the Committee on Appropriations and the ranking member, we stand today not wearing any partisan hat on a very crucial element of our responsibilities as the House of Representatives. I have always been taught constitutionally that we have the Committee on Ways and Means, which the Founding Fathers established as the ways and the means to fund our government; and we have the appropriators who are the distributors of important taxpayers' dollars to move the engine of America. And so I am particularly frustrated by what we are facing today.

I want to associate myself with the remarks of my colleague from the District of Columbia, particularly because I think we should look to the issue of national security. And certainly a city, having come from local government as a member of the Houston City Council, it is very difficult to run a government with the ups and downs of no one knows what may occur without having the kind of funding that the Congresswoman is asking for. This resolution does not answer that question.

Then as I have made known to my colleagues, there are some of us who have entities in our district that are literally closing their doors. They are doing good work. They are fiscally conservative and responsible, like the Martin Luther King Jr. Center in my community that houses homeless women and their children, those children, also separately housed, who come from HIV-infected parents, who have to have separate housing or have to be cared for. Those doors are about to close. Or the increasing rise in America of HIV infection. There are two entities in my congressional district, the Montrose Counseling Center and the Donald Watkins Center, that cater to the needs of individuals in the minority community who are HIV infected.

Then, of course, we with great pride in a bipartisan manner indicated our support for Leave No Child Behind. My school district, one of my school districts, the Houston Independent School District, has been labeled as an exemplary school district; but at the same time there is increasing need for special needs children. Those funds that we so appropriately authorized in Leave No Child Behind are not being funded at the levels that it should. Institutions of higher learning, like Texas Southern University that is branching out to educate as a historically black college those individuals who would not have access to higher learning, are losing programs that are so vital to producing more experts in math and science and the sciences.

And so this CR does more than just respond to maybe someone's viewpoint that we are to harbor our tax dollars and put them off to the side; it hurts people. Particularly, it hurts our community hospitals. We must fund them now. I would only encourage my colleagues by way of thanking them, both the gentleman from Florida (Mr. YOUNG) and the gentleman from Wisconsin (Mr. OBEY), to come together and see how we can resolve these matters; and if the leadership would simply listen to them, we could resolve these matters.

Mr. OBEY. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. LAMPSON).

Mr. LAMPSON. I thank the gentleman for yielding me this time.

Mr. Speaker, I have a question regarding a visit I had just a few minutes ago from some physicians from the State of Texas asking me about the replacement of the Medicare funding into the CR. We know that on January 1, their Medicare payments, or payments to the doctors for treating Medicare payments, will go away. They will be notified at the beginning of December, we understand on December 1. What the doctors are saying is that they received information from us that we would as a Congress attempt to address this last year. We did not. That we would address it this year. We did not. They are afraid that when those letters in December go out asking those doctors to reup, to agree to continue to see Medicare patients, that the answer is going to be ''no way.''

We need to address this because it is going to affect an awful lot of people. Can the gentleman from Wisconsin tell

me, or others, whether or not this language will indeed be put into this CR before we vote on it?

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. LAMPSON. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, I thank the gentleman for raising the point. Unfortunately, that is one of the many items that will not be corrected when this CR passes. You will have those cutbacks go into effect in January. In addition, we lose other items which we cannot reach in our motion to recommit, such as the need to extend unemployment compensation. That is not going to be taken care of, either. This is just another example of the Congress walking away from its responsibilities.

Mr. LAMPSON. Reclaiming the few seconds that I can take on this, it is a travesty to our citizens of this country who are going to need and want treatment within our health care system. If they cannot get access to the care that they need, they will be spending a huge amount of money on themselves, which we will more than likely be picking up as a country later on. My brother is just one of many physicians who will fall into that category. I think that it is terrible that we are having to consider this right now, and I hope and pray that somehow it could be fixed.

Mr. OBEY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would like to ask the distinguished gentleman from Florida a question. As he knows, this committee has been trying to convince the House leadership for months that with a few billion of additional allocation, we could produce appropriation bills that would produce very large bipartisan majority support in both Houses. As he knows, we have been asking for roughly around $10 billion. I know the gentleman has. We have been told, ''Oh, you cannot do that because the Committee on Appropriations is a big spender.'' But as I understand the rule that just passed, the bill that will follow ours that was approved by the rule will in fact wipe out the requirement to sequester because on the entitlement side of the budget, we see an explosion on the deficit of well over $100 billion; and when you take into account all of the exemptions that you have from this sequestration requirement, the Congress is in essence saying, ''Well, do not worry, it is on the mandatory side. So we will let that $30 billion expansion of the deficit that would be avoided by sequestration, we will let that go ahead.''

These same folks who are attacking this committee for being big spenders are in fact wiping out a requirement to compensate for spending that is more than three times as large as the amount that this committee is asking for to fix the appropriations bills.

Is that not roughly the situation?

Mr. YOUNG of Florida. Mr. Speaker, I yield myself such time as I may consume.

That is roughly the situation. The gentleman has described a situation that was beyond our control, unfortunately. The budget that was deemed by the House of Representatives included a top-line number that was different from the number used by the Committee on Appropriations in the Senate. And so we did have a difference of numbers. The problem has been all along that we have not had the same numbers as the other body.

But to get to the gentleman's specific point, the PAYGO issue. By the way, the PAYGO is not in this CR. There was an attempt to include it in the CR, but the committee objected to that, because PAYGO deals with mandatory spending. It relates to mandatory spending, of which we have no jurisdiction and no control. But as I have said on this floor many times and as my colleague from Wisconsin has said many times, a dollar is a dollar, it is all the same color whether it is in a mandatory account or whether it is in a discretionary account. The truth of the matter is that our mandatory spending has far exceeded what the Balanced Budget Act would allow for. And the PAYGO scorecard needs to be cleared so that the government does not become in violation of the Balanced Budget Act. Our committee does not deal with mandatory spending, so I did not think we had any obligation or responsibility or jurisdiction to deal with it in this CR.

But again, and the gentleman makes a very good point, spending is spending. And while appropriators are often referred to as the big spenders, we stay within our allocation, the budget numbers. The mandatory spending accounts are the ones that get really out of balance. That is exactly what has happened here. That is why this PAYGO issue will be before the House later today. It is interesting to note that some of those who are most adamant on keeping down discretionary spending, regardless of what it might be for, seem to have no objection to mandatory spending despite the fact that it goes far above the budget, much more so than the appropriations bills. Our committee has been very careful to keep our spending bills within the budget numbers that were set. The same cannot be said for mandatory programs.

So I appreciate the gentleman raising that issue. It is not something that is political. It is not partisan. It is not one party versus the other. It is just a matter of fact. Mandatory spending is spending exactly the same as discretionary spending. The problem is a lot of people do not understand that and they really need to, because mandatory spending is what is causing the biggest part of our budget problems today. That is why we are going to have to deal with a PAYGO bill later on today or tomorrow. I thank the gentleman for raising the issue.

Mr. OBEY. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, what the gentleman's comments come down to is that the same House leadership that has told the Committee on Appropriations that we cannot make these bills healthy enough to pass by adding roughly $10 billion to them for appropriation bills, the same leadership is asking us to allow the Congress to get out of town with a license to provide spending for more than $30 billion on the entitlement side. I think that exposes the double standard to which we have been subjected for this entire year.

That is why in my motion to recommit I will have a motion that does the following: it will add $2.4 billion to veterans medical care to help reduce the backlog that veterans face now when they go into a VA hospital and want to see a specialist. It will add $2.8 billion to the funding level for the National Institutes of Health so that NIH will be able to proceed to provide its new grants and contracts. Otherwise, they will be in trouble come January. It will provide $2.6 billion in additional funding to FEMA for State and local first responders grants to help police and firemen get up to speed in dealing with our antiterrorism efforts. And it will add $300 million to the Securities and Exchange Commission to bring that funding level up to $776 million, which is the amount that the Congress promised in the authorization that it would provide back when the heat was on when the public was upset about fraud that was going on in many American corporations.

□ 1230

Unfortunately, now this CR will not meet that commitment either. So when the time comes, I will offer that recommit motion and I wanted to, in the interest of saving some time, notify the House of that right now.

Mr. Speaker, I yield back the balance of my time.

Mr. YOUNG of Florida. Mr. Speaker, I yield myself the balance of my time.

Just a brief closing statement to say, Mr. Speaker, that a continuing resolution is not the best way to fund the government. There is no question about that, and I think most of our colleagues would agree with that. But circumstances today require us to deal with this continuing resolution.

And just a couple of comments on the motion to recommit. These types of decisions should be made in the Committee and on the floor of the House once the Committee has reported the bill. And as the ranking member knows, the Committee on Appropriations in the House has marked up all of its bills but one. So these decisions really have been made in the committee, and once we move the bills many of the concerns that the gentleman from Wisconsin (Mr. OBEY) is concerned about will be taken care of because they are legitimate needs of the government. We do not want to recommit this bill today. We want to pass this bill, get this business behind

us, and get on to the balance of our responsibilities for today and tomorrow, and then we will begin to prepare for the beginning of the next session, and hopefully we will have the appropriations bills for 2003 ready to be completed when the House reconvenes.

So, again, a continuing resolution is not the best way to deal with appropriations issues, but because of today's circumstances this is what is available to us, and, Mr. Speaker, I hope that we would reject the motion to recommit and that we would pass this CR and get on with the rest of our business.

Mr. UDALL of Colorado. Mr. Speaker, passage of this resolution is understandable, but unfortunate. And, louder than any words, it demonstrates the cynicism of the Republican leadership here in the House.

For months, the leadership has refused to allow the House to meet its basic responsibility of considering bills to fund any part of the government besides the Department of Defense. And by passing this continuing resolution, that pattern of dereliction will be continued through the rest of this year.

I do not think this is how we should do our business. I agree with the Rocky Mountain News that we should instead make completion of the appropriations process our top priority.

For the information of our colleagues, I am attaching the News's editorial on this subject.

[From the Rocky Mountain News, Nov. 13, 2002]

BUDGET THE TOP PRIORITY FOR CONGRESS

President Bush says the ''single most important item'' facing the lame-duck Congress is creation of his Department of Homeland Security.

Actually, it's not.

The most important duty of the lame-duck Congress is to pass the Federal budget for fiscal year 2003, which began Oct. 1. Embarrassingly, one two of the 13 money bills needed to complete that budget have been passed. And that alone is why the outgoing Congress had to return to the capital, not homeland security or terrorism insurance or the energy bill.

And the returning lawmakers should pass those bills cleanly and not resort to the desperate solution of other lame-duck Congresses—stuffing all the unfinished budget business into the messy monster called an omnibus reconciliation bill.

Lame-duck Congresses are not the best possible legislative forum. They operate in a tight time frame, knowing they'll be out of business at the end of December. And they include in their ranks retiring and defeated lawmakers who no longer answer to anyone. And this lame-duck session has a novel problem. The Democrats now control the Senate, but only by one vote and only until a new Republican senator arrives in a week or so.

The lame-duck Congress' most important item of business is to pass the budget.

The second most important priority is: Go home.

Ms. TAUSCHER. Mr. Speaker, I rise in opposition to this Continuing Resolution.

People at home send us to Washington to do a job and make tough decisions—not simply kick the can down the street when it's convenient for us to do so.

It is irresponsible to run our government like this—without a budget or any sense of what we can afford to spend money on—especially during times of war.

We have real demands on our shrinking federal budget, and we have tough choice to make.

By passing this Continuing Resolution, we are not only avoiding making those decisions, we are putting our country in jeopardy.

This is the fifth Continuing Resolution we've passed this year that funds all aspects of the federal government at fiscal year 2002 levels, except highway construction—which it cuts by almost $4 billion. By setting spending at $27.7 billion instead of the current year level of $31.8 billion, California will lose over $261 million, which translates into about 12,400 good paying jobs that will be lost as a result.

This is wrong for California's economy and it's wrong for the highway users who have paid taxes into the highway trust fund.

Investments in highway infrastructure are not only an immediate stimulus to California's economy, but they will help alleviate congestion and reduce air pollution.

Operating under a Continuing Resolution also has a damaging impact on ongoing construction projects at the national laboratories in my district. Without an annual budget, the labs are unable to consent to the large contracts. Contracts like these at Lawrence Livermore National Laboratory are vital to ongoing construction work on the National Ignition Facility and the Terrascale Simulation Facility, both critical elements of the Stockpile Stewardship Program This not only undermines this important national security program, it also hurts workers because contractors are let go when the labs are no longer able to guarantee payment.

National security work this critical cannot simply be continued piecemeal, and I am concerned that the Continuing Resolution, by driving the costs of construction up, will make it harder to fund these programs that ensure that we have a credible and reliable nuclear deterrent to protect the American people.

And, this Continuing Resolution hurts health care.

Medicare's foundation is crumbling. Medicare payments to physicians and other health professionals will be cut by 12 percent over the next three years, beginning with a 4.4 percent cut on January 1, 2003. More than $11 billion nationwide is at stake, with each state losing millions in federal health care funds. All of this is in addition to the 5.4 percent cut that was implemented on January 1 of this year.

For Medicare seniors, I strongly urge my colleagues to immediately fix the Medicare physician payment update problem.

Physicians and other health professionals are the very foundation of the medical care system. Without them, patients will not be able to get hospital, nursing home and home health care services, or prescription drugs. It is critical that both the House and Senate stay in session to fix this mistake and avert the impending cuts before patient access is further jeopardized.

In addition to failing our nation's seniors, we are also failing America's children.

The Impact Aid program, which compensates local school districts that enroll ''federally connected'' children, is also hurt if Congress passes a Continuing Resolution. Most of these children are the sons and daughters of parents who are in the military or live on military bases.

Since Congress has failed to act appropriately, I urge the Office of Management and Budget (OMB) to approve a reasonable apportionment of Impact Aid funds for fiscal year 2003 based on historical obligations. This action by OMB will ensure that our schools can continue to meet the needs of our children.

And these problems are just the tip of the iceberg. By keeping funding at 2002 levels, Congress is not providing any money for the Securities and Exchange Commission to beef up its enforcement of corporate crime, and the National Institutes of Health has to cut back on important work.

Congress should not leave town until all the appropriations bills are completed. It is our responsibility to make decisions on how to fund the activities in the federal budget, with a new urgent priority of fighting terrorism abroad and protecting our homeland.

American taxpayers are the victim of Congress' inability to get its work done.

I urge my colleagues to vote against this Continuing Resolution and get back to doing the work we were sent to Washington to do.

Mr. YOUNG of Florida. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate has expired.

The joint resolution is considered read for amendment, and pursuant to House Resolution 602, the previous question is ordered.

The question is on engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. OBEY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the resolution?

Mr. OBEY. I certainly am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. OBEY moves to recommit the bill, House Joint Resolution 124, to the Committee on Appropriations with instructions to report the bill back to the House forthwith with the following amendments:

Page 1, line 5, after ''2003'', insert the following:

''*Provided*, That in addition to the amounts made available by section 101, $2,416,000,000 is available for the Department of Veterans Affairs, Veterans Health Administration, Medical Care, for health care for enrolled veterans: *Provided further*, That in addition to the amounts made available by section 101, $2,800,000,000 is available for the Department of Health and Human Services, National Institutes of Health: *Provided further*, That in addition to the amounts made available by section 101, $2,600,000,000 is available for the Federal Emergency Management Agency, Emergency Management and Planning Assistance, for State and local first responders: *Provided further*, That notwithstanding any other provision of this joint resolution, $776,000,000 is available for the Securities and Exchange Commission, Salaries and expenses, and amounts otherwise made available by this resolution for salaries and expenses activities at the Department of Commerce shall be reduced by $100,000,000 and amounts otherwise made available by this resolution for salaries and expenses activities at the Department of Justice (excluding the Federal Bureau of Investigation and the Immigration and Naturalization Service) shall be reduced by $200,000,000: *Provided further*, Notwithstanding any other provision of

this joint resolution, in addition to amounts made available in section 101, and subject to sections 107(c) and 108, such funds shall be available to the Securities and Exchange Commission to advance to the Public Company Accounting Oversight Board for necessary start-up costs of the Board: *Provided further*, That upon the collection of fees authorized in section 109(d) of Public Law 107–204, the Securities and exchange Commission shall be reimbursed for any Securities and Exchange Commission shall be reimbursed for any Securities and exchange Commission appropriations advanced to the Public Company Accounting Oversight Board for start-up expenses, as authorized by section 109(j) of Public Law 107–204, resulting in no net impact on appropriations available to the Securities and Exchange Commission in fiscal year 2003.''

Mr. OBEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. OBEY) is recognized for 5 minutes in support of his motion.

Mr. OBEY. Mr. Speaker, this motion will, as I said, provide increases to the following accounts: For veterans medical care it will provide a $2.4 billion increase; for the National Institutes of Health for bioterrorism and general research it will increase funding by $2.8 billion; for FEMA for State and local first responders it will increase funding by $2.6 billion; for the Securities and Exchange Commission for corporate oversight it will increase funding by $300 million to finally put some teeth back in that agency; and it ensures that the Public Company Accounting Oversight Board has sufficient funding to provide effective oversight of the SEC and corporate accounting standards.

There are other items that I would like to have in the recommit motion, Mr. Speaker, but because of the parliamentary situation, for instance, we are precluded from including items that would include an extension of the unemployment compensation program to long-term unemployed workers. We are precluded from adding funding that was just raised by the gentleman from Texas (Mr. LAMPSON) on the Medicare givebacks for providers, and we have not been able to include funding at this point for additional support for education. That does not mean those items should not also be addressed. They should. But right now we have just been told that the bill that will come up later today will in fact give Congressional blessing to the idea that the deficit will be increased by at least $30 billion on the mandatory side and yet somehow we are committing a mortal sin if we try to provide more funding for veterans medical care, for medical research, to our local police and firemen to strengthen our response against terrorism, and to the SEC in order to ensure that corporate balance sheets are actually on the square and legitimate.

I find that kind of logic quaint. I think that each of these items is perfectly defensible. And with that, Mr. Speaker, I would urge a yes vote on the motion to recommit.

Mr. Speaker, I yield back the balance of my time.

Mr. YOUNG of Florida. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Florida is recognized for 5 minutes.

Mr. YOUNG of Florida. Mr. Speaker, I would simply say that the gentleman's motion to recommit addresses a number of important issues, but they are important to the point that they should not be discussed or determined with a 5-minute debate on one side and a 5-minute debate on the other side. These issues are so important they should have considerable debate, and consideration by the committee, and consideration by the House, and because of that, Mr. Speaker, I object to the motion to recommit and ask the Members to oppose it and then vote for the continuing resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—yeas 196, nays 216, not voting 19, as follows:

[Roll No. 473]

YEAS—196

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (TX)
Harman
Hastings (FL)
Hilliard
Hinojosa
Hoeffel
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—216

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
Delahunt
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)

Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—19

Blagojevich
Condit
Cubin
Ehrlich
Fattah
Grucci
Hill
Hinchey
Hooley
Houghton
McKinney
Miller, George
Neal
Oxley
Payne
Rangel
Roukema
Stump
Visclosky

□ 1304

Mrs. CAPITO, and Messrs. TOM DAVIS of Virginia, KENNEDY of Minnesota, and MORAN of Kansas changed their vote from ''yea'' to ''nay.''

Ms. DEGETTE, and Messrs. PHELPS, COSTELLO, and MEEHAN changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. DELAHUNT. Mr. Speaker, on rollcall No. 473, the motion to recommit for the bill H.J. Res. 124, my vote was inadvertantly recorded as a "no." I had intented to support the Obey motion to recommit and vote "yes."

The SPEAKER pro tempore (Mr. LATOURETTE). The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. OBEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 270, noes 143, not voting 18, as follows:

[Roll No. 474]

AYES—270

Abercrombie
Aderholt
Akin
Andrews
Armey
Baca
Bachus
Baker
Ballenger
Barcia
Bartlett
Barton
Bass
Bereuter
Berkley
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Brady (PA)
Brady (TX)
Brown (FL)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Culberson
Cummings
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hilleary
Hilliard
Hobson
Hoeffel
Hoekstra
Holden
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
Matheson
Matsui
McCarthy (NY)
McCrery
McHugh
McInnis
McKeon
McKinney
McNulty
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moore
Morella
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Osborne
Ose
Otter
Pastor
Pence
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Rush
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Strickland
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Watkins (OK)
Watts (OK)
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOES—143

Ackerman
Allen
Baird
Baldacci
Baldwin
Barrett
Becerra
Bentsen
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Boyd
Brown (OH)
Capps
Capuano
Carson (IN)
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doggett
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank
Gutierrez
Hall (TX)
Hastings (FL)
Hill
Hinojosa
Holt
Honda
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kolbe
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Luther
Lynch
Maloney (NY)
Markey
Mascara
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Moran (KS)
Moran (VA)
Nadler
Napolitano
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Paul
Payne
Pelosi
Peterson (MN)
Phelps
Platts
Price (NC)
Rahall
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Wamp
Waters
Watson (CA)
Watt (NC)
Waxman
Woolsey
Wu

NOT VOTING—18

Barr
Blagojevich
Condit
Cubin
Fattah
Herger
Hinchey
Hooley
Houghton
Jones (OH)
McCarthy (MO)
Miller, George
Neal
Oxley
Rangel
Roukema
Royce
Stump

□ 1319

Mr. ROTHMAN, Ms. KILPATRICK, Mrs. THURMAN, and Mrs. CLAYTON changed their vote from ''aye'' to ''no.''

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION SECURITY ACT OF 2002

Mr. YOUNG of Alaska submitted the following conference report and statement on the Senate bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–777)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1214), to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Maritime Transportation Security Act of 2002''.

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

Sec. 1. Short title; table of contents.

TITLE I—MARITIME TRANSPORTATION SECURITY

Sec. 101. Findings.
Sec. 102. Port security.
Sec. 103. International seafarer identification.
Sec. 104. Extension of seaward jurisdiction.
Sec. 105. Suspension of limitation on strength of Coast Guard.
Sec. 106. Extension of Deepwater Port Act to natural gas.
Sec. 107. Assignment of Coast Guard personnel as sea marshals and enhanced use of other security personnel.
Sec. 108. Technical amendments concerning the transmittal of certain information to the customs service.

Sec. 109. Maritime security professional training.
Sec. 110. Additional reports.
Sec. 111. Performance standards.
Sec. 112. Report on foreign-flag vessels.
Sec. 113. Revision of Port Security Planning Guide.

TITLE II—MARITIME POLICY IMPROVEMENT

Sec. 201. Short title.
Sec. 202. Vessel COASTAL VENTURE.
Sec. 203. Expansion of American Merchant Marine Memorial Wall of Honor.
Sec. 204. Discharge of agricultural cargo residue.
Sec. 205. Recording and discharging notices of claim of maritime lien.
Sec. 206. Tonnage of R/V DAVIDSON.
Sec. 207. Miscellaneous certificates of documentation.
Sec. 208. Exemption for Victory Ships.
Sec. 209. Certificate of documentation for 3 barges.
Sec. 210. Certificate of documentation for the EAGLE.
Sec. 211. Waiver for vessels in New World Challenge Race.
Sec. 212. Vessel ASPHALT COMMANDER.
Sec. 213. Coastwise trade authorization.
Sec. 214. Jones Act waiver for delayed vessel delivery.
Sec. 215. Realignment of policy responsibility in the Department of Transportation.

TITLE III—COAST GUARD PERSONNEL AND MARITIME SAFETY

Sec. 301. Short title.

Subtitle A—Personnel Management

Sec. 311. Coast Guard band director rank.
Sec. 312. Compensatory absence for isolated duty.
Sec. 313. Accelerated promotion of certain Coast Guard officers.

Subtitle B—Marine Safety

Sec. 321. Extension of Territorial Sea for Vessel Bridge-to-Bridge Radiotelephone Act.
Sec. 322. Modification of various reporting requirements.
Sec. 323. Oil spill liability trust fund; emergency fund advancement authority.
Sec. 324. Merchant mariner documentation requirements.
Sec. 325. Penalties for negligent operations and interfering with safe operation.

Subtitle C—Renewal of Advisory Groups

Sec. 331. Commercial Fishing Industry Vessel Advisory Committee.
Sec. 332. Houston-Galveston Navigation Safety Advisory Committee.
Sec. 333. Lower Mississippi River Waterway Advisory Committee.
Sec. 334. Navigation Safety Advisory Council.
Sec. 335. National Boating Safety Advisory Council.
Sec. 336. Towing Safety Advisory Committee.

Subtitle D—Miscellaneous

Sec. 341. Patrol craft.
Sec. 342. Boating safety.
Sec. 343. Caribbean support tender.
Sec. 344. Prohibition of new maritime user fees.
Sec. 345. Great Lakes lighthouses.
Sec. 346. Modernization of National Distress and Response System.
Sec. 347. Conveyance of Coast Guard property in Portland, Maine.
Sec. 348. Additional Coast Guard funding needs after September 11, 2001.
Sec. 349. Miscellaneous conveyances.

TITLE IV—OMNIBUS MARITIME IMPROVEMENTS

Sec. 401. Short title.
Sec. 402. Extension of Coast Guard housing authorities.
Sec. 403. Inventory of vessels for cable laying, maintenance, and repair.
Sec. 404. Vessel escort operations and towing assistance.
Sec. 405. Search and rescue center standards.
Sec. 406. VHF communications services.
Sec. 407. Lower Columbia River maritime fire and safety activities.
Sec. 408. Conforming references to the former Merchant Marine and Fisheries Committee.
Sec. 409. Restriction on vessel documentation.
Sec. 410. Hypothermia protective clothing requirement.
Sec. 411. Reserve officer promotions.
Sec. 412. Regular lieutenant commanders and commanders; continuation upon failure of selection for promotion.
Sec. 413. Reserve student pre-commissioning assistance program.
Sec. 414. Continuation on active duty beyond thirty years.
Sec. 415. Payment of death gratuities on behalf of Coast Guard auxiliarists.
Sec. 416. Align Coast Guard severance pay and revocation of commission authority with Department of Defense authority.
Sec. 417. Long-term lease authority for lighthouse property.
Sec. 418. Maritime Drug Law Enforcement Act amendments.
Sec. 419. Wing-in-ground craft.
Sec. 420. Electronic filing of commercial instruments for vessels.
Sec. 421. Deletion of thumbprint requirement for merchant mariners' documents.
Sec. 422. Temporary certificates of documentation for recreational vessels.
Sec. 423. Marine casualty investigations involving foreign vessels.
Sec. 424. Conveyance of Coast Guard property in Hampton Township, Michigan.
Sec. 425. Conveyance of property in Traverse City, Michigan.
Sec. 426. Annual report on Coast Guard capabilities and readiness to fulfill national defense responsibilities.
Sec. 427. Extension of authorization for oil spill recovery institute.
Sec. 428. Protection against discrimination.
Sec. 429. Icebreaking services.
Sec. 430. Fishing vessel safety training.
Sec. 431. Limitation on liability of pilots at Coast Guard Vessel Traffic Services.
Sec. 432. Assistance for marine safety station on Chicago lakefront.
Sec. 433. Extension of time for recreational vessel and associated equipment recalls.
Sec. 434. Repair of municipal dock, Escanaba, Michigan.
Sec. 435. Vessel GLOBAL EXPLORER.
Sec. 436. Aleutian trade.
Sec. 437. Pictured Rocks National Lakeshore boundary revision.
Sec. 438. Loran-C.
Sec. 439. Authorization of payment.
Sec. 440. Report on oil spill responder immunity.
Sec. 441. Fishing agreements.
Sec. 442. Electronic publishing of marine casualty reports.
Sec. 443. Safety and security of ports and waterways.
Sec. 444. Suspension of payment.
Sec. 445. Prohibition on navigation fees.

TITLE V—AUTHORIZATION OF APPROPRIATIONS FOR THE COAST GUARD

Sec. 501. Short title.
Sec. 502. Authorization of appropriations.
Sec. 503. Authorized levels of military strength and training.

TITLE I—MARITIME TRANSPORTATION SECURITY

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) There are 361 public ports in the United States that are an integral part of our Nation's commerce.

(2) United States ports handle over 95 percent of United States overseas trade. The total volume of goods imported and exported through ports is expected to more than double over the next 20 years.

(3) The variety of trade and commerce carried out at ports includes bulk cargo, containerized cargo, passenger transport and tourism, and intermodal transportation systems that are complex to secure.

(4) The United States is increasingly dependent on imported energy for a substantial share of its energy supply, and a disruption of that share of supply would seriously harm consumers and our economy.

(5) The top 50 ports in the United States account for about 90 percent of all the cargo tonnage. Twenty-five United States ports account for 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from at least 16 ports. Ferries in the United States transport 113,000,000 passengers and 32,000,000 vehicles per year.

(6) Ports often are a major locus of Federal crime, including drug trafficking, cargo theft, and smuggling of contraband and aliens.

(7) Ports are often very open and exposed and are susceptible to large scale acts of terrorism that could cause a large loss of life or economic disruption.

(8) Current inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the nonintrusive inspection of containerized cargo.

(9) The cruise ship industry poses a special risk from a security perspective.

(10) Securing entry points and other areas of port facilities and examining or inspecting containers would increase security at United States ports.

(11) Biometric identification procedures for individuals having access to secure areas in port facilities are important tools to deter and prevent port cargo crimes, smuggling, and terrorist actions.

(12) United States ports are international boundaries that—

(A) are particularly vulnerable to breaches in security;

(B) may present weaknesses in the ability of the United States to realize its national security objectives; and

(C) may serve as a vector or target for terrorist attacks aimed at the United States.

(13) It is in the best interests of the United States—

(A) to have a free flow of interstate and foreign commerce and to ensure the efficient movement of cargo;

(B) to increase United States port security by establishing improving communication among law enforcement officials responsible for port security;

(C) to formulate requirements for physical port security, recognizing the different character and nature of United States port facilities, and to require the establishment of security programs at port facilities;

(D) to provide financial assistance to help the States and the private sector to increase physical security of United States ports;

(E) to invest in long-term technology to facilitate the private sector development of technology that will assist in the nonintrusive timely detection of crime or potential crime at United States ports;

(F) to increase intelligence collection on cargo and intermodal movements to address areas of potential threat to safety and security; and

(G) to promote private sector procedures that provide for in-transit visibility and support law enforcement efforts directed at managing the security risks of cargo shipments.

(14) On April 27, 1999, the President established the Interagency Commission on Crime

and Security in United States Ports to undertake a comprehensive study of the nature and extent of the problem of crime in our ports, as well as the ways in which governments at all levels are responding. The Commission concluded that frequent crimes in ports include drug smuggling, illegal car exports, fraud, and cargo theft. Internal conspiracies are an issue at many ports and contribute to Federal crime. Criminal organizations are exploiting weak security at ports to commit a wide range of cargo crimes. Intelligence and information sharing among law enforcement agencies needs to be improved and coordinated at many ports. A lack of minimum physical and personnel security standards at ports and related facilities leaves many ports and port users very vulnerable. Access to ports and operations within ports is often uncontrolled. Security-related and detection-related equipment, such as small boats, cameras, large-scale x-ray machines, and vessel tracking devices, are lacking at many ports.

(15) The International Maritime Organization and other similar international organizations are currently developing a new maritime security system that contains the essential elements for enhancing global maritime security. Therefore, it is in the best interests of the United States to implement new international instruments that establish such a system.

SEC. 102. PORT SECURITY.

(a) IN GENERAL.—Title 46, United States Code, is amended by adding at the end the following new subtitle:

"Subtitle VI—Miscellaneous

''Chap. Sec.
"701. Port Security 70101

"CHAPTER 701—PORT SECURITY

''Sec.
''70101. Definitions.
''70102. United States facility and vessel vulnerability assessments.
''70103. Maritime transportation security plans.
''70104. Transportation security incident response.
''70105. Transportation security cards.
''70106. Maritime safety and security teams.
''70107. Grants.
''70108. Foreign port assessment.
''70109. Notifying foreign authorities.
''70110. Actions when foreign ports not maintaining effective antiterrorism measures.
''70111. Enhanced crewmember identification.
''70112. Maritime security advisory committees.
''70113. Maritime intelligence.
''70114. Automatic identification systems.
''70115. Long-range vessel tracking system.
''70116. Secure systems of transportation.
''70117. Civil penalty.

"§ 70101. Definitions

''For the purpose of this chapter:

''(1) The term 'Area Maritime Transportation Security Plan' means an Area Maritime Transportation Security Plan prepared under section 70103(b).

''(2) The term 'facility' means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.

''(3) The term 'National Maritime Transportation Security Plan' means the National Maritime Transportation Security Plan prepared and published under section 70103(a).

''(4) The term 'owner or operator' means—

''(A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel; and

''(B) in the case of a facility, any person owning, leasing, or operating such facility.

''(5) The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

''(6) The term 'transportation security incident' means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

"§ 70102. United States facility and vessel vulnerability assessments

''(a) INITIAL ASSESSMENTS.—The Secretary shall conduct an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that pose a high risk of being involved in a transportation security incident.

''(b) FACILITY AND VESSEL ASSESSMENTS.—(1) Based on the information gathered under subsection (a) of this section, the Secretary shall conduct a detailed vulnerability assessment of the facilities and vessels that may be involved in a transportation security incident. The vulnerability assessment shall include the following:

''(A) Identification and evaluation of critical assets and infrastructures.

''(B) Identification of the threats to those assets and infrastructures.

''(C) Identification of weaknesses in physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, contingency response, and other areas as determined by the Secretary.

''(2) Upon completion of an assessment under this subsection for a facility or vessel, the Secretary shall provide the owner or operator with a copy of the vulnerability assessment for that facility or vessel.

''(3) The Secretary shall update each vulnerability assessment conducted under this section at least every 5 years.

''(4) In lieu of conducting a facility or vessel vulnerability assessment under paragraph (1), the Secretary may accept an alternative assessment conducted by or on behalf of the owner or operator of the facility or vessel if the Secretary determines that the alternative assessment includes the matters required under paragraph (1).

"§ 70103. Maritime transportation security plans

''(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—(1) The Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

''(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

''(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

''(B) Identification of security resources.

''(C) Procedures and techniques to be employed in deterring a national transportation security incident.

''(D) Establishment of procedures for the coordination of activities of—

''(i) Coast Guard maritime security teams established under this chapter; and

''(ii) Federal Maritime Security Coordinators required under this chapter.

''(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

''(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

''(G) Designation of—

''(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

''(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

''(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

''(I) A recognition of certified systems of intermodal transportation.

''(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

''(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

''(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

''(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

''(b) AREA MARITIME TRANSPORTATION SECURITY PLANS.—(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

''(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

''(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

''(2) The Area Maritime Transportation Security Plan for an area shall—

''(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

''(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

''(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

''(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

''(E) include any other information the Secretary requires; and

''(F) be updated at least every 5 years by the Federal Maritime Security Coordinator.

''(3) The Secretary shall—

''(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

''(B) periodically review previously approved Area Maritime Transportation Security Plans.

''(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

''(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

''(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

''(c) VESSEL AND FACILITY SECURITY PLANS.—(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

''(2) The vessels and facilities referred to in paragraph (1)—

''(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

''(B) do not include any vessel or facility owned or operated by the Department of Defense.

''(3) A security plan required under this subsection shall—

''(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

''(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

''(C) include provisions for—

''(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

''(ii) establishing and controlling access to secure areas of the vessel or facility;

''(iii) procedural security policies;

''(iv) communications systems; and

''(v) other security systems;

''(D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;

''(E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;

''(F) be updated at least every five years; and

''(G) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.

''(4) The Secretary shall—

''(A) promptly review each such plan;

''(B) require amendments to any plan that does not meet the requirements of this subsection;

''(C) approve any plan that meets the requirements of this subsection; and

''(D) review each plan periodically thereafter.

''(5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—

''(A) the plan has been approved by the Secretary; and

''(B) the vessel or facility is operating in compliance with the plan.

''(6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.

''(7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

''(d) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

''(1) facility security plans, vessel security plans, and port vulnerability assessments; and

''(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

''§ 70104. Transportation security incident response

''(a) FACILITY AND VESSEL RESPONSE PLANS.—The Secretary shall—

''(1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and

''(2) make those plans available to the Director of the Federal Emergency Management Agency for inclusion in the Director's response plan for United States ports and waterways.

''(b) CONTENTS.—Response plans developed under subsection (a) shall provide a comprehensive response to an emergency, including notifying and coordinating with local, State, and Federal authorities, including the Director of the Federal Emergency Management Agency, securing the facility or vessel, and evacuating facility and vessel personnel.

''(c) INCLUSION IN SECURITY PLAN.—A response plan required under this subsection for a vessel or facility may be included in the security plan prepared under section 70103(c).

''§ 70105. Transportation security cards

''(a) PROHIBITION.—(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the vessel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

''(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

''(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

''(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

''(b) ISSUANCE OF CARDS.—(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.

''(2) This subsection applies to—

''(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

''(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

''(C) a vessel pilot;

''(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

''(E) an individual with access to security sensitive information as determined by the Secretary; and

''(F) other individuals engaged in port security activities as determined by the Secretary.

''(c) DETERMINATION OF TERRORISM SECURITY RISK.—(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

''(A) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

''(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

''(ii) for causing a severe transportation security incident;

''(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

''(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

''(D) otherwise poses a terrorism security risk to the United States.

''(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

''(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

''(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

''(3) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

''(4) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

''(d) BACKGROUND RECORDS CHECK.—(1) On request of the Secretary, the Attorney General shall—

''(A) conduct a background records check regarding the individual; and

''(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

''(2) A background records check regarding an individual under this subsection shall consist of the following:

''(A) A check of the relevant criminal history databases.

''(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

''(C) As appropriate, a check of the relevant international databases or other appropriate means.

''(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

''(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

''(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

''(f) DEFINITION.—In this section, the term 'alien' has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).''.

''§ 70106. Maritime safety and security teams

''(a) IN GENERAL.—To enhance the domestic maritime security capability of the United States, the Secretary shall establish such maritime safety and security teams as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

''(b) MISSION.—Each maritime safety and security team shall be trained, equipped, and capable of being employed to—

''(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

''(2) enforce moving or fixed safety or security zones established pursuant to law;

''(3) conduct high speed intercepts;

''(4) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;

''(5) rapidly deploy to supplement United States armed forces domestically or overseas;

''(6) respond to criminal or terrorist acts within a port so as to minimize, insofar as possible, the disruption caused by such acts;

''(7) assist with facility vulnerability assessments required under this chapter; and

''(8) carry out other security missions as are assigned to it by the Secretary.

''(c) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, each maritime safety and security team shall coordinate its activities with other Federal, State, and local law enforcement and emergency response agencies.

''§ 70107. Grants

''(a) IN GENERAL.—The Secretary of Transportation, acting through the Maritime Administrator, shall establish a grant program for making a fair and equitable allocation among port authorities, facility operators, and State and local agencies required to provide security services of funds to implement Area Maritime Transportation Security Plans and facility security plans. The program shall take into account national economic and strategic defense considerations.

''(b) ELIGIBLE COSTS.—The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

''(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel.

''(2) The cost of acquisition, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

''(3) The cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and of testing and evaluating such equipment, to certify secure systems of transportation.

''(4) The cost of conducting vulnerability assessments to evaluate and make recommendations with respect to security.

''(c) MATCHING REQUIREMENTS.—

''(1) 75-PERCENT FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

''(2) EXCEPTIONS.—

''(A) SMALL PROJECTS.—There are no matching requirements for grants under subsection (a) for projects costing not more than $25,000.

''(B) HIGHER LEVEL OF SUPPORT REQUIRED.—If the Secretary of Transportation determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve grants under this section with a matching requirement other than that specified in paragraph (1).

''(d) COORDINATION AND COOPERATION AGREEMENTS.—The Secretary of Transportation shall ensure that projects paid for, or the costs of which are reimbursed, under this section within any area or port are coordinated with other projects, and may require cooperative agreements among users of the port and port facilities with respect to projects funded under this section.

''(e) ADMINISTRATION.—

''(1) IN GENERAL.—The program shall require eligible port authorities, facility operators, and State and local agencies required to provide security services, to submit an application, at such time, in such form, and containing such information and assurances as the Secretary of Transportation may require, and shall include appropriate application, review, and delivery mechanisms.

''(2) MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application for payment or reimbursement of eligible costs shall include, at a minimum, the following:

''(A) A copy of the applicable Area Maritime Transportation Security Plan or facility security plan.

''(B) A comprehensive description of the need for the project, and a statement of the project's relationship to the applicable Area Maritime Transportation Security Plan or facility security plan.

''(C) A determination by the Captain of the Port that the security project addresses or corrects Coast Guard identified vulnerabilities in security and ensures compliance with Area Maritime Transportation Security Plans and facility security plans.

''(3) PROCEDURAL SAFEGUARDS.—The Secretary of Transportation shall by regulation establish appropriate accounting, reporting, and review procedures to ensure that amounts paid or reimbursed under this section are used for the purposes for which they were made available, all expenditures are properly accounted for, and amounts not used for such purposes and amounts not obligated or expended are recovered.

''(4) PROJECT APPROVAL REQUIRED.—The Secretary of Transportation may approve an application for the payment or reimbursement of costs under this section only if the Secretary of Transportation is satisfied that—

''(A) the project is consistent with Coast Guard vulnerability assessments and ensures compliance with Area Maritime Transportation Security Plans and facility security plans;

''(B) enough money is available to pay the project costs that will not be reimbursed by the United States Government under this section;

''(C) the project will be completed without unreasonable delay; and

''(D) the recipient has authority to carry out the project as proposed.

''(f) AUDITS AND EXAMINATIONS.—A recipient of amounts made available under this section shall keep such records as the Secretary of Transportation may require, and make them available for review and audit by the Secretary of Transportation, the Comptroller General of the United States, or the Inspector General of the Department of Transportation.

''(g) REPORTS ON SECURITY FUNDING AND COMPLIANCE.—

''(1) INITIAL REPORT.—Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall transmit an unclassified report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, that—

''(A) includes a funding proposal and rationale to fund the correction of Coast Guard identified vulnerabilities in port security and to help ensure compliance with Area Maritime Transportation Security Plans and facility security plans for fiscal years 2003 through 2008; and

''(B) includes projected funding proposals for fiscal years 2003 through 2008 for the following security programs:

''(i) The Sea Marshall program.

''(ii) The Automated Identification System and a system of polling vessels on entry into United States waters.

''(iii) The maritime intelligence requirements in this Act.

''(iv) The issuance of transportation security cards required by section 70105.

''(vii) The program of certifying secure systems of transportation.

''(2) OTHER EXPENDITURES.—The Secretary of Transportation shall, as part of the report required by paragraph (1) report, in coordination with the Commissioner of Customs, on projected expenditures of screening and detection equipment and on cargo security programs over fiscal years 2003 through 2008.

''(3) ANNUAL REPORTS.—Annually, beginning 1 year after transmittal of the report required by paragraph (1) until October 1, 2009, the Secretary of Transportation shall transmit an unclassified annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, on progress in achieving compliance with the correction of Coast Guard identified vulnerabilities in port security and compliance with Area Maritime Transportation Security Plans and facility security plans that—

''(A) identifies any modifications necessary in funding to ensure the correction of Coast Guard identified vulnerabilities and ensure compliance with Area Maritime Transportation Security Plans and facility security plans;

''(B) includes an assessment of progress in implementing the grant program established by subsection (a);

''(C) includes any recommendations the Secretary may make to improve these programs; and

''(D) with respect to a port selected by the Secretary of Transportation, describes progress and enhancements of applicable Area Maritime Transportation Security Plans and facility security plans and how the Maritime Transportation Security Act of 2002 has improved security at that port.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for each of fiscal years 2003 through 2008 such sums as are necessary to carry out subsections (a) through (g).

''(i) RESEARCH AND DEVELOPMENT GRANTS FOR PORT SECURITY.—

''(1) AUTHORITY.—The Secretary of Transportation is authorized to establish and administer a grant program for the support of research and development of technologies that can be used to secure the ports of the United States. The Secretary may award grants under the program to national laboratories, private nonprofit organizations, institutions of higher education, and other entities. The Secretary shall establish competitive procedures for awarding grants under the program and criteria for grant applications and eligibility.

''(2) USE OF FUNDS.—Grants awarded pursuant to paragraph (1) shall be used to develop—

''(A) methods to increase the ability of the Customs Service to inspect, or target for inspection, merchandise carried on any vessel that will arrive or has arrived at any port or place in the United States;

''(B) equipment to accurately detect explosives, or chemical and biological agents, that could be used to commit terrorist acts against the United States;

''(C) equipment to accurately detect nuclear materials, including scintillation-based detection equipment capable of attachment to spreaders to signal the presence of nuclear materials during the unloading of containers;

''(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including 'smart sensors' that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit such information to the appropriate authorities at a remote location;

''(E) tools to mitigate the consequences of a terrorist act at a port of the United States, including a network of sensors to predict the dispersion of radiological, chemical, or biological agents that might be intentionally or accidentally released; or

''(F) applications to apply existing technologies from other industries to increase overall port security.

''(3) ADMINISTRATIVE PROVISIONS.—

''(A) NO DUPLICATION OF EFFORT.—Before making any grant, the Secretary of Transportation shall coordinate with other Federal agencies to ensure the grant will not be used for research and development that is already being conducted with Federal funding.

''(B) ACCOUNTING.—The Secretary of Transportation shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

''(C) RECORDKEEPING.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the Department of Transportation and the Secretary of Transportation for audit and examination.

''(D) ANNUAL REVIEW AND REPORT.—The Inspector General of the Department of Transportation shall annually review the program established under paragraph (1) to ensure that the expenditures and obligations of funds are consistent with the purposes for which they are provided and report the findings to Congress.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 for each of the fiscal years 2003 through 2008 to carry out the provisions of this subsection.

''§ 70108. Foreign port assessment

''(a) IN GENERAL.—The Secretary shall assess the effectiveness of the antiterrorism measures maintained at—

''(1) a foreign port—

''(A) served by vessels documented under chapter 121 of this title; or

''(B) from which foreign vessels depart on a voyage to the United States; and

''(2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

''(b) PROCEDURES.—In conducting an assessment under subsection (a), the Secretary shall assess the effectiveness of—

''(1) screening of containerized and other cargo and baggage;

''(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

''(3) additional security on board vessels;

''(4) licensing or certification of compliance with appropriate security standards;

''(5) the security management program of the foreign port; and

''(6) other appropriate measures to deter terrorism against the United States.

''(c) CONSULTATION.—In carrying out this section, the Secretary shall consult with—

''(1) the Secretary of Defense and the Secretary of State—

''(A) on the terrorist threat that exists in each country involved; and

''(B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;

''(2) the Secretary of the Treasury;

''(3) appropriate authorities of foreign governments; and

''(4) operators of vessels.

''§ 70109. Notifying foreign authorities

''(a) IN GENERAL.—If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

''(b) TRAINING PROGRAM.—The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

''§ 70110. Actions when foreign ports not maintaining effective antiterrorism measures

''(a) IN GENERAL.—If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary—

''(1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;

''(2) may deny entry into the United States to any vessel that does not meet such conditions; and

''(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

''(b) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

''(1) 90 days after the government of the foreign country with jurisdiction over or control of that port is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or

''(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

''(c) STATE DEPARTMENT TO BE NOTIFIED.—The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

''(d) ACTION CANCELED.—An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port.

''§ 70111. Enhanced crewmember identification

''(a) REQUIREMENT.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall require crewmembers on vessels calling at United States ports to carry and present on demand any identification that the Secretary decides is necessary.

''(b) FORMS AND PROCESS.—The Secretary, in consultation with the Attorney General and the Secretary of State, shall establish the proper forms and process that shall be used for identification and verification of crewmembers.

''§ 70112. Maritime Security Advisory Committees

''(a) ESTABLISHMENT OF COMMITTEES.—(1) The Secretary shall establish a National Maritime Security Advisory Committee. The Committee—

''(A) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security matters;

''(B) may make available to the Congress recommendations that the Committee makes to the Secretary; and

''(C) shall meet at the call of—

''(i) the Secretary, who shall call such a meeting at least once during each calendar year; or

''(ii) a majority of the Committee.

''(2)(A) The Secretary may—

''(i) establish an Area Maritime Security Advisory Committee for any port area of the United States; and

''(ii) request such a committee to review the proposed Area Maritime Transportation Security Plan developed under section 70103(b) and make recommendations to the Secretary that the Committee considers appropriate.

''(B) A committee established under this paragraph for an area—

''(i) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to maritime security in that area;

''(ii) may make available to the Congress recommendations that the committee makes to the Secretary; and

''(iii) shall meet at the call of—

''(I) the Secretary, who shall call such a meeting at least once during each calendar year; or

''(II) a majority of the committee.

''(b) MEMBERSHIP.—(1) Each of the committees established under subsection (a) shall consist of not less than 7 members appointed by the Secretary, each of whom has at least 5 years practical experience in maritime security operations.

''(2) The term of each member shall be for a period of not more than 5 years, specified by the Secretary.

''(3) Before appointing an individual to a position on such a committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the committee.

''(4) The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee.

''(c) CHAIRPERSON AND VICE CHAIRPERSON.—(1) Each committee established under subsection (a) shall elect 1 of its members as the Chairman and 1 of its members at the Vice Chairperson.

''(2) The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

''(d) OBSERVERS.—(1) The Secretary shall, and the head of any other interested Federal agency may, designate a representative to participate as an observer with the Committee.

''(2) The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).

''(e) CONSIDERATION OF VIEWS.—The Secretary shall consider the information, advice, and recommendations of the Committee in formulating policy regarding matters affecting maritime security.

''(f) COMPENSATION AND EXPENSES.—(1) A member of a committee established under this section, when attending meetings of the committee or when otherwise engaged in the business of the committee, is entitled to receive—

''(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–15 of the General Schedule under section 5332 of title 5 including travel time; and

''(B) travel or transportation expenses under section 5703 of title 5.

''(2) A member of such a committee shall not be considered to be an officer or employee of the United States for any purpose based on their receipt of any payment under this subsection.

''(g) FACA; TERMINATION.—(1) The Federal Advisory Committee Act (5 U.S.C. App.)—

''(A) applies to the National Maritime Security Advisory Committee established under this section, except that such committee terminates on September 30, 2008; and

''(B) does not apply to Area Maritime Security Advisory Committees established under this section.

''(2) Not later than September 30, 2006, each committee established under this section shall submit to the Congress its recommendation regarding whether the committee should be renewed and continued beyond the termination date.

''§ 70113. Maritime intelligence

''(a) IN GENERAL.—The Secretary shall implement a system to collect, integrate, and analyze

information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States, including information related to crew, passengers, cargo, and intermodal shipments.

''(b) CONSULTATION.—In developing the information system under subsection (a), the Secretary shall consult with the Transportation Security Oversight Board and other departments and agencies, as appropriate.

''(c) INFORMATION INTEGRATION.—To deter a transportation security incident, the Secretary may collect information from public and private entities to the extent that the information is not provided by other Federal departments and agencies.

''§ 70114. Automatic identification systems

''(a) SYSTEM REQUIREMENTS.—(1) Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate an automatic identification system under regulations prescribed by the Secretary:

''(A) A self-propelled commercial vessel of at least 65 feet overall in length.

''(B) A vessel carrying more than a number of passengers for hire determined by the Secretary.

''(C) A towing vessel of more than 26 feet overall in length and 600 horsepower.

''(D) Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.

''(2) The Secretary may—

''(A) exempt a vessel from paragraph (1) if the Secretary finds that an automatic identification system is not necessary for the safe navigation of the vessel on the waters on which the vessel operates; and

''(B) waive the application of paragraph (1) with respect to operation of vessels on navigable waters of the United States specified by the Secretary if the Secretary finds that automatic identification systems are not needed for safe navigation on those waters.

''(b) REGULATIONS.—The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).

''§ 70115. Long-range vessel tracking system

''The Secretary may develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. The system shall be designed to provide the Secretary the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents. The Secretary may use existing maritime organizations to collect and monitor tracking information under the system.

''§ 70116. Secure systems of transportation

''(a) IN GENERAL.—The Secretary, in consultation with the Transportation Security Oversight Board, shall establish a program to evaluate and certify secure systems of international intermodal transportation.

''(b) ELEMENTS OF PROGRAM.—The program shall include—

''(1) establishing standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

''(2) establishing standards and procedures for securing cargo and monitoring that security while in transit;

''(3) developing performance standards to enhance the physical security of shipping containers, including standards for seals and locks;

''(4) establishing standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

''(5) any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.

''§ 70117. Civil penalty

''Any person that violates this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.''.

(b) CONFORMING AMENDMENT.—The table of subtitles at the beginning of title 46, United States Code, is amended by adding at the end the following:

''VI. MISCELLANEOUS ..... 70101''.

(c) DEADLINE.—The Secretary shall establish the plans required under section 70104(a)(1) of title 46, United States Code, as enacted by this Act, before April 1, 2003.

(d) RULEMAKING REQUIREMENTS.—

(1) INTERIM FINAL RULE AUTHORITY.—The Secretary shall issue an interim final rule as a temporary regulation implementing this section (including the amendments made by this section) as soon as practicable after the date of enactment of this section, without regard to the provisions of chapter 5 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final regulations shall expire not later than 1 year after the date of enactment of this Act.

(2) INITIATION OF RULEMAKING.—The Secretary may initiate a rulemaking to implement this section (including the amendments made by this section) as soon as practicable after the date of enactment of this section. The final rule issued pursuant to that rulemaking may supersede the interim final rule promulgated under this subsection.

(e) PHASE-IN OF AUTOMATIC IDENTIFICATION SYSTEM.—

(1) SCHEDULE.—Section 70114 of title 46, United States Code, as enacted by this Act, shall apply as follows:

(A) On and after January 1, 2003, to any vessel built after that date.

(B) On and after July 1, 2003, to any vessel built before the date referred to in subparagraph (A) that is—

(i) a passenger vessel required to carry a certificate under the International Convention for the Safety of Life at Sea, 1974 (SOLAS);

(ii) a tanker; or

(iii) a towing vessel engaged in moving a tank vessel.

(C) On and after December 31, 2004, to all other vessels built before the date referred to in subparagraph (A).

(2) DEFINITION.—The terms in this subsection have the same meaning as those terms have under section 2101 of title 46, United States Code.

SEC. 103. INTERNATIONAL SEAFARER IDENTIFICATION.

(a) TREATY INITIATIVE.—The Secretary of the department in which the Coast Guard is operating is encouraged to negotiate an international agreement, or an amendment to an international agreement, that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial waters, of the United States or such other country.

(b) LEGISLATIVE ALTERNATIVE.—If the Secretary fails to complete a negotiation process undertaken under subsection (a) within 24 months after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a draft of legislation that, if enacted, would establish a uniform, comprehensive system of identification for seafarers.

SEC. 104. EXTENSION OF SEAWARD JURISDICTION.

(a) DEFINITION OF TERRITORIAL WATERS.—Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. 195; 40 Stat. 231) is amended—

(1) by striking ''The term 'United States' as used in this Act includes'' and inserting the following:

''In this Act:

''(1) UNITED STATES.—The term 'United States' includes''; and

(2) by adding at the end the following:

''(2) TERRITORIAL WATERS.—The term 'territorial waters of the United States' includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.''.

(b) CIVIL PENALTY FOR VIOLATION OF ACT OF JUNE 15, 1917.—Section 2 of title II of the Act of June 15, 1917 (50 U.S.C. 192), is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''If'' in the first undesignated paragraph;

(2) by striking ''(a) If any other'' and inserting ''(b) APPLICATION TO OTHERS.—If any other''; and

(3) by adding at the end the following:

''(c) CIVIL PENALTY.—A person violating this Act, or a regulation prescribed under this Act, shall be liable to the United States Government for a civil penalty of not more than $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.''.

SEC. 105. SUSPENSION OF LIMITATION ON STRENGTH OF COAST GUARD.

(a) PERSONNEL END STRENGTHS.—Section 661(a) of title 14, United States Code, is amended by adding at the end the following: ''If at the end of any fiscal year there is in effect a declaration of war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the Coast Guard, for a period not to exceed 6 months after the end of the war or termination of the national emergency.''.

(b) OFFICERS IN COAST GUARD RESERVE.—Section 724 of title 14, United States Code, is amended by adding at the end thereof the following:

''(c) DEFERRAL OF LIMITATION.—If at the end of any fiscal year there is in effect a declaration of war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the Coast Guard Reserve, for a period not to exceed 6 months after the end of the war or termination of the national emergency.''.

SEC. 106. EXTENSION OF DEEPWATER PORT ACT TO NATURAL GAS.

(a) IN GENERAL.—The following provisions of the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) are each amended by inserting ''or natural gas'' after ''oil'' each place it appears:

(1) Section 2(a) (33 U.S.C. 1501(a)).

(2) Section 4(a) (33 U.S.C. 1503(a)).

(3) Section 21(a) (33 U.S.C. 1520(a)).

(b) DEFINITIONS.—Section 3 of the Deepwater Port Act of 1974 (33 U.S.C. 1502) is amended—

(1) by redesignating paragraphs (13) through (18) as paragraphs (14) through (19), respectively;

(2) by amending paragraph (9) to read as follows:

''(9) 'deepwater port'—

''(A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23, and for other uses not inconsistent with the purposes of this Act, including transportation of oil or natural gas from the United States outer continental shelf;

''(B) includes all components and equipment, including pipelines, pumping stations, service

platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;

''(C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

''(D) shall be considered a 'new source' for purposes of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act, (33 U.S.C. 1251 et seq.);''; and

(3) by inserting after paragraph (12) the following:

''(13) 'natural gas' means either natural gas unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas;''.

(c) FACILITY APPROVAL.—

(1) Section 5(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(d)) is amended by adding at the end the following:

''(4) This subsection shall not apply to deepwater ports for natural gas.''.

(2) Section 5(i) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(i)) is amended by adding at the end the following:

''(4) The Secretary shall approve or deny any application for a deepwater port for natural gas submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license. Paragraphs (1), (2), and (3) of this subsection shall not apply to an application for a deepwater port for natural gas.''.

(d) FACILITY DEVELOPMENT.—Section 8 of the Deepwater Port Act of 1974 (33 U.S.C. 1507) is amended by adding at the end the following:

''(d) MANAGED ACCESS.—Subsections (a) and (b) shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates.

''(e) JURISDICTION.—Notwithstanding any provision of the Natural Gas Act (15 U.S.C. 717 et seq.), any regulation or rule issued thereunder, or section 19 as it pertains to such Act, this Act shall apply with respect to the licensing, siting, construction, or operation of a deepwater natural gas port or the acceptance, transport, storage, regassification, or conveyance of natural gas at or through a deepwater port, to the exclusion of the Natural Gas Act or any regulation or rule issued thereunder.''.

(e) REGULATIONS.—

(1) AGENCY AND DEPARTMENT EXPERTISE AND RESPONSIBILITIES.—Not later than 30 days after the date of the enactment of this Act, the heads of Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports for natural gas shall transmit to the Secretary of Transportation written comments as to such expertise or statutory responsibilities pursuant to the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) or any other Federal law.

(2) INTERIM FINAL RULE.—The Secretary may issue an interim final rule as a temporary regulation implementing this section (including the amendments made by this section) as soon as practicable after the date of enactment of this section, without regard to the provisions of chapter 5 of title 5, United States Code.

(3) FINAL RULES.—As soon as practicable after the date of the enactment of this Act, the Secretary of Transportation shall issue additional final rules that, in the discretion of the Secretary, are determined to be necessary under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) for the application and issuance of licenses for a deepwater port for natural gas.

(f) ENVIRONMENTAL ANALYSIS.—Section 5 of the Deepwater Port Act of 1974 (33 U.S.C. 1504) is amended by striking subsection (f) and inserting the following:

''(f) NEPA COMPLIANCE.—For all applications, the Secretary, in cooperation with other involved Federal agencies and departments, shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Such compliance shall fulfill the requirement of all Federal agencies in carrying out their responsibilities under the National Environmental Policy Act of 1969 pursuant to this Act.''.

(g) STATE FEES.—Section 5(h)(2) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(h)(2)) is amended by inserting ''and unless prohibited by law,'' after ''Notwithstanding any other provision of this Act,''.

SEC. 107. ASSIGNMENT OF COAST GUARD PERSONNEL AS SEA MARSHALS AND ENHANCED USE OF OTHER SECURITY PERSONNEL.

(a) IN GENERAL.—Section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (1);

(2) by striking ''terrorism.'' in paragraph (2) and inserting ''terrorism; and''; and

(3) by adding at the end the following:

''(3) dispatch properly trained and qualified armed Coast Guard personnel on vessels and public or commercial structures on or adjacent to waters subject to United States jurisdiction to deter or respond to acts of terrorism or transportation security incidents, as defined in section 70101 of title 46, United States Code.''.

(b) REPORT ON USE OF NON-COAST GUARD PERSONNEL.—The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on—

(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));

(2) the possibility of using personnel other than Coast Guard personnel to carry out Coast Guard personnel functions under that section and whether additional legal authority would be necessary to use such personnel for such functions; and

(3) the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the United States, to provide training under that section.

SEC. 108. TECHNICAL AMENDMENTS CONCERNING THE TRANSMITTAL OF CERTAIN INFORMATION TO THE CUSTOMS SERVICE.

(a) TARIFF ACT OF 1930.—Section 431A(d) of the Tariff Act of 1930, as added by section 343(b) of the Trade Act of 2002 (Public Law 107–210), is amended to read as follows:

''(d) REPORTING OF UNDOCUMENTED CARGO.—

''(1) IN GENERAL.—A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal.

''(2) SHARING ARRANGEMENTS.—For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

''(3) REASSIGNMENT TO ANOTHER VESSEL.—For purposes of this subsection and subsection (f), if merchandise has been tendered to a marine terminal operator and subsequently reassigned for carriage on another vessel, the merchandise shall be considered properly documented if the information provided reflects carriage on the previously assigned vessel and otherwise meets the requirements of subsection (b). Notwithstanding the preceding sentence, it shall be the responsibility of the vessel carrier to notify the Customs Service promptly of any reassignment of merchandise for carriage on a vessel other than the vessel on which the merchandise was originally assigned.

''(4) MULTIPLE CONTAINERS.—If a single shipment is comprised of multiple containers, the 48-hour period described in paragraph (1) shall begin to run from the time the last container of the shipment is delivered to the marine terminal operator. It shall be the responsibility of the person tendering the cargo to inform the carrier that the shipment consists of multiple containers that will be delivered to the marine terminal operator at different times as part of a single shipment.''.

(b) MANDATORY ADVANCED ELECTRONIC INFORMATION.—Section 343(a) of the Trade Act of 2002 (Public Law 107–210) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—

''(A) Subject to paragraphs (2) and (3), the Secretary is authorized to promulgate regulations providing for the transmission to the Customs Service, through an electronic data interchange system, of information pertaining to cargo to be brought into the United States or to be sent from the United States, prior to the arrival or departure of the cargo.

''(B) The Secretary shall endeavor to promulgate an initial set of regulations under subparagraph (A) not later than October 1, 2003.''.

(2) by striking paragraph (2) and inserting the following:

''(2) INFORMATION REQUIRED.—The cargo information required by the regulations promulgated pursuant to paragraph (1) under the parameters set forth in paragraph (3) shall be such information on cargo as the Secretary determines to be reasonably necessary to ensure cargo safety and security pursuant to those laws enforced and administered by the Customs Service. The Secretary shall provide to appropriate Federal departments and agencies cargo information obtained pursuant to paragraph (1).''; and

(3) in paragraph (3)—

(A) by striking ''aviation, maritime, and surface transportation safety and security'' in subparagraphs (F), (H), and (L)(ii) and inserting ''cargo safety and security'';

(B) in subparagraph (F)—

(i) by inserting ''merchandise'' after ''determining'';

(ii) by inserting ''and preventing smuggling'' after ''security''; and

(iii) by adding at the end the following: ''Notwithstanding the preceding sentence, nothing in this section shall be treated as amending, repealing, or otherwise modifying title IV of the Tariff Act of 1930 or regulations promulgated thereunder.'';

(C) in subparagraph (G)—

(i) in the first sentence—

(I) by inserting ''cargo'' after ''confidential''; and

(II) by inserting after ''Customs Service'' the following: ''pursuant to such regulations, except for the manifest information collected pursuant to section 431 of the Tariff Act of 1930 and required to be available for public disclosure pursuant to section 431(c) of such Act.''; and

(ii) by striking the second sentence; and

(D) in subparagraph (L)—

(i) in the matter preceding clause (i)—

(I) by striking ''60'' and inserting ''15''; and

(II) by striking ''promulgation of regulations'' and inserting ''publication of a final rule pursuant to this section'';

(ii) by striking ''and'' at the end of clause (iii);

(iii) by striking the period and inserting ''; and'' at the end of clause (iv); and

(iv) by inserting at the end the following:

''(v) if the Secretary determines to amend the proposed regulations after they have been transmitted to the Committees pursuant to this subparagraph, the Secretary shall transmit the amended regulations to such Committees no later than 5 days prior to the publication of the final rule.''.

(c) REPEAL.—Section 343A of the Trade Act of 2002 (116 Stat. 985) is repealed.

SEC. 109. MARITIME SECURITY PROFESSIONAL TRAINING.

(a) IN GENERAL.—

(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall develop standards and curriculum to allow for the training and certification of maritime security professionals. In developing these standards and curriculum, the Secretary shall consult with the National Maritime Security Advisory Committee established under section 70112 of title 46, United States Code, as amended by this Act.

(2) SECRETARY TO CONSULT ON STANDARDS.—In developing standards under this section, the Secretary may, without regard to the Federal Advisory Committee Act (5 U.S.C. App.), consult with the Federal Law Enforcement Training Center, the United States Merchant Marine Academy's Global Maritime and Transportation School, the Maritime Security Council, the International Association of Airport and Port Police, the National Cargo Security Council, and any other Federal, State, or local government or law enforcement agency or private organization or individual determined by the Secretary to have pertinent expertise.

(b) MINIMUM STANDARDS.—The standards established by the Secretary under subsection (a) shall include the following elements:

(1) The training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures, including, as appropriate, recommendations for incorporating a background check process for personnel trained and certified in foreign ports.

(2) The training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment.

(3) The provision of off-site training and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

(c) TRAINING PROVIDED TO LAW ENFORCEMENT AND SECURITY PERSONNEL.—

(1) IN GENERAL.—The Secretary is authorized to make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

(2) ACADEMIES AND SCHOOLS.—The Secretary may provide training under this section at—

(A) each of the 6 State maritime academies;

(B) the United States Merchant Marine Academy;

(C) the Appalachian Transportation Institute; and

(D) other security training schools in the United States.

(d) USE OF CONTRACT RESOURCES.—The Secretary may employ Federal and contract resources to train and certify maritime security professionals in accordance with the standards and curriculum developed under this Act.

(e) ANNUAL REPORT.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

(f) AUTHORIZATION OF APPROPRIATIONS—There are authorized to be appropriated to the Secretary to carry out this section $5,500,000 for each of fiscal years 2003 through 2008.

SEC. 110. ADDITIONAL REPORTS.

(a) ANNUAL REPORT ON MARITIME SECURITY AND TERRORISM.—Section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) is amended by adding at the end thereof the following: ''Beginning with the first report submitted under this section after the date of enactment of the Maritime Transportation Security Act of 2002, the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against acts of terrorism.''.

(b) REPORT ON TRAINING CENTER.—The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2005 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against coastal and maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.

(c) REPORT ON SECURE SYSTEM OF TRANSPORTATION PROGRAM.—Within one year after the secure system of transportation program is implemented under section 70116 of title 46, United States Code, as amended by this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Senate Committees on Commerce, Science, and Transportation and Finance and the House of Representatives Committees on Transportation and Infrastructure and Ways and Means that—

(1) evaluates the secure system of transportation program and its components;

(2) states the Secretary's view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures and for the requirements of the National Maritime Security Plan for reopening of United States ports to commerce;

(3) states the Secretary's view as to the integrity of the procedures, technology, or systems evaluated as part of the program;

(4) makes a recommendation with respect to whether the program, or any procedure, system, or technology should be incorporated in a nationwide system for preclearance of imports of waterborne goods and for the requirements of the National Maritime Security Plan for the reopening of United States ports to Commerce;

(5) describes the impact of the program on staffing levels at the department in which the Coast Guard is operating, and the Customs Service; and

(6) states the Secretary's views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is preapproved for entry into the United States and for the purpose of the requirements of the National Maritime Security Plan for the reopening of United States ports to commerce.

SEC. 111. PERFORMANCE STANDARDS.

Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, in consultation with the Transportation Security Oversight Board, shall—

(1) develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States either directly or via a foreign port; and

(2) develop performance standards to enhance the physical security of shipping containers, including standards for seals and locks.

SEC. 112. REPORT ON FOREIGN-FLAG VESSELS.

Within 6 months after the date of enactment of this Act and every year thereafter, the Secretary of the department in which the Coast Guard is operating, in consultation with the Secretary of State, shall provide a report to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives that lists the following information:

(1) A list of all nations whose flag vessels have entered United States ports in the previous year.

(2) Of the nations on that list, a separate list of those nations—

(A) whose registered flag vessels appear as Priority III or higher on the Boarding Priority Matrix maintained by the Coast Guard;

(B) that have presented, or whose flag vessels have presented, false, intentionally incomplete, or fraudulent information to the United States concerning passenger or cargo manifests, crew identity or qualifications, or registration or classification of their flag vessels;

(C) whose vessel registration or classification procedures have been found by the Secretary to be noncompliant with international classifications or do not exercise adequate control over safety and security concerns; or

(D) whose laws or regulations are not sufficient to allow tracking of ownership and registration histories of registered flag vessels.

(3) Actions taken by the United States, whether through domestic action or international negotiation, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801), to improve transparency and security of vessel registration procedures in nations on the list under paragraph (2).

(4) Recommendations for legislative or other actions needed to improve security of United States ports against potential threats posed by flag vessels of nations named in paragraph (2).

SEC. 113. REVISION OF PORT SECURITY PLANNING GUIDE.

The Secretary of Transportation, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, shall publish a revised version of the document entitled ''Port Security: A National Planning Guide'', incorporating the requirements prescribed under chapter 701 of title 46, United States Code, as amended by this Act, within 3 years after the date of enactment of this Act, and make that revised document available on the Internet.

TITLE II—MARITIME POLICY IMPROVEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Maritime Policy Improvement Act of 2002''.

SEC. 202. VESSEL COASTAL VENTURE.

Section 1120(g) of the Coast Guard Authorization Act of 1996 (Public Law 104–324; 110 Stat. 3978) is amended by inserting ''COASTAL VENTURE (United States official number 971086),'' after ''vessels''.

SEC. 203. EXPANSION OF AMERICAN MERCHANT MARINE MEMORIAL WALL OF HONOR.

(a) FINDINGS.—The Congress finds that—

(1) the United States Merchant Marine has served the people of the United States in all wars since 1775;

(2) the United States Merchant Marine served as the Nation's first navy and defeated the British Navy to help gain the Nation's independence;

(3) the United States Merchant Marine kept the lifeline of freedom open to the allies of the United States during the Second World War, making one of the most significant contributions made by any nation to the victory of the allies in that war;

(4) President Franklin D. Roosevelt and many military leaders praised the role of the United States Merchant Marine as the ''Fourth Arm of Defense'' during the Second World War;

(5) more than 250,000 men and women served in the United States Merchant Marine during the Second World War;

(6) during the Second World War, members of the United States Merchant Marine faced dangers from the elements and from submarines, mines, armed raiders, destroyers, aircraft, and ''kamikaze'' pilots;

(7) during the Second World War, at least 6,830 members of the United States Merchant Marine were killed at sea;

(8) during the Second World War, 11,000 members of the United States Merchant Marine were wounded, at least 1,100 of whom later died from their wounds;

(9) during the Second World War, 604 members of the United States Merchant Marine were taken prisoner;

(10) 1 in 32 members of the United States Merchant Marine serving in the Second World War died in the line of duty, suffering a higher percentage of war-related deaths than any of the other armed services of the United States; and

(11) the United States Merchant Marine continues to serve the United States, promoting freedom and meeting the high ideals of its former members.

(b) GRANTS TO CONSTRUCT ADDITION TO AMERICAN MERCHANT MARINE MEMORIAL WALL OF HONOR.—

(1) IN GENERAL.—The Secretary of Transportation may make grants to the American Merchant Marine Veterans Memorial Committee, Inc., to construct an addition to the American Merchant Marine Memorial Wall of Honor located at the Los Angeles Maritime Museum in San Pedro, California.

(2) FEDERAL SHARE.—The Federal share of the cost of activities carried out with a grant made under this section shall be 50 percent.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000 for fiscal year 2003.

SEC. 204. DISCHARGE OF AGRICULTURAL CARGO RESIDUE.

Notwithstanding any other provision of law, the discharge from a vessel of any agricultural cargo residue material in the form of hold washings shall be governed exclusively by the provisions of the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) that implement Annex V to the International Convention for the Prevention of Pollution from Ships.

SEC. 205. RECORDING AND DISCHARGING NOTICES OF CLAIM OF MARITIME LIEN.

(a) LIENS ON ANY DOCUMENTED VESSEL.—

(1) IN GENERAL.—Section 31343 of title 46, United States Code, is amended as follows:

(A) By amending the section heading to read as follows:

''§ 31343. Recording and discharging notices of claim of maritime lien''.

(B) In subsection (a) by striking ''covered by a preferred mortgage filed or recorded under this chapter'' and inserting ''documented, or for which an application for documentation has been filed, under chapter 121''.

(C) By amending subsection (b) to read as follows:

''(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

''(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

''(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

''(i) The owner of the vessel.

''(ii) Each person that recorded under subsection (a) of this section an unexpired notice of a claim of an undischarged lien on the vessel.

''(iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

''(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.''.

(D) By amending subsection (c) to read as follows:

''(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

''(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.''.

(E) By adding at the end the following:

''(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

''(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 313 of title 46, United States Code, is amended by striking the item relating to section 31343 and inserting the following:

''31343. Recording and discharging notices of claim of maritime lien.''.

(b) NOTICE REQUIREMENTS.—Section 31325 of title 46, United States Code, is amended as follows:

(1) In subsection (d)(1)(B) by striking ''a notice of a claim'' and inserting ''an unexpired notice of a claim''.

(2) In subsection (f)(1) by striking ''a notice of a claim'' and inserting ''an unexpired notice of a claim''.

(c) APPROVAL OF SURRENDER OF DOCUMENTATION.—Section 12111 of title 46, United States Code, is amended by adding at the end the following:

''(d)(1) The Secretary shall not refuse to approve the surrender of the certificate of documentation for a vessel solely on the basis that a notice of a claim of a lien on the vessel has been recorded under section 31343(a) of this title.

''(2) The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.''.

(d) TECHNICAL CORRECTION.—Section 9(c) of the Shipping Act, 1916 (46 App. U.S.C. 808(c)) is amended in the matter preceding paragraph (1) by striking ''Except'' and all that follows through ''12106(e) of title 46,'' and inserting ''Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181) and in section 12106(e) of title 46,''.

(e) EFFECTIVE DATE.—This section shall take effect January 1, 2003.

SEC. 206. TONNAGE OF R/V DAVIDSON.

(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall prescribe a tonnage measurement as a small passenger vessel as defined in section 2101 of title 46, United States Code, for the vessel R/V DAVIDSON (United States official number D1066485) for purposes of applying the optional regulatory measurement under section 14305 of that title.

(b) APPLICATION.—Subsection (a) shall apply only when the vessel is operating in compliance with the requirements of section 3301(8) of title 46, United States Code.

SEC. 207. MISCELLANEOUS CERTIFICATES OF DOCUMENTATION.

(a) IN GENERAL.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 App. U.S.C. 289), and sections 12106 and 12108 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the following vessels:

(1) LOOKING GLASS (United States official number 925735).

(2) YANKEE (United States official number 1076210).

(3) LUCKY DOG of St. Petersburg, Florida (State of Florida registration number FLZP7569E373).

(4) ENTERPRIZE (United States official number 1077571).

(5) M/V SANDPIPER (United States official number 1079439).

(6) FRITHA (United States official number 1085943).

(7) PUFFIN (United States official number 697029).

(8) VICTORY OF BURNHAM (United States official number 663780).

(9) R'ADVENTURE II (United States official number 905373).

(10) ANTJA (State of Florida registration number FL3475MA).

(11) SKIMMER, manufactured by Contour Yachts, Inc. (hull identification number QHG34031D001).

(12) TOKEENA (State of South Carolina registration number SC 1602 BJ).

(13) DOUBLE EAGLE 2 (United States official number 1042549).

(14) ENCOUNTER (United States official number 998174).

(15) AJ (United States official number 599164).

(16) BARGE 10 (United States official number 1101368).

(17) NOT A SHOT (United States official number 911064).

(18) PRIDE OF MANY (Canadian official number 811529).

(19) AMAZING GRACE (United States official number 92769).

(20) SHEWHO (United States official number 1104094).

(21) SOVEREIGN (United States official number 1028144).

(22) CALEDONIA (United States official number 679530).

(23) ISLANDER (State of South Carolina identification number SC 9279 BJ).

(24) F/V ANITA J (United States official number 560532).

(25) F/V HALF MOON BAY (United States official number 615796).

(26) F/V SUNSET BAY (United States official number 598484).

(27) BILLIE-B (United States official number 958427).

(b) ELIGIBILITY FOR ADMINISTRATIVE WAIVERS.—The following vessels are deemed to be eligible vessels within the meaning of section 504(2)

of the Coast Guard Authorization Act of 1998 (46 U.S.C. 12106 note):

(1) EXCELLENCE III (hull identification number HQZ00255K101).

(2) ADIOS (hull identification number FAL75003A101).

(3) LAUDERDALE LADY (United States official number 1103520).

(4) UNIT ONE (United States official number 1128562).

(c) REPEAL OF JONES ACT WAIVER ADMINISTRATIVE PROCESS SUNSET; ANTI-FRAUD REVOCATION AUTHORITY.—

(1) REPEAL OF SUNSET.—Section 505 of the Coast Guard Authorization Act of 1998 (46 U.S.C. 12106 note) is repealed. The repeal of section 505 shall have no effect on the validity of any certificate or endorsement issued under section 502 of that Act.

(2) REVOCATION FOR FRAUD.—Section 503 of the Coast Guard Authorization Act of 1998 (46 U.S.C. 12106 note) is amended to read as follows:

"SEC. 503. REVOCATION.

''(a) REVOCATION FOR FRAUD.—The Secretary shall revoke a certificate or an endorsement issued under section 502, after notice and an opportunity for a hearing, if the Secretary determines that the certificate or endorsement was obtained by fraud.

''(b) APPLICATION WITH CRIMINAL PENALTIES.—Nothing in this section affects—

''(1) the criminal prohibition on fraud and false statements provided by section 1001 of title 18, United States Code; or

''(2) any other authority of the Secretary to revoke a certificate or endorsement issued under section 502 of this Act.''.

(d) TECHNOLOGY DEMONSTRATION WAIVER.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and sections 12106 and 12108 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for the sole purpose of technology demonstrations (including transporting guests for such demonstration who have not contributed consideration for their passage) for the vessel FOILCAT (United States official number 1063892).

SEC. 208. EXEMPTION FOR VICTORY SHIPS.

Section 3302(l)(1) of title 46, United States Code, is amended by adding at the end the following:

''(D) The SS Red Oak Victory (United States official number 249410), owned by the Richmond Museum Association, located in Richmond, California.

''(E) The SS American Victory (United States official number 248005), owned by Victory Ship, Inc., of Tampa, Florida.

''(F) The LST–325, owned by USS LST Ship Memorial, Incorporated, located in Mobile, Alabama.''.

SEC. 209. CERTIFICATE OF DOCUMENTATION FOR 3 BARGES.

(a) DOCUMENTATION CERTIFICATE.—Notwithstanding section 12106 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), and subject to subsection (c) of this section, the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade for each of the vessels listed in subsection (b).

(b) VESSELS DESCRIBED.—The vessels referred to in subsection (a) are the following:

(1) The former Navy deck barge JIM, having a length of 110 feet and a width of 34 feet.

(2) The former railroad car barge HUGH, having a length of 185 feet and a width of 34 feet.

(3) The former railroad car barge TOMMY, having a length of 185 feet and a width of 34 feet.

(c) LIMITATION ON OPERATION.—A vessel issued a certificate of documentation under this section may be used only as a floating platform for launching fireworks, including transportation of materials associated with that use.

SEC. 210. CERTIFICATE OF DOCUMENTATION FOR THE EAGLE.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), chapter 121 of title 46, United States Code, and section 1 of the Act of May 28, 1906 (46 App. U.S.C. 292), the Secretary of the department in which the Coast Guard is operating shall issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel EAGLE (hull number BK–1754, United States official number 1091389) if the vessel is—

(1) owned by a State, a political subdivision of a State, or a public authority chartered by a State;

(2) if chartered, chartered to a State, a political subdivision of a State, or a public authority chartered by a State;

(3) operated only in conjunction with—

(A) scour jet operations; or

(B) dredging services adjacent to facilities owned by the State, political subdivision, or public authority; and

(4) externally identified clearly as a vessel of that State, subdivision, or authority.

SEC. 211. WAIVER FOR VESSELS IN NEW WORLD CHALLENGE RACE.

Notwithstanding section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), beginning on April 1, 2002, the 10 sailboats participating in the New World Challenge Race may transport guests, who have not contributed consideration for their passage, from and around the ports of San Francisco and San Diego, California, before and during stops of that race. This section shall have no force or effect beginning on the earlier of—

(1) 60 days after the last competing sailboat reaches the end of that race in San Francisco, California; or

(2) December 31, 2003.

SEC. 212. VESSEL ASPHALT COMMANDER.

Notwithstanding any other law or agreement with the United States Government, the vessel ASPHALT COMMANDER (United States official number 663105) may be transferred to or placed under a foreign registry or sold to a person that is not a citizen of the United States and transferred to or placed under a foreign registry.

SEC. 213. COASTWISE TRADE AUTHORIZATION.

(a) IN GENERAL.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other provision of law restricting the operation of a foreign-built vessel in the coastwise trade of the United States, the following vessels may, subject to subsection (b), engage in the coastwise trade of the United States to transport platform jackets from ports in the Gulf of Mexico to sites on the Outer Continental Shelf for completion of certain offshore projects as follows:

(1) The H–114, H–627, I–650, and H–851 for the projects known as Atlantis, Thunderhorse, Holstein, and Mad Dog.

(2) The I–600 for the projects known as Murphy Medusa, Dominion Devil's Tower, and Murphy Front Runner.

(b) PRIORITY FOR U.S.-BUILT VESSELS.—Subsection (a) shall not apply in instances where a United States-built, United States-documented vessel with the capacity to transport and launch the platform jacket involved or its components is available to transport that jacket or its components. In this section, the term ''platform jacket'' has the meaning given that term under the thirteenth proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended by subsection (c) of this section.

(c) DEFINITION.—The thirteenth proviso (pertaining to transportation by launch barge) of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), is amended by striking the period at the end and inserting the following: ''; and for the purposes of this proviso, the term 'platform jacket' includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as 'topsides') of a hydrocarbon development and production platform.''.

SEC. 214. JONES ACT WAIVER FOR DELAYED VESSEL DELIVERY.

(a) IN GENERAL.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and sections 12106 and 12108 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for a self-propelled tank vessel not built in the United States as provided in this section.

(b) WAIVER REQUIREMENTS.—The Secretary may not grant a waiver under subsection (a) unless—

(1) the person requesting the waiver is a party to a binding legal contract, executed within 24 months after the date of enactment of this Act, with a United States shipyard for the construction in the United States of a self-propelled tank vessel;

(2) the Secretary determines, on the basis of the terms of the contract, the parties to the contract, the actions of those parties in connection with the contract, and the circumstances under which the contract was executed, that the parties are making a bona fide effort to construct in the United States and deliver a self-propelled tank vessel in a timely manner;

(3) the vessel for which the waiver is granted will meet otherwise applicable requirements of law regarding ownership and operation for vessels employed in the coastwise trade;

(4) the shipyard owns a facility with sufficient infrastructure to construct the self-propelled tank vessel;

(5) the self-propelled tank vessel that is the subject of that contract will not be available for use on the contracted delivery date because of a delay in the construction or delivery of the vessel due to unusual circumstances; and

(6) the Secretary determines that no other suitable tank vessel or vessels, or tank vessel capacity, that would not require such a waiver are reasonably available to the person requesting the waiver.

Prior to making the determination under paragraph (6), the Secretary shall provide public notice of a waiver request and shall provide persons who may have such suitable tank vessels an opportunity to indicate to the requester and the Secretary the particulars of available tank vessels or tank vessel capacity not requiring a waiver under this section.

(c) LIMITATIONS.—

(1) CAPACITY OF TANK VESSEL.—The Secretary may not grant a waiver under subsection (a) for a self-propelled tank vessel that has substantially greater capacity than the vessel described in subsection (b)(1).

(2) MAXIMUM DURATION OF WAIVER.—The Secretary may not grant a waiver under subsection (a) for a period prior to, or extending more than 48 months after, the original contract delivery date of the vessel described in subsection (b)(1).

(3) MAXIMUM NUMBER OF WAIVERS.—The Secretary may grant waivers under subsection (a) for not more than 3 self-propelled tank vessels.

(d) DETERMINATION OF WAIVER.—

(1) IN GENERAL.—A waiver grant under subsection (a) shall terminate on the earlier of—

(A) the date established by the Secretary as its expiration date under subsection (c)(2); or

(B) the date that is 60 days after the day on which the vessel described in subsection (b)(1) is delivered.

(2) TERMINATION FOR INTENTIONAL DELAY.—The Secretary may terminate a waiver granted under subsection (a) at any time if the Secretary determines that the delay in the construction or delivery of the vessel described in the subsection (b)(1) is no longer due to unusual circumstances.

(e) SUSPENSION OF WAIVER.—The Secretary may suspend a waiver granted under subsection (a) for any period of time if the Secretary determines that a suitable tank vessel, or suitable tank vessel capacity, that would not require such a waiver is reasonably available to the person requesting the waiver.

(f) CONTRACTED-FOR VESSEL DELIVERY.—If the Secretary grants a waiver under subsection (a), the shipyard constructing the vessel described in subsection (b)(1) shall deliver the vessel, constructed in accordance with the terms of the contract, as soon as practicable after the delivery date established by the contract.

(g) UNUSUAL CIRCUMSTANCES DEFINED.—In this section, the term ''unusual circumstances'' means bankruptcy of the shipyard or Acts of God (other than ordinary storms or inclement weather conditions), labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances beyond the control of the parties to the contract which prevent commencement of construction, or timely delivery or completion, of a vessel.

SEC. 215. REALIGNMENT OF POLICY RESPONSIBILITY IN THE DEPARTMENT OF TRANSPORTATION.

(a) IN GENERAL.—Section 102 of title 49, United States Code, is amended by—

(1) redesignating subsection (d) as subsection (g), and moving such subsection to appear after subsection (f);

(2) inserting after subsection (c) the following:

''(d) The Department has an Under Secretary of Transportation for Policy appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall provide leadership in the development of policy for the Department, supervise the policy activities of Assistant Secretaries with primary responsibility for aviation, international, and other transportation policy development and carry out other powers and duties prescribed by the Secretary. The Under Secretary acts for the Secretary when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of Secretary and Deputy Secretary are vacant.''; and

(3) by striking ''Secretary and the Deputy Secretary'' each place it appears in the last sentence of subsection (f), as redesignated, and inserting ''Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy''.

(b) POSITION IN EXECUTIVE SERVICE.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Transportation for Policy.''.

(c) CONFORMING AMENDMENT.—Section 102 of title 49, United States Code, is further amended by striking subsection (g), as redesignated by subsection (a)(1), on the date that an individual is appointed to the position of Under Secretary of Transportation for Policy under subsection (d) of such section, as added by subsection (a)(2) of this section.

TITLE III—COAST GUARD PERSONNEL AND MARITIME SAFETY

SEC. 301. SHORT TITLE.

This title may be cited as the ''Coast Guard Personnel and Maritime Safety Act of 2002''.

Subtitle A—Personnel Management

SEC. 311. COAST GUARD BAND DIRECTOR RANK.

Section 336(d) of title 14, United States Code, is amended by striking ''commander'' and inserting ''captain''.

SEC. 312. COMPENSATORY ABSENCE FOR ISOLATED DUTY.

(a) IN GENERAL.—Section 511 of title 14, United States Code, is amended to read as follows:

''§ 511. Compensatory absence from duty for military personnel at isolated duty stations

''The Secretary may grant compensatory absence from duty to military personnel of the Coast Guard serving at isolated duty stations of the Coast Guard when conditions of duty result in confinement because of isolation or in long periods of continuous duty.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 13 of title 14, United States Code, is amended by striking the item relating to section 511 and inserting the following:

''511. Compensatory absence from duty for military personnel at isolated duty stations.''.

SEC. 313. ACCELERATED PROMOTION OF CERTAIN COAST GUARD OFFICERS.

Title 14, United States Code, is amended—

(1) in section 259, by adding at the end the following:

''(c)(1) After selecting the officers to be recommended for promotion, a selection board may recommend officers of particular merit, from among those officers chosen for promotion, to be placed at the top of the list of selectees promulgated by the Secretary under section 271(a) of this title. The number of officers that a board may recommend to be placed at the top of the list of selectees may not exceed the percentages set forth in subsection (b) unless such a percentage is a number less than one, in which case the board may recommend one officer for such placement. No officer may be recommended to be placed at the top of the list of selectees unless he or she receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

''(2) The Secretary shall conduct a survey of the Coast Guard officer corps to determine if implementation of this subsection will improve Coast Guard officer retention. A selection board may not make any recommendation under this subsection before the date on which the Secretary publishes a finding, based upon the results of the survey, that implementation of this subsection will improve Coast Guard officer retention.

''(3) The Secretary shall submit any finding made by the Secretary pursuant to paragraph (2) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.'';

(2) in section 260(a), by inserting ''and the names of those officers recommended to be advanced to the top of the list of selectees established by the Secretary under section 271(a) of this title'' after ''promotion''; and

(3) in section 271(a), by inserting at the end the following: ''The names of all officers approved by the President and recommended by the board to be placed at the top of the list of selectees shall be placed at the top of the list of selectees in the order of seniority on the active duty promotion list.''.

Subtitle B—Marine Safety

SEC. 321. EXTENSION OF TERRITORIAL SEA FOR VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE ACT.

Section 4(b) of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1203(b)), is amended by striking ''United States inside the lines established pursuant to section 2 of the Act of February 19, 1895 (28 Stat. 672), as amended.'' and inserting ''United States, which includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.''.

SEC. 322. MODIFICATION OF VARIOUS REPORTING REQUIREMENTS.

(a) TERMINATION OF OIL SPILL LIABILITY TRUST FUND ANNUAL REPORT.—The report regarding the Oil Spill Liability Trust Fund required by the Conference Report (House Report 101–892) accompanying the Department of Transportation and Related Agencies Appropriations Act, 1991, as that requirement was amended by section 1122 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66), shall no longer be submitted to the Congress.

(b) PRESERVATION OF CERTAIN REPORTING REQUIREMENTS.—Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) does not apply to any report required to be submitted under any of the following provisions of law:

(1) COAST GUARD OPERATIONS AND EXPENDITURES.—Section 651 of title 14, United States Code.

(2) SUMMARY OF MARINE CASUALTIES REPORTED DURING PRIOR FISCAL YEAR.—Section 6307(c) of title 46, United States Code.

(3) USER FEE ACTIVITIES AND AMOUNTS.—Section 664 of title 46, United States Code.

(4) CONDITIONS OF PUBLIC PORTS OF THE UNITED STATES.—Section 308(c) of title 49, United States Code.

(5) ACTIVITIES OF FEDERAL MARITIME COMMISSION.—Section 208 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1118).

(6) ACTIVITIES OF INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—Section 7001(e) of the Oil Pollution Act of 1990 (33 U.S.C. 2761(e)).

SEC. 323. OIL SPILL LIABILITY TRUST FUND; EMERGENCY FUND ADVANCEMENT AUTHORITY.

Section 6002(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2752(b)) is amended by inserting after the first sentence the following: ''To the extent that such amount is not adequate, the Coast Guard may obtain an advance from the Fund of such sums as may be necessary, up to a maximum of $100,000,000, and within 30 days shall notify Congress of the amount advanced and the facts and circumstances necessitating the advance. Amounts advanced shall be repaid to the Fund when, and to the extent that, removal costs are recovered by the Coast Guard from responsible parties for the discharge or substantial threat of discharge.''.

SEC. 324. MERCHANT MARINER DOCUMENTATION REQUIREMENTS.

(a) INTERIM MERCHANT MARINERS' DOCUMENTS.—Section 7302 of title 46, United States Code, is amended—

(1) by striking ''A'' in subsection (f) and inserting ''Except as provided in subsection (g), a''; and

(2) by adding at the end the following:

''(g)(1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to—

''(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or

''(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

''(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.''.

(b) EXCEPTION.—Section 8701(a) of title 46, United States Code, is amended—

(1) by striking ''and'' after the semicolon in paragraph (8);

(2) by redesignating paragraph (9) as paragraph (10); and

(3) by inserting after paragraph (8) the following:

''(9) a passenger vessel not engaged in a foreign voyage with respect to individuals on board employed for a period of not more than 30 service days within a 12 month period as entertainment personnel, with no duties, including emergency duties, related to the navigation of the

vessel or the safety of the vessel, its crew, cargo or passengers; and''.

SEC. 325. PENALTIES FOR NEGLIGENT OPERATIONS AND INTERFERING WITH SAFE OPERATION.

Section 2302(a) of title 46, United States Code, is amended by striking ''$1,000.'' and inserting ''$5,000 in the case of a recreational vessel, or $25,000 in the case of any other vessel.''.

Subtitle C—Renewal of Advisory Groups

SEC. 331. COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE.

(a) COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE.—Section 4508 of title 46, United States Code, is amended—

*(1) by inserting ''**Safety**'' in the section heading after ''**Vessel**'';*

(2) by inserting ''Safety'' in subsection (a) after ''Vessel'';

(3) by striking ''(5 App. U.S.C. 1 et seq.)'' in subsection (e)(1) and inserting ''(5 App. U.S.C.)''; and

(4) by striking ''on September 30, 2000'' in subsection (e)(1) and inserting ''on September 30, 2005''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 45 of title 46, United States Code, is amended by striking the item relating to section 4508 and inserting the following:

''4508. Commercial Fishing Industry Vessel Safety Advisory Committee.''.

SEC. 332. HOUSTON-GALVESTON NAVIGATION SAFETY ADVISORY COMMITTEE.

Section 18(h) of the Coast Guard Authorization Act of 1991 (Public Law 102–241) is amended by striking ''September 30, 2000.'' and inserting ''September 30, 2005.''.

SEC. 333. LOWER MISSISSIPPI RIVER WATERWAY ADVISORY COMMITTEE.

Section 19(g) of the Coast Guard Authorization Act of 1991 (Public Law 102–241) is amended by striking ''September 30, 2000'' and inserting ''September 30, 2005''.

SEC. 334. NAVIGATION SAFETY ADVISORY COUNCIL.

Section 5(d) of the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) is amended by striking ''September 30, 2000'' and inserting ''September 30, 2005''.

SEC. 335. NATIONAL BOATING SAFETY ADVISORY COUNCIL.

Section 13110(e) of title 46, United States Code, is amended by striking ''September 30, 2000'' and inserting ''September 30, 2005''.

SEC. 336. TOWING SAFETY ADVISORY COMMITTEE.

The Act entitled ''An Act to establish a Towing Safety Advisory Committee in the Department of Transportation'' approved October 6, 1980 (33 U.S.C. 1231a), is amended by striking ''September 30, 2000.'' in subsection (e) and inserting ''September 30, 2005.''.

Subtitle D—Miscellaneous

SEC. 341. PATROL CRAFT.

Notwithstanding any other provision of law, the Secretary of the department in which the Coast Guard is operating may accept, by direct transfer without cost, for use by the Coast Guard primarily for expanded drug interdiction activities required to meet national supply reduction performance goals, up to 7 PC–170 patrol craft from the Department of Defense if it offers to transfer such craft.

SEC. 342. BOATING SAFETY.

(a) GENERAL STATE REVENUE DEFINITION.—For fiscal year 2003, the term ''general State revenue'' in section 13102(a)(3) of title 46, United States Code, includes any amounts expended for the State's recreational boating safety program by a State agency, a public corporation established under State law, or any other State instrumentality, as determined by the Secretary of the department in which the Coast Guard is operating.

(b) FUNDING.—For fiscal year 2003, the amount available for recreational boating safety under section 4(b)(3) of the Act of August 9, 1950 (16 U.S.C. 777c(b)(3)), is $83,000,000.

SEC. 343. CARIBBEAN SUPPORT TENDER.

(a) IN GENERAL.—The Coast Guard is authorized to operate and maintain a Caribbean Support Tender (or similar type vessel) to provide technical assistance, including law enforcement training, for foreign coast guards, navies, and other maritime services.

(b) MEDICAL AND DENTAL CARE.—

(1) The Commandant may provide medical and dental care to foreign military Caribbean Support Tender personnel and their dependents accompanying them in the United States—

(A) on an outpatient basis without cost; and

(B) on an inpatient basis if the United States is reimbursed for the costs of providing such care.

Payments received as reimbursement for the provision of such care shall be credited to the appropriations against which the charges were made for the provision of such care.

(2) Notwithstanding paragraph (1)(B), the Commandant may provide inpatient medical and dental care in the United States without cost to foreign military Caribbean Support Tender personnel and their dependents accompanying them in the United States if comparable care is made available to a comparable number of United States military personnel in that foreign country.

SEC. 344. PROHIBITION OF NEW MARITIME USER FEES.

Section 2110(k) of title 46, United States Code, is amended by striking ''2001'' and inserting ''2006''.

SEC. 345. GREAT LAKES LIGHTHOUSES.

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

(1) The Great Lakes are home to more than 400 lighthouses. 120 of these maritime landmarks are in the State of Michigan.

(2) Lighthouses are an important part of Great Lakes culture and stand as a testament to the importance of shipping in the region's political, economic, and social history.

(3) Advances in navigation technology have made many Great Lakes lighthouses obsolete. In Michigan alone, approximately 70 lighthouses will be designated as excess property of the Federal Government and will be transferred to the General Services Administration for disposal.

(4) Unfortunately, the Federal property disposal process is confusing, complicated, and not well-suited to disposal of historic lighthouses or to facilitate transfers to nonprofit organizations. This is especially troubling because, in many cases, local nonprofit historical organizations have dedicated tremendous resources to preserving and maintaining Great Lakes lighthouses.

(5) If Great Lakes lighthouses disappear, the public will be unaware of an important chapter in Great Lakes history.

(6) The National Trust for Historic Preservation has placed Michigan lighthouses on their list of Most Endangered Historic Places.

(b) ASSISTANCE FOR GREAT LAKES LIGHTHOUSE PRESERVATION EFFORTS.—The Secretary of the department in which the Coast Guard is operating, may—

(1) continue to offer advice and technical assistance to organizations in the Great Lakes region that are dedicated to lighthouse stewardship; and

(2) promptly release information regarding the timing of designations of Coast Guard lighthouses on the Great Lakes as excess to the needs of the Coast Guard, to enable those organizations to mobilize and be prepared to take appropriate action with respect to the disposal of those properties.

SEC. 346. MODERNIZATION OF NATIONAL DISTRESS AND RESPONSE SYSTEM.

(a) REPORT.—The Secretary of the department in which the Coast Guard is operating shall prepare a status report on the modernization of the National Distress and Response System and transmit the report, not later than 60 days after the date of enactment of this Act and annually thereafter until completion of the project, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(b) CONTENTS.—The report required by subsection (a) shall—

(1) set forth the scope of the modernization, the schedule for completion of the System, and information on progress in meeting the schedule and on any anticipated delays;

(2) specify the funding expended to-date on the System, the funding required to complete the System, and the purposes for which the funds were or will be expended;

(3) describe and map the existing public and private communications coverage throughout the waters of the coastal and internal regions of the continental United States, Alaska, Hawaii, Guam, and the Caribbean, and identify locations that possess direction-finding, asset-tracking communications, and digital selective calling service;

(4) identify areas of high risk to boaters and Coast Guard personnel due to communications gaps;

(5) specify steps taken by the Secretary to fill existing gaps in coverage, including obtaining direction-finding equipment, digital recording systems, asset-tracking communications, use of commercial VHF services, and digital selective calling services that meet or exceed Global Maritime Distress and Safety System requirements adopted under the International Convention for the Safety of Life at Sea;

(6) identify the number of VHF–FM radios equipped with digital selective calling sold to United States boaters;

(7) list all reported marine accidents, casualties, and fatalities occurring in areas with existing communications gaps or failures, including incidents associated with gaps in VHF–FM coverage or digital selected calling capabilities and failures associated with inadequate communications equipment aboard the involved vessels during calendar years 1997 and thereafter;

(8) identify existing systems available to close all identified marine safety gaps before January 1, 2003, including expeditious receipt and response by appropriate Coast Guard operations centers to VHF–FM digital selective calling distress signal; and

(9) identify actions taken to-date to implement the recommendations of the National Transportation Safety Board in its Report No. MAR–99–01.

SEC. 347. CONVEYANCE OF COAST GUARD PROPERTY IN PORTLAND, MAINE.

(a) AUTHORITY TO CONVEY.—

(1) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating, or a designee of the Secretary, may convey to the Gulf of Maine Aquarium Development Corporation, its successors and assigns, without payment for consideration, all right, title, and interest of the United States in and to approximately 4.13 acres of land, including a pier and bulkhead, known as the Naval Reserve Pier property, together with any improvements thereon in their then current condition, located in Portland, Maine. All conditions placed with the deed of title shall be construed as covenants running with the land.

(2) IDENTIFICATION OF PROPERTY.—The Secretary, in consultation with the Commandant of the Coast Guard, may identify, describe, and determine the property to be conveyed under this section. The floating docks associated with or attached to the Naval Reserve Pier property shall remain the personal property of the United States.

(b) LEASE TO THE UNITED STATES.—

(1) CONDITION OF CONVEYANCE.—The Naval Reserve Pier property shall not be conveyed until the Corporation enters into a lease agreement with the United States, the terms of which

are mutually satisfactory to the Commandant and the Corporation, in which the Corporation shall lease a portion of the Naval Reserve Pier property to the United States for a term of 30 years without payment of consideration. The lease agreement shall be executed within 12 months after the date of enactment of this Act.

(2) IDENTIFICATION OF LEASED PREMISES.—The Secretary, in consultation with the Commandant, may identify and describe the leased premises and rights of access, including the following, in order to allow the Coast Guard to operate and perform missions from and upon the leased premises:

(A) The right of ingress and egress over the Naval Reserve Pier property, including the pier and bulkhead, at any time, without notice, for purposes of access to Coast Guard vessels and performance of Coast Guard missions and other mission-related activities.

(B) The right to berth Coast Guard cutters or other vessels as required in the moorings along the east side of the Naval Reserve Pier property and the right to attach floating docks which shall be owned and maintained at the United States' sole cost and expense.

(C) The right to operate, maintain, remove, relocate, or replace an aid to navigation located upon, or to install any aid to navigation upon, the Naval Reserve Pier property as the Coast Guard, in its sole discretion, may determine is needed for navigational purposes.

(D) The right to occupy up to 3,000 contiguous gross square feet at the Naval Reserve Pier property for storage and office space, which will be provided and constructed by the Corporation, at the Corporation's sole cost and expense, and which will be maintained, and utilities and other operating expenses paid for, by the United States at its sole cost and expense.

(E) The right to occupy up to 1,200 contiguous gross square feet of offsite storage in a location other than the Naval Reserve Pier property, which will be provided by the Corporation at the Corporation's sole cost and expense, and which will be maintained, and utilities and other operating expenses paid for, by the United States at its sole cost and expense.

(F) The right for Coast Guard personnel to park up to 60 vehicles, at no expense to the Government, in the Corporation's parking spaces on the Naval Reserve Pier property or in parking spaces that the Corporation may secure within 1,000 feet of the Naval Reserve Pier property or within 1,000 feet of the Coast Guard Marine Safety Office Portland. Spaces for no less than 30 vehicles shall be located on the Naval Reserve Pier property.

(3) RENEWAL.—The lease described in paragraph (1) may be renewed, at the sole option of the United States, for additional lease terms.

(4) LIMITATION ON SUBLEASES.—The United States may not sublease the leased premises to a third party or use the leased premises for purposes other than fulfilling the missions of the Coast Guard and for other mission related activities.

(5) TERMINATION.—In the event that the Coast Guard ceases to use the leased premises, the Secretary, in consultation with the Commandant, may terminate the lease with the Corporation.

(c) IMPROVEMENT OF LEASED PREMISES.—

(1) IN GENERAL.—The Naval Reserve Pier property shall not be conveyed until the Corporation enters into an agreement with the United States, subject to the Commandant's design specifications, project's schedule, and final project approval, to replace the bulkhead and pier which connects to, and provides access from, the bulkhead to the floating docks, at the Corporation's sole cost and expense, on the east side of the Naval Reserve Pier property within 30 months from the date of conveyance. The agreement to improve the leased premises shall be executed within 12 months after the date of enactment of this Act.

(2) FURTHER IMPROVEMENTS.—In addition to the improvements described in paragraph (1), the Commandant may further improve the leased premises during the lease term, at the United States sole cost and expense.

(d) UTILITY INSTALLATION AND MAINTENANCE OBLIGATIONS.—

(1) UTILITIES.—The Naval Reserve Pier property shall not be conveyed until the Corporation enters into an agreement with the United States to allow the United States to operate and maintain existing utility lines and related equipment, at the United States sole cost and expense. At such time as the Corporation constructs its proposed public aquarium, the Corporation shall replace existing utility lines and related equipment and provide additional utility lines and equipment capable of supporting a third 110-foot Coast Guard cutter, with comparable, new, code compliant utility lines and equipment at the Corporation's sole cost and expense, maintain such utility lines and related equipment from an agreed upon demarcation point, and make such utility lines and equipment available for use by the United States, if the United States pays for its use of utilities at its sole cost and expense. The agreement concerning the operation and maintenance of utility lines and equipment shall be executed within 12 months after the date of enactment of this Act.

(2) MAINTENANCE.—The Naval Reserve Pier property shall not be conveyed until the Corporation enters into an agreement with the United States to maintain, at the Corporation's sole cost and expense, the replacement bulkhead and pier on the east side of the Naval Reserve Pier property. The agreement concerning the maintenance of the bulkhead and pier shall be executed within 12 months after the date of enactment of this Act.

(3) AIDS TO NAVIGATION.—The United States shall be required to maintain, at its sole cost and expense, any Coast Guard active aid to navigation located upon the Naval Reserve Pier property.

(e) ADDITIONAL RIGHTS.—The conveyance of the Naval Reserve Pier property shall be made subject to conditions the Secretary considers necessary to ensure that—

(1) the Corporation shall not interfere or allow interference, in any manner, with use of the leased premises by the United States; and

(2) the Corporation shall not interfere or allow interference, in any manner, with any aid to navigation nor hinder activities required for the operation and maintenance of any aid to navigation, without the express written permission of the head of the agency responsible for operating and maintaining the aid to navigation.

(f) REMEDIES AND REVERSIONARY INTEREST.—The Naval Reserve Pier property, at the option of the Secretary, shall revert to the United States and be placed under the administrative control of the Secretary, if, and only if, the Corporation fails to abide by any of the terms of this section or any agreement entered into under subsection (b), (c), or (d) of this section.

(g) LIABILITY OF THE PARTIES.—The liability of the United States and the Corporation for any injury, death, or damage to or loss of property occurring on the leased property shall be determined with reference to existing State or Federal law, as appropriate, and any such liability may not be modified or enlarged by this title or any agreement of the parties.

(h) EXPIRATION OF AUTHORITY TO CONVEY.—The authority to convey the Naval Reserve property under this section shall expire 3 years after the date of enactment of this Act.

(i) DEFINITIONS.—In this section, the following definitions apply:

(1) AID TO NAVIGATION.—The term ''aid to navigation'' means equipment used for navigational purposes, including a light, antenna, sound signal, electronic navigation equipment, cameras, sensors power source, or other related equipment which are operated or maintained by the United States.

(2) CORPORATION.—The term ''Corporation'' means the Gulf of Maine Aquarium Development Corporation, its successors and assigns.

SEC. 348. ADDITIONAL COAST GUARD FUNDING NEEDS AFTER SEPTEMBER 11, 2001.

(a) IN GENERAL.—No later than 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit a report to the Congress that—

(1) compares Coast Guard expenditures by mission area on an annualized basis before and after the terrorist attacks of September 11, 2001;

(2) estimates—

(A) annual funding amounts and personnel levels that would restore all Coast Guard mission areas to the readiness levels that existed before September 11, 2001;

(B) annual funding amounts and personnel levels required to fulfill the Coast Guard's additional responsibilities for port security after September 11, 2001; and

(C) annual funding amounts and personnel levels required to increase law enforcement needs in mission areas other than port security after September 11, 2001;

(3) generally describes the services provided by the Coast Guard to the Department of Defense after September 11, 2001, and states the cost of such services; and

(4) identifies the Federal agency providing funds for those services.

(b) REPORT REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate identifying mission targets for each Coast Guard mission for fiscal years 2003, 2004, and 2005 and the specific steps necessary to achieve those targets. The Inspector General of the department in which the Coast Guard is operating shall review the final strategic plan and provide an independent report with its views to the Committees within 90 days after the plan has been submitted by the Secretary.

SEC. 349. MISCELLANEOUS CONVEYANCES.

(a) AUTHORITY TO CONVEY.—

(1) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating may convey, by an appropriate means of conveyance, all right, title, and interest of the United States in and to each of the following properties:

(A) Coast Guard Slip Point Light Station, located in Clallam County, Washington, to Clallam County, Washington.

(B) The parcel of land on which is situated the Point Piños Light, located in Monterey County, California, to the city of Pacific Grove, California.

(2) IDENTIFICATION OF PROPERTY.—The Secretary may identify, describe, and determine the property to be conveyed under this subsection.

(3) LIMITATION.—The Secretary may not under this section convey—

(A) any historical artifact, including any lens or lantern, located on the property at or before the time of the conveyance; or

(B) any interest in submerged land.

(b) GENERAL TERMS AND CONDITIONS.—

(1) IN GENERAL.—Each conveyance of property under this section shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions required by this section and other terms and conditions the Secretary may consider appropriate, including the reservation of easements and other rights on behalf of the United States.

(2) REVERSIONARY INTEREST.—In addition to any term or condition established under this section, each conveyance of property under this section shall be subject to the condition that all right, title, and interest in the property shall immediately revert to the United States if—

(A) the property, or any part of the property—

(i) ceases to be available and accessible to the public, on a reasonable basis, for educational, park, recreational, cultural, historic preservation, or other similar purposes specified for the property in the terms of conveyance;

(ii) ceases to be maintained in a manner that is consistent with its present or future use as a site for Coast Guard aids to navigation or compliance with this section; or

(iii) ceases to be maintained in a manner consistent with the conditions in paragraph (4) established by the Secretary pursuant to the National Historic Preservation Act (16 U.S.C. 470 et seq.); or

(B) at least 30 days before that reversion, the Secretary provides written notice to the owner that the property is needed for national security purposes.

(3) MAINTENANCE OF NAVIGATION FUNCTIONS.—Each conveyance of property under this section shall be made subject to the conditions that the Secretary considers to be necessary to assure that—

(A) the lights, antennas, and associated equipment located on the property conveyed that are active aids to navigation shall continue to be operated and maintained by the United States for as long as they are needed for this purpose;

(B) the owner of the property may not interfere or allow interference in any manner with aids to navigation without express written permission from the Commandant of the Coast Guard;

(C) there is reserved to the United States the right to relocate, replace, or add any aid to navigation or make any changes to the property conveyed as may be necessary for navigational purposes;

(D) the United States shall have the right, at any time, to enter the property without notice for the purpose of operating, maintaining, and inspecting aids to navigation and for the purpose of enforcing compliance with this subsection; and

(E) the United States shall have an easement of access to and across the property for the purpose of maintaining the aids to navigation in use on the property.

(4) MAINTENANCE OF PROPERTY.—(A) Subject to subparagraph (B), the owner of a property conveyed under this section shall maintain the property in a proper, substantial, and workmanlike manner, and in accordance with any conditions established by the conveying authority pursuant to the National Historic Preservation Act (16 U.S.C. 470 et seq.) and other applicable laws.

(B) The owner of a property conveyed under this section is not required to maintain any active aid to navigation equipment on the property, except private aids to navigation permitted under section 83 of title 14, United States Code.

(c) SPECIAL TERMS AND CONDITIONS.—The Secretary may retain all right, title, and interest of the United States in and to any portion of any parcel referred to in subsection (a)(1)(B) that the Secretary considers appropriate.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) AIDS TO NAVIGATION.—The term ''aids to navigation'' means equipment used for navigation purposes, including a light, antenna, radio, sound signal, electronic navigation equipment, or other associated equipment which are operated or maintained by the United States.

(2) OWNER.—The term ''owner'' means, for a property conveyed under this section, the person identified in subsection (a)(1) of the property and includes any successor or assign of that person.

TITLE IV—OMNIBUS MARITIME IMPROVEMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Omnibus Maritime and Coast Guard Improvements Act of 2002''.

SEC. 402. EXTENSION OF COAST GUARD HOUSING AUTHORITIES.

(a) HOUSING CONTRACTORS.—Section 681(a) of title 14, United States Code, is amended by inserting '', including a small business concern qualified under section 8(a) of the Small Business Act (15 U.S.C. 637(a)),'' after ''private persons''.

(b) BUDGET AUTHORITY LIMITATION.—Section 687(f) of title 14, United States Code, is amended by striking ''$20,000,000'' and inserting ''$40,000,000''.

(c) DEMONSTRATION PROJECT.—Section 687 of title 14, United States Code, is amended by adding at the end the following:

''(g) DEMONSTRATION PROJECT AUTHORIZED.—To promote efficiencies through the use of alternative procedures for expediting new housing projects, the Secretary—

''(1) may develop and implement a demonstration project for acquisition or construction of military family housing and military unaccompanied housing on or near the Coast Guard installation at Kodiak, Alaska;

''(2) in implementing the demonstration project, shall utilize, to the maximum extent possible, the contracting authority of the Small Business Administration's section 8(a) program;

''(3) shall, to the maximum extent possible, acquire or construct such housing through contracts with small business concerns qualified under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) that have their principal place of business in the State of Alaska; and

''(4) shall report to Congress by September 1 of each year on the progress of activities under the demonstration project.''.

(d) EXTENSION.—Section 689 of title 14, United States Code, is amended by striking ''2001'' and inserting ''2007''.

SEC. 403. INVENTORY OF VESSELS FOR CABLE LAYING, MAINTENANCE, AND REPAIR.

(a) INVENTORY.—The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under chapter 121 of title 46, United States Code, are 200 feet or more in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classified as a cable ship or cable vessel.

(b) VESSEL INFORMATION.—For each vessel listed in the inventory, the Secretary shall include in the inventory—

(1) the name, length, beam, depth, and other distinguishing characteristics of the vessel;

(2) the abilities and limitations of the vessel with respect to the laying, maintaining, and repairing of a submarine cable; and

(3) the name and address of the person to whom inquiries regarding the vessel may be made.

(c) PUBLICATION.—The Secretary shall—

(1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a current inventory developed under subsection (a); and

(2) every six months thereafter, publish in the Federal Register an updated inventory.

SEC. 404. VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE.

(a) IN GENERAL.—Except in the case of a vessel in distress, only a vessel of the United States (as that term is defined in section 2101 of title 46, United States Code) may perform the following escort vessel operations within the navigable waters of the United States:

(1) Operations that commence or terminate at a port or place in the United States.

(2) Operations required by United States law or regulation.

(3) Operations provided in whole or in part within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to those facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) ADDITION TO TOWING VESSEL.—In the case of a vessel being towed under section 4370 of the Revised Statutes of the United States (46 App. U.S.C. 316(a)), an escort vessel is any vessel assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall affect or be construed or interpreted to affect or modify section 4370 of the Revised Statutes of the United States (46 U.S.C. 316(a)).

(d) DEFINITION.—In this section, the term ''escort vessel'' means any vessel that is assigned and dedicated to assist another vessel, whether or not tethered to that vessel, solely as a safety precaution to assist in controlling the speed or course of the assisted vessel in the event of a steering or propulsion equipment failure, or any other similar emergency circumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation.

(e) PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than $10,000 for each day during which the violations occurs.

SEC. 405. SEARCH AND RESCUE CENTER STANDARDS.

(a) IN GENERAL.—Title 14, United States Code, is amended—

(1) by redesignating the second section 673 and section 674 in order as sections 674 and 675; and

(2) by adding at the end of chapter 17 the following:

''§ 676. Search and rescue center standards

''(a) The Secretary shall establish, implement, and maintain the minimum standards necessary for the safe operation of all Coast Guard search and rescue center facilities, including with respect to the following:

''(1) The lighting, acoustics, and temperature in the facilities.

''(2) The number of individuals on a shift in the facility assigned search and rescue responsibilities (including communications), which may be adjusted based on seasonal workload.

''(3) The length of time an individual may serve on watch to minimize fatigue, based on the best scientific information available.

''(4) The scheduling of individuals having search and rescue responsibilities to minimize fatigue of the individual when on duty in the facility.

''(5) The workload of each individual engaged in search and rescue responsibilities in the facility.

''(6) Stress management for the individuals assigned search and rescue responsibilities in the facilities.

''(7) The design of equipment and facilities to minimize fatigue and enhance search and rescue operations.

''(8) The acquisition and maintenance of interim search and rescue command center communications equipment.

''(9) Any other requirements that the Secretary believes will increase the safe operation of the search and rescue centers.

''(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Secretary should establish, implement, and maintain minimum standards necessary to ensure that an individual on duty or watch in a Coast Guard search and rescue command center facility does not work more than 12 hours in a 24-hour period, except in an emergency or unforeseen circumstances.

''(c) DEFINITION.—For the purposes of this section, the term 'search and rescue center facility' means a Coast Guard shore facility that maintains a search and rescue mission coordination and communications watch.

''(d) REPORT TO CONGRESS.—The Secretary shall provide a quarterly written report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, describing the status of implementation of the standards described in subsection (b), including a list of the facilities at which such standards have or have not been implemented.''.

(b) PRESCRIPTION OF STANDARDS.—The Secretary shall prescribe the standards required under section 675(a) of title 14, United States Code, as enacted by subsection (a) of this section, before January 1, 2003.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 17 of title 14, United States Code, is amended by striking the second item relating to a section 673 and the item relating to a section 674 and inserting the following:

''674. Small boat station capability.
''675. Small boat station closures.
''676. Search and rescue center standards.''.

SEC. 406. VHF COMMUNICATIONS SERVICES.

(a) The Secretary of the department in which the Coast Guard is operating may authorize a person providing commercial VHF communications services to place commercial VHF communications equipment on real property under the administrative control of the Coast Guard (including towers) subject to any terms agreed to by the parties. The Secretary and that commercial VHF communications service provider also may enter into an agreement providing for VHF communications services to the Coast Guard (including digital selective calling and radio direction finding services) at a discounted rate or price based on providing such access to real property under the administrative control of the Coast Guard.

(b) Commercial VHF communication equipment placed on real property under the administrative control of the Coast Guard under this section shall not interfere in any manner with any current or future Coast Guard communication equipment.

(c) Nothing in the section shall affect the rights or obligations of the United States under section 704(c) of the Telecommunications Act of 1996 (47 U.S.C. 332 note) with respect to the availability of property or under section 359(d) of the Communications Act of 1934 (47 U.S.C. 357(d)) with respect to charges for transmission of distress messages.

SEC. 407. LOWER COLUMBIA RIVER MARITIME FIRE AND SAFETY ACTIVITIES.

There is authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating $987,400 for fire, oil, and toxic spill response communications, training, equipment, and program administration activities conducted by nonprofit organizations that act in cooperation with the Coast Guard, to remain available until expended. Organizations receiving appropriated funds must have a multiyear record of spill and marine fire response in Federal navigable waterways. Federal funds shall not exceed 25 percent of such an organization's total budget.

SEC. 408. CONFORMING REFERENCES TO THE FORMER MERCHANT MARINE AND FISHERIES COMMITTEE.

(a) LAWS CODIFIED IN TITLE 14, UNITED STATES CODE.—(1) Sections 194(b)(2) and 194(b)(5) of title 14, United States Code, are amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(2) Section 663 of title 14, United States Code, is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(3) Section 664(c) of title 14, United States Code, is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(b) LAWS CODIFIED IN TITLE 33, UNITED STATES CODE.—(1) Section 3(d)(3) of the International Navigational Rules Act of 1977 (33 U.S.C. 1602(d)(3)) is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(2) Section 5004(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2734(2)) is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(c) LAWS CODIFIED IN TITLE 46, UNITED STATES CODE.—(1) Section 6307(a) of title 46, United States Code, is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(2) Section 901g(b)(3) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241k(b)(3)) is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

(3) Section 913(b) of the International Maritime and Port Security Act (46 App. U.S.C. 1809(b)) is amended by striking ''Merchant Marine and Fisheries'' and inserting ''Transportation and Infrastructure''.

SEC. 409. RESTRICTION ON VESSEL DOCUMENTATION.

Section 12108(a) of title 46, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) was built in the United States;'';

(2) by striking ''and'' at the end of paragraph (3);

(3) by redesignating paragraph (4) as paragraph (5); and

(4) by inserting after paragraph (3) the following:

''(4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and''.

SEC. 410. HYPOTHERMIA PROTECTIVE CLOTHING REQUIREMENT.

The Commandant of the Coast Guard shall ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.

SEC. 411. RESERVE OFFICER PROMOTIONS.

(a) Section 729(i) of title 14, United States Code, is amended by inserting ''on the date a vacancy occurs, or as soon thereafter as practicable in the grade to which the officer was selected for promotion or, if promotion was determined in accordance with a running mate system,'' after ''grade''.

(b) Section 731(b) of title 14, United States Code, is amended by striking the period at the end and inserting '', or in the event that promotion is not determined in accordance with a running mate system, then a Reserve officer becomes eligible for consideration for promotion to the next higher grade at the beginning of the promotion year in which he or she completes the following amount of service computed from the date of rank in the grade in which he or she is serving:

''(1) two years in the grade of lieutenant (junior grade);

''(2) three years in the grade of lieutenant;

''(3) four years in the grade of lieutenant commander;

''(4) four years in the grade of commander; and

''(5) three years in the grade of captain.''.

(c) Section 736(a) of title 14, United States Code, is amended by inserting ''the date of rank shall be the date of appointment in that grade, unless the promotion was determined in accordance with a running mate system, in which event'' after ''subchapter,''.

SEC. 412. REGULAR LIEUTENANT COMMANDERS AND COMMANDERS; CONTINUATION UPON FAILURE OF SELECTION FOR PROMOTION.

Section 285 of title 14, United States Code, is amended—

(1) by striking ''Each officer'' and inserting ''(a) Each officer''; and

(2) by adding at the end the following:

''(b) A lieutenant commander or commander of the Regular Coast Guard subject to discharge or retirement under subsection (a) may be continued on active duty when the Secretary directs a selection board convened under section 251 of this title to continue up to a specified number of lieutenant commanders or commanders on active duty. When so directed, the selection board shall recommend those officers who in the opinion of the board are best qualified to advance the needs and efficiency of the Coast Guard. When the recommendations of the board are approved by the Secretary, the officers recommended for continuation shall be notified that they have been recommended for continuation and offered an additional term of service that fulfills the needs of the Coast Guard.

''(c)(1) An officer who holds the grade of lieutenant commander of the Regular Coast Guard may not be continued on active duty under subsection (b) for a period that extends beyond 24 years of active commissioned service unless promoted to the grade of commander of the Regular Coast Guard. An officer who holds the grade of commander of the Regular Coast Guard may not be continued on active duty under subsection (b) for a period that extends beyond 26 years of active commissioned service unless promoted to the grade of captain of the Regular Coast Guard.

''(2) Unless retired or discharged under another provision of law, each officer who is continued on active duty under subsection (b) but is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher grade, shall, if eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which the period of continued service is completed.''.

SEC. 413. RESERVE STUDENT PRE-COMMISSIONING ASSISTANCE PROGRAM.

(a) IN GENERAL.—Chapter 21 of title 14, United States Code, is amended by inserting after section 709 the following new section:

''§ 709a. Reserve student pre-commissioning assistance program

''(a) The Secretary may provide financial assistance to an eligible enlisted member of the Coast Guard Reserve, not on active duty, for expenses of the member while the member is pursuing on a full-time basis at an institution of higher education a program of education approved by the Secretary that leads to—

''(1) a baccalaureate degree in not more than 5 academic years; or

''(2) a post-baccalaureate degree.

''(b)(1) To be eligible for financial assistance under this section, an enlisted member of the Coast Guard Reserve shall—

''(A) be enrolled on a full-time basis in a program of education referred to in subsection (a) at any institution of higher education; and

''(B) enter into a written agreement with the Coast Guard described in paragraph (2).

''(2) A written agreement referred to in paragraph (1)(B) is an agreement between the member and the Secretary in which the member agrees—

''(A) to accept an appointment as a commissioned officer in the Coast Guard Reserve, if tendered;

''(B) to serve on active duty for up to five years; and

''(C) under such terms and conditions as shall be prescribed by the Secretary, to serve in the Coast Guard Reserve until the eighth anniversary of the date of the appointment.

''(c) Expenses for which financial assistance may be provided under this section are the following:

''(1) Tuition and fees charged by the institution of higher education involved.

''(2) The cost of books.

''(3) In the case of a program of education leading to a baccalaureate degree, laboratory expenses.

''(4) Such other expenses as are deemed appropriate by the Secretary.

''(d) The amount of financial assistance provided to a member under this section shall be prescribed by the Secretary, but may not exceed $25,000 for any academic year.

''(e) Financial assistance may be provided to a member under this section for up to 5 consecutive academic years.

''(f) A member who receives financial assistance under this section may be ordered to active duty in the Coast Guard Reserve by the Secretary to serve in a designated enlisted grade for such period as the Secretary prescribes, but not more than 4 years, if the member—

''(1) completes the academic requirements of the program and refuses to accept an appointment as a commissioned officer in the Coast Guard Reserve when offered;

''(2) fails to complete the academic requirements of the institution of higher education involved; or

''(3) fails to maintain eligibility for an original appointment as a commissioned officer.

''(g)(1) If a member requests to be released from the program and the request is accepted by the Secretary, or if the member fails because of misconduct to complete the period of active duty specified, or if the member fails to fulfill any term or condition of the written agreement required to be eligible for financial assistance under this section, the financial assistance shall be terminated. The Secretary may request the member to reimburse the United States in an amount that bears the same ratio to the total costs of the education provided to that member as the unserved portion of active duty bears to the total period of active duty the member agreed to serve. The Secretary shall have the option to order such reimbursement without first ordering the member to active duty. An obligation to reimburse the United States imposed under this paragraph is a debt owed to the United States.

''(2) The Secretary may waive the service obligated under subsection (f) of a member who becomes unqualified to serve on active duty due to a circumstance not within the control of that member or who is not physically qualified for appointment and who is determined to be unqualified for service as an enlisted member of the Coast Guard Reserve due to a physical or medical condition that was not the result of the member's own misconduct or grossly negligent conduct.

''(3) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of a written agreement entered into under subsection (b) does not discharge the individual signing the agreement from a debt arising under such agreement or under paragraph (1).

''(h) As used in this section, the term 'institution of higher education' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 21 of title 14, United States Code, is amended by adding the following new item after the item relating to section 709:

''709a. Reserve student pre-commissioning assistance program.''.

SEC. 414. CONTINUATION ON ACTIVE DUTY BEYOND THIRTY YEARS.

Section 289 of title 14, United States Code, is amended by adding at the end the following new subsection:

''(h) Notwithstanding subsection (g) and section 288 of this title, the Commandant may by annual action retain on active duty from promotion year to promotion year any officer who would otherwise be retired under subsection (g) or section 288 of this title. An officer so retained, unless retired under some other provision of law, shall be retired on June 30 of that promotion year in which no action is taken to further retain the officer under this subsection.''.

SEC. 415. PAYMENT OF DEATH GRATUITIES ON BEHALF OF COAST GUARD AUXILIARISTS.

Section 823a(b) of title 14, United States Code, is amended by inserting after paragraph (8) the following:

''(9) On or after January 1, 2001, section 651 of Public Law 104–208.''.

SEC. 416. ALIGN COAST GUARD SEVERANCE PAY AND REVOCATION OF COMMISSION AUTHORITY WITH DEPARTMENT OF DEFENSE AUTHORITY.

(a) IN GENERAL.—Chapter 11 of title 14, United States Code, is amended—

(1) in section 281—

(A) by striking ''**three**'' in the section heading and inserting ''**five**''; and

(B) by striking ''three'' in the text and inserting ''five'';

(2) in section 283(b)(2)(A), by striking ''severance'' and inserting ''separation'';

(3) in section 286—

(A) by striking ''**severance**'' in the section heading and inserting ''**separation**''; and

(B) by striking subsection (b) and inserting the following:

''(b) An officer of the Regular Coast Guard who is discharged under this section or section 282, 283, or 284 of this title and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) of section 1174 of title 10.

''(c) An officer of the Regular Coast Guard who is discharged under section 327 of this title and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2) of section 1174 of title 10 as determined under regulations promulgated by the Secretary.

''(d) Notwithstanding subsections (a) and (b), an officer discharged under chapter 11 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if the officer requested in writing or otherwise sought not to be selected for promotion, or requested removal from the list of selectees.'';

(4) in section 286a—

(A) by striking ''**severance**'' in the section heading and inserting ''**separation**'' in its place; and

(B) by striking subsections (a), (b), and (c) and inserting the following:

''(a) A regular warrant officer of the Coast Guard who is discharged under section 580 of title 10, and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1) of section 1174 of title 10.

''(b) A regular warrant officer of the Coast Guard who is discharged under section 1165 or 1166 of title 10, and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1) or (d)(2) of section 1174 of title 10, as determined under regulations promulgated by the Secretary.

''(c) In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.''; and

(5) in section 327—

(A) by striking ''**severance**'' in the section heading and inserting ''**separation**'';

(B) by striking subsection (a)(2) and inserting the following:

''(2) for discharge with separation benefits under section 286(c) of this title.'';

(C) by striking subsection (a)(3);

(D) by striking subsection (b)(2) and inserting the following:

''(2) if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged with separation benefits under section 286(c) of this title, unless under regulations promulgated by the Secretary the condition under which the officer is discharged does not warrant an honorable discharge.''; and

(E) by striking subsection (b)(3).

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 14, United States Code, is amended—

(1) in the item relating to section 281, by striking ''three'' and inserting ''five'';

(2) in the item relating to section 286, by striking ''severance'' and inserting ''separation'';

(3) in the item relating to section 286a, by striking ''severance'' and inserting ''separation''; and

(4) in the item relating to section 327, by striking ''severance'' and inserting ''separation'' in its place.

(c) EFFECTIVE DATE.—The amendments made by paragraphs (2), (3), (4), and (5) of subsection (a) shall take effect four years after the date of enactment of this Act, except that subsection (d) of section 286 of title 14, United States Code, as amended by paragraph (3) of subsection (a) of this section, shall take effect on the date of enactment of this Act and shall apply with respect to conduct on or after that date. The amendments made to the table of sections of chapter 11 of title 14, United States Code, by paragraphs (2), (3), and (4) of subsection (b) of this section shall take effect four years after the date of enactment of this Act.

SEC. 417. LONG-TERM LEASE AUTHORITY FOR LIGHTHOUSE PROPERTY.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by inserting after section 672 the following:

''§ 672a. Long-term lease authority for lighthouse property

''(a) The Commandant of the Coast Guard may lease to non-Federal entities, including private individuals, lighthouse property under the administrative control of the Coast Guard for terms not to exceed 30 years. Consideration for the use and occupancy of lighthouse property leased under this section, and for the value of any utilities and services furnished to a lessee of such property by the Commandant, may consist, in whole or in part, of non-pecuniary remuneration including the improvement, alteration, restoration, rehabilitation, repair, and maintenance of the leased premises by the lessee. Section 321 of chapter 314 of the Act of June 30, 1932 (40 U.S.C. 303b) shall not apply to leases issued by the Commandant under this section.

''(b) Amounts received from leases made under this section, less expenses incurred, shall be deposited in the Treasury.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 17 of title 14, United States Code, is amended by inserting after the item relating to section 672 the following:

''672a. Long-term lease authority for lighthouse property.''.

SEC. 418. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENTS.

(a) IN GENERAL.—Section 3 of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903) is amended—

(1) in subsection (c)(1)(D), by striking ''and'';

(2) in subsection (c)(1)(E), by striking ''United States.'' and inserting ''United States; and''; and

(3) by inserting after subsection (c)(1)(E) the following:

''(F) a vessel located in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999, and (i) is entering the United States, (ii) has departed the United States, or (iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).''.

(b) MARITIME DRUG LAW ENFORCEMENT AMENDMENT.—Section 4 of the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1904) is amended—

(1) by inserting ''(a)'' before ''Any property''; and

(2) by adding at the end the following:

''(b) Practices commonly recognized as smuggling tactics may provide prima facie evidence of

intent to use a vessel to commit, or to facilitate the commission of, an offense under this Act, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of an offense under this Act:

''(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—

''(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

''(B) the presence of any compartment or equipment which is built or fitted out for smuggling, not including items such as a safe or lockbox reasonably used for the storage of personal valuables;

''(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

''(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

''(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

''(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

''(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

''(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

''(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

''(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

''(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

''(6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

''(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on a person aboard the vessel, of a quantity or other nature which reasonably indicates manufacturing or distribution activity.

''(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

''(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.''.

SEC. 419. WING-IN-GROUND CRAFT.

(a) SMALL PASSENGER VESSEL.—Section 2101(35) of title 46, United States Code, is amended by inserting ''a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and'' after '''small passenger vessel' means''.

(b) WING-IN-GROUND CRAFT.—Section 2101 of title 46, United States Code, is amended by adding at the end the following:

''(48) 'wing-in-ground craft' means a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water's surface.''.

SEC. 420. ELECTRONIC FILING OF COMMERCIAL INSTRUMENTS FOR VESSELS.

Section 31321(a)(4) of title 46, United States Code, is amended—

(1) by striking ''(A)''; and

(2) by striking subparagraph (B).

SEC. 421. DELETION OF THUMBPRINT REQUIREMENT FOR MERCHANT MARINERS' DOCUMENTS.

Section 7303 of title 46, United States Code, is amended by striking ''the thumbprint,''.

SEC. 422. TEMPORARY CERTIFICATES OF DOCUMENTATION FOR RECREATIONAL VESSELS.

(a) Section 12103(a) of title 46, United States Code, is amended by inserting '', or a temporary certificate of documentation,'' after ''certificate of documentation''.

(b)(1) Chapter 121 of title 46, United States Code, is amended by adding after section 12103 the following:

''§ 12103a. Issuance of temporary certificate of documentation by third parties

''(a) The Secretary of the department in which the Coast Guard is operating may delegate, subject to the supervision and control of the Secretary and under terms set out by regulation, to private entities determined and certified by the Secretary to be qualified, the authority to issue a temporary certificate of documentation for a recreational vessel if the applicant for the certificate of documentation meets the requirements set out in sections 12102 and 12103 of this chapter.

''(b) A temporary certificate of documentation issued under section 12103(a) and subsection (a) of this section is valid for up to 30 days from issuance.''.

(2) The table of sections for chapter 121 of title 46, United States Code, is amended by inserting after the item relating to section 12103 the following:

''12103a. Issuance of temporary certificate of documentation by third parties.''.

SEC. 423. MARINE CASUALTY INVESTIGATIONS INVOLVING FOREIGN VESSELS.

Section 6101 of title 46, United States Code, is amended—

(1) by redesignating the second subsection (e) as subsection (f); and

(2) by adding at the end the following:

''(g) To the extent consistent with generally recognized practices and procedures of international law, this part applies to a foreign vessel involved in a marine casualty or incident, as defined in the International Maritime Organization Code for the Investigation of Marine Casualties and Incidents, where the United States is a Substantially Interested State and is, or has the consent of, the Lead Investigating State under the Code.''.

SEC. 424. CONVEYANCE OF COAST GUARD PROPERTY IN HAMPTON TOWNSHIP, MICHIGAN.

(a) REQUIREMENT TO CONVEY.—

(1) IN GENERAL.—Notwithstanding any other law, the Secretary of the department in which the Coast Guard is operating may convey to BaySail, Inc. (a nonprofit corporation established under the laws of the State of Michigan; in this section referred to as ''BaySail''), without monetary consideration, all right, title, and interest of the United States in and to property adjacent to Coast Guard Station Saginaw River, located in Hampton Township, Michigan, as identified under paragraph (2). No submerged lands may be conveyed under this section.

(2) IDENTIFICATION OF PROPERTY.—The Secretary, in consultation with the Commandant of the Coast Guard, shall identify, describe, and determine the property to be conveyed under this section.

(3) SURVEY.—The exact acreage and legal description of the property conveyed under paragraph (1), as identified under paragraph (2), and any easements or rights-of-way reserved by the United States under subsection (b), shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by BaySail.

(b) TERMS AND CONDITIONS OF CONVEYANCE.—The conveyance of property under this section shall be made subject to any terms and conditions the Secretary considers necessary, including the reservation of easements and other rights on behalf of the United States.

(c) REVERSIONARY INTEREST.—

(1) IN GENERAL.—During the 5-year period beginning on the date the Secretary makes the conveyance authorized by subsection (a), the real property conveyed pursuant to this section, at the option of the Secretary, shall revert to the United States and be placed under the administrative control of the Secretary if—

(A) BaySail sells, conveys, assigns, exchanges, or encumbers the property conveyed or any part thereof;

(B) BaySail fails to maintain the property conveyed in a manner consistent with the terms and conditions under subsection (b);

(C) BaySail conducts any commercial activity at the property conveyed, or any part thereof, without approval of the Secretary; or

(D) at least 30 days before the reversion, the Secretary provides written notice to the owner that the property or any part thereof is needed for national security purposes.

(2) ADDITIONAL PERIOD.—The Secretary may, before the last day of the 5-year period described in paragraph (1), authorize an additional 5-year period during which paragraph (1) shall apply.

SEC. 425. CONVEYANCE OF PROPERTY IN TRAVERSE CITY, MICHIGAN.

Section 1005(c) of the Coast Guard Authorization Act of 1996 (110 Stat. 3957) is amended by striking ''the Traverse City Area Public School District'' and inserting ''a public or private nonprofit entity for an educational or recreational purpose''.

SEC. 426. ANNUAL REPORT ON COAST GUARD CAPABILITIES AND READINESS TO FULFILL NATIONAL DEFENSE RESPONSIBILITIES.

Not later than February 15 each year, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, prepared in conjunction with the Commandant of the Coast Guard, setting forth the capabilities and readiness of the Coast Guard to fulfill its national defense responsibilities.

SEC. 427. EXTENSION OF AUTHORIZATION FOR OIL SPILL RECOVERY INSTITUTE.

Section 5001(i) of the Oil Pollution Act of 1990 (33 U.S.C. 2731(i)) is amended by striking ''10 years'' and all that follows through the period at the end and inserting ''September 30, 2012.''.

SEC. 428. PROTECTION AGAINST DISCRIMINATION.

(a) IN GENERAL.—Section 2114(a) of title 46, United States Code, is amended to read as follows:

''(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

''(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred; or

''(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public.

''(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

''(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.''.

(b) APPROPRIATE RELIEF.—Section 2114(b) of such title is amended—

(1) in paragraph (1) by striking ''and'' at the end;

(2) in paragraph (2) by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(3) an award of costs and reasonable attorney's fees to a prevailing plaintiff not exceeding $1,000; and

''(4) an award of costs and reasonable attorney's fees to a prevailing employer not exceeding $1,000 if the court finds that a complaint filed under this section is frivolous or has been brought in bad faith.''.

SEC. 429. ICEBREAKING SERVICES.

The Commandant of the Coast Guard shall not plan, implement, or finalize any regulation or take any other action which would result in the decommissioning of any WYTL-class harbor tugs unless and until the Commandant certifies in writing to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that sufficient replacement capability has been procured by the Coast Guard to remediate any degradation in current icebreaking services that would be caused by such decommissioning.

SEC. 430. FISHING VESSEL SAFETY TRAINING.

(a) IN GENERAL.—The Commandant of the Coast Guard may provide support, with or without reimbursement, to an entity engaged in fishing vessel safety training, including—

(1) assistance in developing training curricula;

(2) use of Coast Guard personnel, including active duty members, members of the Coast Guard Reserve, and members of the Coast Guard Auxiliary, as temporary or adjunct instructors;

(3) sharing of appropriate Coast Guard informational and safety publications; and

(4) participation on applicable fishing vessel safety training advisory panels.

(b) NO INTERFERENCE WITH OTHER FUNCTIONS.—In providing support under subsection (a), the Commandant shall ensure that the support does not interfere with any Coast Guard function or operation.

SEC. 431. LIMITATION ON LIABILITY OF PILOTS AT COAST GUARD VESSEL TRAFFIC SERVICES.

(a) IN GENERAL.—Chapter 23 of title 46, United States Code, is amended by adding at the end the following:

''§ 2307. Limitation of liability for Coast Guard Vessel Traffic Service pilots

''Any pilot, acting in the course and scope of his or her duties while at a United States Coast Guard Vessel Traffic Service, who provides information, advice, or communication assistance while under the supervision of a Coast Guard officer, member, or employee shall not be liable for damages caused by or related to such assistance unless the acts or omissions of such pilot constitute gross negligence or willful misconduct.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 23 of title 46, United States Code, is amended by adding at the end the following:

''2307. Limitation of liability for Coast Guard Vessel Traffic Service pilots.''.

SEC. 432. ASSISTANCE FOR MARINE SAFETY STATION ON CHICAGO LAKEFRONT.

(a) ASSISTANCE AUTHORIZED.—The Coast Guard may transfer funds, appropriated by Public Law 107–87 for the construction of a Coast Guard Marine Safety and Rescue Station in Chicago, Illinois, to the City of Chicago to pay the Federal share of the cost of a project to demolish the Old Coast Guard Station, located at the north end of the inner Chicago Harbor breakwater at the foot of Randolph Street, and to plan, engineer, design, and construct a new facility at that site for use as a marine safety station on the Chicago lakefront.

(b) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of a project carried out with assistance under this section may not exceed one-third of the total cost of the project or $2,000,000, whichever is less.

(2) NON-FEDERAL SHARE.—There shall not be applied to the non-Federal share of a project carried out with assistance under this section—

(A) the value of land and existing facilities used for the project; and

(B) any costs incurred for site work performed before the date of the enactment of this Act, including costs for reconstruction of the east breakwater wall and associated utilities.

SEC. 433. EXTENSION OF TIME FOR RECREATIONAL VESSEL AND ASSOCIATED EQUIPMENT RECALLS.

Section 4310(c) of title 46, United States Code, is amended—

(1) in each of paragraphs (2)(A) and (2)(B) by striking ''5'' and inserting ''10''; and

(2) in each of paragraphs (1)(A), (1)(B), and (1)(C) by inserting ''by first class mail or'' before ''by certified mail''.

SEC. 434. REPAIR OF MUNICIPAL DOCK, ESCANABA, MICHIGAN.

The Secretary of Transportation may transfer to the City of Escanaba, Michigan, up to $300,000 of funds appropriated for Coast Guard acquisition, construction, and improvements by Public Law 107–87, for the repair of the North wall of the municipal dock, Escanaba, Michigan.

SEC. 435. VESSEL GLOBAL EXPLORER.

The Secretary of Transportation shall amend the certificate of documentation of the vessel GLOBAL EXPLORER (United States official number 556069) to state that the vessel was built in the year 2002 in Gulfport, Mississippi.

SEC. 436. ALEUTIAN TRADE.

(a) LOADLINES.—Section 5102(b)(5)(B)(ii) of title 46, United States Code, is amended by inserting ''is not'' after ''(ii)''.

(b) IMPLEMENTATION.—Except as provided in subsection (c), a fish tender vessel that before January 1, 2003, transported cargo (not including fishery related products) in the Aleutian trade is subject to chapter 51 of title 46, United States Code (as amended by subsection (a) of this section).

(c) EXCEPTION.—

(1) IN GENERAL.—Before December 31, 2006, the BOWFIN (United States official number 604231) is exempt from chapter 51 of title 46, United States Code (as amended by subsection (a) of this section) when engaged in the Aleutian trade, if the vessel does not undergo a major conversion.

(2) ENSURING SAFETY.—Before the date referred to in paragraph (1), a Coast Guard official who has reason to believe that the vessel referred to in paragraph (1) operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with section 3302 of title 46, United States Code, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

SEC. 437. PICTURED ROCKS NATIONAL LAKESHORE BOUNDARY REVISION.

(a) TRANSFER.—As soon as practicable after the date of enactment of this Act, the Administrator of General Services may transfer to the Secretary, without consideration, administrative jurisdiction over, and management of, the public land.

(b) BOUNDARY REVISION.—The boundary of the Lakeshore is revised to include the public land transferred under subsection (a).

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) ADMINISTRATION.—The Secretary may administer the public land transferred under section (a)—

(1) as part of the Lakeshore; and

(2) in accordance with applicable laws (including regulations).

(e) ACCESS TO AIDS TO NAVIGATION.—The Secretary of Transportation, in consultation with the Secretary, may access the front and rear range lights on the public land for the purposes of servicing, operating, maintaining, and repairing those lights.

(f) DEFINITIONS.—In this section:

(1) LAKESHORE.—The term ''Lakeshore'' means the Pictured Rocks National Lakeshore in the State of Michigan.

(2) MAP.—The term ''map'' means the map entitled ''Proposed Addition to Pictured Rocks National Lakeshore'', numbered 625/80048, and dated April 2002.

(3) PUBLIC LAND.—The term ''public land'' means the approximately .32 acres of United States Coast Guard land and improvements to the land, including the United States Coast Guard Auxiliary Operations Station and the front and rear range lights, as depicted on the map.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $225,000 to restore, preserve, and maintain the public land transferred under subsection (a).

SEC. 438. LORAN-C.

There are authorized to be appropriated to the Department of Transportation, in addition to funds authorized for the Coast Guard for operation of the LORAN-C system, for capital expenses related to LORAN-C navigation infrastructure, $25,000,000 for fiscal year 2003. The Secretary of Transportation may transfer from the Federal Aviation Administration and other agencies of the Department funds appropriated as authorized under this section in order to reimburse the Coast Guard for related expenses.

SEC. 439. AUTHORIZATION OF PAYMENT.

(a) IN GENERAL.—The Secretary of the Treasury shall pay the sum of $71,000, out of funds in the Treasury not otherwise appropriated, to the State of Hawaii, such sum being the damages arising out of the June 19, 1997, allision by the United States Coast Guard Cutter RUSH with the ferry pier at Barber's Point Harbor, Hawaii.

(b) FULL SETTLEMENT.—The payment made under subsection (a) is in full settlement of all claims by the State of Hawaii against the United States arising from the June 19, 1997, allision.

SEC. 440. REPORT ON OIL SPILL RESPONDER IMMUNITY.

(a) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, jointly with the Secretary of Commerce and the Secretary of the Interior, and after consultation with the Administrator of the Environmental Protection Agency and the Attorney General, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the immunity from criminal and civil penalties provided under existing law of a private

responder (other than a responsible party) in the case of the incidental take of federally listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by that responder during an oil spill removal activity where the responder was acting in a manner consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator for the spill, and on the circumstances under which such penalties have been or could be imposed on a private responder. The report shall take into consideration the procedures under the Inter-Agency Memorandum for addressing incidental takes.

(b) DEFINITIONS.—In this section—

(1) the term ''Federal On-Scene Coordinator'' has the meaning given that term in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

(2) the term ''incidental take'' has the meaning given that term in the Inter-Agency Memorandum;

(3) the term ''Inter-Agency Memorandum'' means the Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act, effective on July 22, 2001;

(4) the terms ''National Contingency Plan'', ''removal'', and ''responsible party'' have the meanings given those terms under section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701); and

(5) the term ''private responder'' means a non-governmental entity or individual that is carrying out an oil spill removal activity at the direction of a Federal agency or a responsible party.

SEC. 441. FISHING AGREEMENTS.

(a) IN GENERAL.—Section 10601(a) of title 46, United States Code, is amended—

(1) by inserting after ''on a voyage, the'' the following: ''owner, charterer, or managing operator, or a representative thereof, including the''; and

(2) by inserting a comma after ''individual in charge''.

(b) CLERICAL AND CONFORMING AMENDMENTS.—Section 10601 of title 46, United States Code, is amended—

(1) in subsection (a) by striking ''enployed'' and inserting ''employed'';

(2) by striking subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

(c) APPLICATION.—An agreement that complies with the requirements of section 10601(a) of title 46, United States Code, as herein amended, and that is not the subject of an action prior to June 20, 2002, alleging a breach of subsections (a) or (b) of section 10601 as in effect on such date, is hereby deemed to have been in compliance with such subsections.

SEC. 442. ELECTRONIC PUBLISHING OF MARINE CASUALTY REPORTS.

(a) IN GENERAL.—Section 6101 of title 46, United States Code, is amended by adding at the end the following:

''(g)(1) The Secretary shall publish all major marine casualty reports prepared in accordance with this section in an electronic form, and shall provide information electronically regarding how other marine casualty reports can be obtained.

''(2) For purposes of this paragraph, the term 'major marine casualty' means a casualty involving a vessel, other than a public vessel, that results in—

''(A) the loss of 6 or more lives;

''(B) the loss of a mechanically propelled vessel of 100 or more gross tons;

''(C) property damage initially estimated at $500,000 or more; or

''(D) serious threat, as determined by the Commandant of the Coast Guard with concurrence by the Chairman of the National Transportation Safety Board, to life, property, or the environment by hazardous materials.

''(h) The Secretary shall, as soon as possible, and no later than January 1, 2005, publish all marine casualty reports prepared in accordance with this section in an electronic form.''.

(b) APPLICATION.—The amendment made by subsection (a) applies to all marine casualty reports completed after the date of enactment of this Act.

SEC. 443. SAFETY AND SECURITY OF PORTS AND WATERWAYS.

The Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) is amended—

(1) by striking ''safety and protection of the marine environment'' in section 2(a) (33 U.S.C. 1221(a)) and inserting ''safety, protection of the marine environment, and safety and security of United States ports and waterways''; and

(2) by striking ''safety and protection of the marine environment,'' in section 5(a) (33 U.S.C. 1224(a)) and inserting ''safety, protection of the marine environment, and the safety and security of United States ports and waterways,''.

SEC. 444. SUSPENSION OF PAYMENT.

(a) IN GENERAL.—Title 14, United States Code, is amended by inserting after section 424 the following:

''§ 424a. Suspension of payment of retired pay of members who are absent from the United States to avoid prosecution

''Under procedures prescribed by the Secretary, the Secretary may suspend the payment of the retired pay of a member or former member during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability. The procedures shall address the types of criminal offenses and civil proceedings for which the procedures may be used, including the offenses specified in section 8312 of title 5, and the manner by which a member, upon the return of the member to the United States, may obtain retired pay withheld during the member's absence.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 11 of title 14, United States Code, is amended by inserting after the item relating to section 424 the following:

''424a. Suspension of payment of retired pay of members who are absent from the United States to avoid prosecution.''.

SEC. 445. PROHIBITION ON NAVIGATION FEES.

Section 4 of the Rivers and Harbors Appropriation Act of 1884 (33 U.S.C. 5) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) The following is added at the end:

''(b) No taxes, tolls, operating charges, fees, or any other impositions whatever shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for—

''(1) fees charged under section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236); or

''(2) reasonable fees charged on a fair and equitable basis that—

''(A) are used solely to pay the cost of a service to the vessel or water craft;

''(B) enhance the safety and efficiency of interstate and foreign commerce; and

''(C) do not impose more than a small burden on interstate or foreign commerce.''.

TITLE V—AUTHORIZATION OF APPROPRIATIONS FOR THE COAST GUARD

SEC. 501. SHORT TITLE.

This title may be cited as the ''Coast Guard Authorization Act for Fiscal Year 2003''.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for fiscal year 2003 for necessary expenses of the Coast Guard as follows:

(1) For the operation and maintenance of the Coast Guard, $4,327,456,000, of which $25,000,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, $725,000,000, of which $20,000,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(3) For research, development, test, and evaluation of technologies, materials, and human factors directly relating to improving the performance of the Coast Guard's mission in support of search and rescue, aids to navigation, marine safety, marine environmental protection, enforcement of laws and treaties, ice operations, oceanographic research, and defense readiness, $22,000,000, to remain available until expended, of which $3,500,000 is authorized to be derived each fiscal year from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(4) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, $889,000,000.

(5) For alteration or removal of bridges over navigable waters of the United States constituting obstructions to navigation, and for personnel and administrative costs associated with the Bridge Alteration Program, $18,000,000, to remain available until expended.

(6) For environmental compliance and restoration at Coast Guard facilities (other than parts and equipment associated with operations and maintenance), $17,000,000, to remain available until expended.

SEC. 503. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized an end-of-year strength for active duty personnel of 45,500 as of September 30, 2003.

(b) MILITARY TRAINING STUDENT LOADS.—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training for fiscal year 2003, 2,250 student years.

(2) For flight training for fiscal year 2003, 125 student years.

(3) For professional training in military and civilian institutions for fiscal year 2003, 300 student years.

(4) For officer acquisition for fiscal year 2003, 1,150 student years.

And the House agree to the same.

From the Committee on Transportation and Infrastructure, for consideration of the Senate bill and the House amendment, and modifications committed to conference:

DON YOUNG,
HOWARD COBLE,
FRANK A. LOBIONDO,
JIM OBERSTAR,
CORRINE BROWN,

From the Committee on Ways and Means, for consideration of secs. 112 and 115 of the Senate bill, and sec. 108 of the House amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHIL CRANE,
CHARLES B. RANGEL,
Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL INOUYE,
JOHN F. KERRY,
JOHN BREAUX,
RON WYDEN,
MAX CLELAND,
BARBARA BOXER,
JOHN MCCAIN,
TED STEVENS,
TRENT LOTT,
KAY BAILEY HUTCHISON,
OLYMPIA SNOWE,
GORDON SMITH,
BOB GRAHAM,
CHUCK GRASSLEY,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1214) to ensure the security of maritime transportation in the United States against acts of terrorism, and for other purposes, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical correction, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

Section 1 of the Senate bill states that the Act may be cited as the ''Port and Maritime Security Act of 2001.''

Section 1 of the House amendment states that the Act may be cited as the ''Maritime Transportation Antiterrorism Act of 2002.''

The Conference substitute states that the Act may be cited as the ''Maritime Transportation Security Act of 2002.''

TITLE I—MARITIME TRANSPORTATION SECURITY

SECTION 101. FINDINGS

Section 101 of the Senate bill states a number of Congressional findings in regard to the Port and Maritime Security Act of 2001.

The House bill does not contain a comparable provision.

The Conference substitute adopts the Senate provision with an amendment.

SECTION 102. PORT SECURITY

Senate bill

Definitions

Section 123 of the Senate bill contains various definitions of terms in S. 1214.

Initial security evaluations and port vulnerability assessments

Section 103 of the Senate bill requires the Secretary of Transportation, after consultation with appropriate public and private sector officials and organizations, to develop standards and procedures for conducting initial security evaluations and port vulnerability assessments.

National maritime transportation security plan

Section 203 of the Senate bill requires the Secretary of Transportation to prepare and publish a National Maritime Transportation Security Plan for prevention and response to maritime crime and terrorism.

Area maritime security committees and area maritime security plans

Section 204 of the Senate bill establishes Area Maritime Security Plans.

Maritime facility security plans

Section 105 of the Senate bill requires the Secretary of Transportation, after consultation with the Secretary of the Treasury and the Attorney General, to issue regulations establishing requirements for the submission of a Maritime Facility Security Plan by each port authority, waterfront facility operator, or operator of a public or commercial structure located within a marine environment.

Vessel security plans

Section 205 of the Senate bill authorizes the Secretary of Transportation to issue regulations establishing requirements for vessel security plan and programs for vessels calling on United States ports.

Protection of security-related information

Section 206 of the Senate bill prohibits the security plan information developed under this Act from disclosure.

Employment investigations and restrictions for security-sensitive positions

Section 106 of the Senate bill requires the Secretary of Transportation to control access to areas in the Maritime Facility Security Plan for each waterfront facility and to limit access to security-sensitive information. The regulations may also require employment history and criminal background checks for individuals with unrestricted access to controlled areas or sensitive information.

Maritime safety and security teams

Section 117 of the Senate bill requires the Secretary of Transportation to establish Maritime Safety and Security Teams to safeguard the public and protect vessels, harbors, ports, and other waterfront facilities.

Port security infrastructure improvement

Section 111 of the Senate bill amends the Merchant Marine Act of 1936 to provide loan guarantees and grants for port security infrastructure improvements.

Research and development for crime and terrorism prevention and detection technology

Section 118 of the Senate bill requires the Secretary of Transportation to establish a grant program to fund eligible projects for the development, testing, and transfer of technology to enhance security at United States ports.

International port security

Section 108 of the Senate bill gives the Secretary of Transportation additional authority to address security risks arising from foreign ports, such as enhanced enforcement against vessels arriving from these ports, travel advisories for passengers, suspension of the right of a United States vessel to enter these ports, and authority to assist foreign port authorities to maintain an appropriate level of security.

Enhanced crewmember identification

Section 208 of the Senate bill authorizes the Secretary of Transportation, in consultation with the Attorney General, to require crewmembers aboard vessels calling on the United States ports to carry and present upon demand such identification as the Secretary determines.

National maritime security advisory committee

Section 102 of the Senate bill amends the Ports and Waterways Safety Act to require the Secretary of Transportation to establish a National Maritime Advisory Committee.

Area maritime security committees and area maritime security plans

Section 204 of the Senate bill requires the Secretary of Transportation to establish Area Maritime Security Committees comprised of members appointed by the Secretary.

Establishment of local port security committees

Section 104 of the Senate bill requires the Secretary of Transportation to establish local port security committees at each U.S. seaport.

Maritime domain awareness

Section 107 of the Senate bill directs the Secretary of Transportation to conduct a study on ways to enhance Maritime Domain Awareness through improved collection and coordination of maritime intelligence.

House amendment

Section 101 of the House amendment creates a new subtitle VI of title 46, United States Code, to establish a comprehensive national system of antiterrorism security enhancements. Chapter 701 of this subtitle contains provisions related to port security.

Definitions

New Section 70101 of chapter 701 provides the definition of seven terms used throughout the new chapter.

United States facility vulnerability assessments

Section 70102 requires the Secretary of Transportation to conduct port vulnerability assessments for U.S. ports, including an assessment of the vulnerability of each facility in a port, at which there is a risk of a catastrophic emergency.

Catastrophic emergency planning

Section 70103 establishes the national maritime transportation antiterrorism planning system. The Secretary is required to prepare a National Maritime Transportation Antiterrorism Plan to assign the duties and responsibilities of the various Federal, state, and local governmental agencies. Area Maritime Transportation Antiterrorism Plans are developed by Federal maritime antiterrorism coordinators, who are Coast Guard officials designated in the National Plan, in consultation with local harbor safety advisory committees. Vessel and facility antiterrorism plans must be developed by owners and operators of vessels and facilities that the Secretary believes may be involved in a catastrophic emergency.

Antiterrorism response

Section 70104 of chapter 701 requires the Secretary of Transportation to cooperate with the Director of Federal Emergency Management Agency (FEMA) to coordinate maritime terrorism response actions.

Transportation security cards

Section 70105 establishes a national standard for issuance of biometric transportation security cards whose purpose is to control access to secure terminal areas to only authorized personnel. The Secretary is required to issue an individual a transportation security card unless the Secretary decides that the individual poses a terrorism security risk to the United States warranting denial of the card.

Maritime antiterrorism teams

Section 70106 establishes Coast Guard maritime antiterrorism teams to protect vessels, ports, facilities, and cargo on United States' waters.

Grants

Section 70107 allows the Under Secretary of Transportation for Security to provide financial assistance for enhanced facility security to implement a maritime antiterrorism plan approved by the Coast Guard or an interim measure required by the Coast Guard.

Foreign port assessment

Section 70108 requires the Secretary to assess the effectiveness of the antiterrorism

measures maintained at all foreign ports from which vessels depart on a voyage to the United States or which pose a high risk of terrorism to the United States.

Notifying foreign authorities

Section 70109 of chapter 701 requires the Secretary, after conducting a foreign port assessment, to contact the foreign government if he finds that a port in that foreign country does not maintain effective antiterrorism measures.

Actions when foreign ports not maintaining effective antiterrorism measures

If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, section 70110 allows him to prescribe conditions of entry into the United States for any vessel arriving from that port. The Secretary may also deny entry into the United States to any vessel that does not meet these conditions.

Crew and passenger manifests

Section 70111 requires that the operators of commercial vessels arriving in the United States from a foreign port provide the Under Secretary of Transportation for Security with a passenger and crew manifest.

Automatic identification system

Section 107 of the House amendment establishes a phase in schedule for most commercial vessels to be equipped with a position-indicating transponder and an appropriate situation display for accessing the information made available by the transponder system.

Civil penalty

Section 70112 establishes a civil penalty of not more than $25,000 for each violation of this new chapter.

Conference substitute

Section 102 of the Conference substitute creates a new subtitle VI of title 46, United States Code, to establish a comprehensive national system of transportation security enhancements. Chapter 701 of this subtitle contains provisions related to port security.

Definitions

New section 70101 provides definitions for six terms to be used in new chapter 701. The term ''Secretary'' is defined as the Secretary of the department of which the Coast Guard is operating. The term ''transportation security incident'' is defined as a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption.

United States facility and vessel vulnerability assessments

Section 70102 requires the Secretary to conduct initial assessments of vessel types and facilities, located on or adjacent to the waters subject to the jurisdiction of the U.S., and to identify which of these vessels or facilities pose a high risk of being involved in a transportation security incident. Based on the information gathered in the initial assessments, the Secretary is required to conduct a detailed vulnerability assessment for facilities and vessels that may be involved in a transportation security incident. The Secretary may also accept an alternative assessment prepared by or on behalf of a vessel or facility owner or operator if that assessment satisfies certain criteria.

Maritime transportation security plans

Section 70103 of new chapter 701 requires the Secretary to establish the National Maritime Transportation Security Plan for deterring and responding to a transportation security incident. The National Maritime Transportation Security Plan must include a risked-based system for evaluating the potential threat to security zones designated by the Secretary on the waters subject to the jurisdiction of the U.S. Each Federal Maritime Security Coordinator, after soliciting advice from the Area Security Advisory Committee, is required to submit to the Secretary an Area Maritime Transportation Security Plan for each individual area established under the National Maritime Transportation Security Plan. Finally, section 70103 requires owners and operators of vessels and facilities, which the Secretary believes may be involved in a transportation security incident, to develop vessel and facility security plans. Section 70103(c)(3)(D) regarding antiterrorism measures is not intended to require vessel operators to contract in advance or otherwise arrange for antiterrorism response resources. The Conferees consider antiterrorism response the responsibility of local, state and Federal law enforcement agencies.

The Conferees urge the Secretary to review and approve the vessel and facility security plans in a timely manner. Vessel and facility owners should not be required to cease their operations due to the failure of the Secretary to approve their vessel or facility transportation security plans in a reasonable time period.

Nothing in new section 70103(d) should prevent the Secretary from making the facility security plans, vessels security plans, and port vulnerability assessments available to the owners or operators of the vessel or facilities that are the subject of the plans or assessments.

Transportation security incident response

Section 70104 requires the Secretary to establish a system of security incident response plans developed for vessels and facilities that may be involved in a transportation security incident. Tank vessels are currently required under the Oil Pollution Act of 1990 to have oil spills response plans. The Secretary may allow these plans to be used to address oil spilled from vessels involved in a transportation security incident. Similarly, some states, such as Alaska, Washington, Oregon, and California, require non-tank vessels to have oil spill response plans. The Secretary may also allow these state approved plans to be used to address oil spilled from these non-tank vessels involved in a transportation security incident.

Transportation security cards

Section 70105 establishes a national standard for issuance of transportation security cards whose purpose is to control access to ensure terminal areas to only authorized personnel.

The Conferees expect the Secretary to take appropriate action to ensure that transportation security cards are processed in an expeditious manner in order to prevent undue disruptions at our nation's ports. In particular, the Conferees are aware of the concerns raised by the operators of towing vessels, particularly those operating on the inland waterways of the United States, about the potential for delay in the issuance of transportation security cards. Any undue delay by the Secretary in processing applications and issuing the required cards upon approval could severely impact the ability of vessel owners to crew vessels and could severely disrupt operating schedules.

In an effort to prevent disruptions to port and maritime operations, the Conference agreement includes statutory language to provide flexibility to the Secretary in administering the transportation security card program to take into account the unique circumstances and risks presented by particular segments of the transportation industry. The Conferees encourage the Secretary to work with all affected parties, including the inland and coastal tug, towboat, and barge industry, to ensure timely processing of applications and to address those cases where the Secretary is unable to issue a transportation security card within seventy-two hours of receipt of the application.

Maritime safety and security teams

Section 70106 establishes Coast Guard maritime safety and security teams to protect vessels, ports, facilities, and cargo on United States' waters. The Conferees believe that Coast Guard vessels used by the maritime safety and security teams should be sized and comprised of hull materials tailored to enhance the performance for the varying roles of maritime security. The hull material and shape should fit the specific mission requirements. No hull composition should be excluded without an independent analysis. Maritime safety and security team vessels must be able to intercept suspect boats before they threaten America's ports and waterways.

Grants

Section 70107 provides financial assistance for enhanced security to implement facility or area maritime security plans approved by the Coast Guard or an interim security measure required by the Coast Guard.

The Conferees believe that water-based security barriers or caissons should be eligible for Federal financial assistance for vessel and facility security upgrades authorized under section 70107.

This section authorizes matching grants for various types of security upgrades at U.S. ports and U.S. maritime areas including reimbursements for security enhancements that have corrected security vulnerabilities since September 11, 2001, that are consistent with their Area Maritime Transportation Security Plans and facility security plans.

The economies and quality of life in Alaska and Hawaii are directly related to the functionality and operability of their ports. These states are reliant on maritime transportation and are lacking readily available or economically comparable alternative modes for transporting general commodities. The Conferees encourage the Secretary to give consideration to these features.

This section also provides $15 million for each of fiscal years 2003 through 2008 for research and development grants for port security.

The Center for Commercial Deployment of Transportation Technologies program is sponsored by the U.S. Maritime Administration and the U.S. Department of Defense under a cooperative agreement with the California State University Long Beach. The program involves the development of dual use transportation and transformational technologies and can help secure the international intermodal transportation system. The Conferees encourage the Secretary of Transportation and the Secretary of Defense to obligate any current and prior year appropriations under the continuing cooperative agreement with minimal administrative surcharge.

This section also provides reporting requirements that would mandate proposed levels of funding to ensure compliance with security plans. The reports would be required annually to assess overall levels of security.

Foreign port assessment

New section 70108 of title 46 requires the Secretary to assess the effectiveness of the antiterrorism measures maintained at a foreign port from which vessels depart on a voyage to the United States or which poses a high risk of introducing terrorism to international maritime commerce.

Notifying foreign authorities

Section 70109 requires the Secretary, after conducting a foreign port assessment, to

contact the foreign government if he finds that a port in that foreign country does not maintain effective antiterrorism measures. Section 70109(b) requires the Secretary to make available a port security training program for ports in foreign counties that are found under section 70108 to lack adequate security measures. Inter-American Port Security Training Program (IAPSTP) is administered by the U.S. Maritime Administration under the authority of the U.S. Department of State. Currently, the program works with the Organization of American States to transfer technical information and security expertise related to port security and to develop cooperative regional efforts among the public and private sector that protect the flow of international maritime trade. The program also works with member nations to develop recommendations pertaining to strategic regional approaches to seaport crime, international port and cargo security standards, and other multilateral cooperative endeavors. The Conferees believe that expanding IAPSTP to include nations that lack adequate port security measures will help increase worldwide understanding of maritime and port security. Expansion of the program to other nations can lead to increased multilateral approaches to improving port and cargo security.

Actions when foreign ports not maintaining effective antiterrorism measures

If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, section 70110 allows him to prescribe conditions of entry into the United States for any vessel arriving from that port. The Secretary may also deny entry into the United States to any vessel that does not meet these conditions.

Enhanced crew member identification

Section 70111 requires crew members on vessels calling at U.S. ports to carry and present on demand any identification that the Secretary decides is necessary.

Maritime security advisory committees

Section 70112 requires the Secretary to establish a National Maritime Security Advisory Committee and Area Maritime Security Advisory Committees for any port area of the United States. The Committees may advise, consult, and make recommendations to the Secretary on ways to enhance security and safety at U.S. seaports.

Maritime intelligence

Section 70113 requires the Secretary to implement a system to collect, integrate, and analyze information concerning vessels operating in waters subject to the jurisdiction of the U.S. The Secretary may collect information from public and private entities to the extent that the information is not provided by other Federal departments and agencies.

The Conferees want to emphasize the importance of establishing a risk-based system for evaluating the potential threat of vessels entering the U.S. A majority of the domestic and international vessels entering U.S. ports are not subject to any screening procedures. This lack of physical screening increases the risk of terrorist activities in U.S. ports and the need to develop a system which can identify and assess the vessels that pose the greatest threat to U.S. national security. The Conferees are aware that a terrorism risk profiling system has been developed that assigns incoming vessels a risk rating. This rating is based on an integrated data analysis that links vessel characteristics and ownership details to political and strategic information related to international terrorism. A vessel screening system which provides shipping intelligence and analysis can be utilized to identify those vessels requiring close inspection by the Coast Guard and other agencies. We urge the Coast Guard and port authorities to include vessel risk profiling in their enhanced security procedures.

The Conferees are concerned about the lack of coordination between Federal agencies that collect and analyze intelligence data and urge the various Federal agencies involved in port security to work together to assure that American ports are protected from a terrorist threat.

The Conferees also note that section 108 of this Act requires the sharing of cargo information and urge that cargo information be integrated into any screening system implemented.

Automatic identification systems

Section 70114 requires that certain vessels be equipped with and operate an automatic identification system (AIS) under regulations prescribed by the Secretary. The AIS includes a position indicating transponder and an electronic charting or situation display for accessing the information made available by the transponder system. This will allow a vessel operator to more easily identify the position and hearing of their vessel and other vessels navigating in the area. It will also allow shore-based Coast Guard facilities to more easily monitor the location and heading of vessels in their area.

Long-range vessel tracking system

Section 70115 authorizes the Secretary to develop and implement a long-range automated secure vessel tracking system for all vessels on voyages in U.S. waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. The Secretary may use existing maritime organizations to collect and monitor tracking information under the system.

Secure systems of transportation

Section 70116 requires the Secretary, in consultation with the Transportation Security Oversight Board, to establish a program to evaluate and certify secure systems of international intermodal transportation.

In establishing secure systems of transportation standards, the Conferees encourage the Secretary to consider the possible role of third party experts who meet regulatory requirements to be established by the Secretary of Transportation to perform preloading security audits at the load site of the exporter.

Civil penalty

Section 70117 establishes a civil penalty of not more than $25,000 for each violation of this new chapter.

SECTION 103. INTERNATIONAL SEAFARER IDENTIFICATION

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

Section 103 of the Conference substitute encourages the Secretary of the Department in which the Coast Guard is operating to undertake negotiations on an international agreement that provides for an international system for identifying seafarers. If the Secretary is unable to negotiate this agreement within 24 months, he is required to submit to Congress a draft of legislation which would establish a system for identifying seafarers.

SECTION 104. EXTENSION OF SEAWARD JURISDICTION

Section 119 of the Senate bill extends the territorial jurisdiction of the United States from 3 miles off the shore, to 12 miles. This extension of jurisdiction is consistent with Presidential Proclamation 5928 of December 27, 1988, and is also consistent with the Law of the Sea. The section also creates civil penalties for violating this Act not to exceed $25,000 for each violation.

Section 103 of the House amendment is very similar to the Senate provision.

The Conference substitute adopts the House amendment.

To better protect our ports and waterways and effectively counter the threat posed by maritime terrorism, the United States must be able to exercise broad powers in the maritime environment. International law, both conventional and customary, provides coastal States with broad security powers in the maritime environment. Both the Convention on the Territorial Sea and Contiguous Zone, 1958 (TSC), to which the United States is a party, and the 1982 United Nations Convention on the Law of the Sea (LOS), clearly recognize coastal States' sovereignty in their territorial sea. Article 14(4) of the TSC states that innocent passage ''shall take place in conformity with these articles and with other rules of international law.'' The ''other rules of international law'' include customary international law. The United States, although not a party to the 1982 United Nations Convention on the Law of the Sea (LOS), has consistently maintained that specific provisions, including Article 21, represent customary international law. Therefore, the Conferees note that Section 33 USC 1223(d) of the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.) (PWSA), which limits application of the PWSA with respect to foreign vessels in innocent passage to actions authorized by ''international treaty, convention or agreement, to which the United States is a party'', also allows for such actions to be taken under PWSA which are consistent with customary international law.

SECTION 105. SUSPENSION OF LIMITATION ON STRENGTH OF COAST GUARD

Section 120 of the Senate bill suspends the effectiveness of any end-strength and grade distribution for the Coast Guard for any fiscal year that there is in effect a declaration of war or national emergency, for a period not to exceed six months after the end of the war or national emergency.

Section 104 of the House amendment is identical to the Senate bill.

The Conference substitute adopts the Senate provision.

SECTION 106. EXTENSION OF THE DEEPWATER PORT ACT TO NATURAL GAS

Section 201 of the Senate bill allows natural gas to be included in the Deepwater Port Act which establishes a system for permitting and licensing deepwater terminals. Currently, only oil facilities are included in this Federal law.

Section 105 of the House amendment includes the identical provision of the Senate bill with several additional subsections. These technical provisions ensure the proper application and administration of the Deepwater Port Act to offshore natural gas facilities and enable the timely development of offshore natural gas facilities.

The Conference substitute adopts the House provisions along with an amendment which includes an expanded definition of a deepwater port for natural gas and clarifies the scope of application of the Deepwater Port Act.

The Deepwater Port Act, as enacted in 1974, established a system for permitting and licensing deepwater terminals for the handling and transfer of oil in water beyond the territorial limits of the U.S. The Deepwater Port Modernization Act, enacted in 1996, streamlined the regulation of these facilities, repealed the previous limitation on uses of a deepwater port, and authorized uses not inconsistent with the purposes of the Act. Under the current law and applicable regulations, an existing deepwater port may be authorized to transport commodities other

than oil, including natural gas, upon the approval of any necessary amendments to its operations manual. Section 106 of the Conference substitute allows a deepwater port to be licensed for purposes of natural gas importation, storage and handling, regardless of whether the port is also used for the transportation of crude oil.

The Conferees do not intend these amendments to the Deepwater Port Act of 1974 to apply to the production or gathering of oil or natural gas from the Continental Shelf or facilities used exclusively in the production or gathering of oil or natural gas from the Continental Shelf.

SECTION 107. ASSIGNMENT OF COAST GUARD PERSONNEL AS SEA MARSHALS AND ENHANCED USE OF OTHER SECURITY PERSONNEL

Section 202 of the Senate bill amends the Ports and Waterways Safety Act to allow the dispatch of properly trained and qualified armed Coast Guard personnel on facilities and vessels to deter or respond to acts of terrorism. This provision also requires the owner and operator of a commercial structure or a vessel to provide the appropriate level of security, as necessary, including armed security. The bill further requires that the Secretary of Transportation issue a report on the use of non-Coast Guard personnel as sea marshals.

Section 106 of the House amendment is similar to the Senate provision except that the House provision does not include the requirement for private facility and vessel security.

The Conference substitute amends the Ports and Waterways Safety Act to allow for the dispatch of properly trained and qualified armed Coast Guard personnel on facilities and vessels to deter or respond to acts of terrorism or transportation security incidents. The substitute also requires that the Secretary of the department in which the Coast Guard is operating to report to Congress on the use of non-Coast Guard personnel as sea marshals.

SECTION 108. TECHNICAL AMENDMENTS CONCERNING THE TRANSMITTAL OF CERTAIN INFORMATION TO THE CUSTOMS SERVICE

Section 115 of the Senate bill amends the Tariff Act of 1930 to require a carrier, including a non-vessel owning common carrier, to provide by electronic transmission cargo manifest information in advance of port entry or clearance. The section outlines the cargo and route information that must be transmitted. The section also prohibits the export of cargo unless properly documented and prevents a marine terminal operator from loading any cargo that is not documented.

Section 108 of the House amendment amends the Tariff Act of 1930 to require that each land, air, or vessel carrier, which enters the U.S., provide by electronic transmission cargo information in advance of entry in such manner, time, and form as prescribed under regulations by the Secretary of the Treasury. The Secretary of the Treasury is also required to provide this advance cargo information to any appropriate Federal agency.

The Conference substitute contains amendments to section 431A of the Tariff Act of 1930, as added by section 343(b) of the Trade Act of 2002, Public Law 107–210, including a requirement that the Secretary of the Treasury provide the appropriate Federal departments and agencies with cargo information obtained pursuant to this section. The Conference substitute also amends section 343(a) of Public Law 107–210.

SECTION 109. MARITIME SECURITY PROFESSIONAL TRAINING

Section 110 of the Senate bill requires the Secretary of Transportation to develop standards and a curriculum to allow for the training and certification of maritime security professionals. The section further authorizes the Secretary to make training opportunities available to any law enforcement or maritime security personnel in the United States.

Section 101 of the House bill authorizes $4 million for each of fiscal years 2003, 2004, and 2005 to be used for maritime security training grants. These grants must be used by these educational institutions for the development and implementation of a comprehensive port and maritime security education program.

The Conference substitute adopts the Senate provision with an amendment to authorize $5.5 million for each of fiscal years 2003 through 2008 for maritime training.

The Conferees believe that proper training is an essential element of any effective strategy to combat terrorism and enhance the security of our Nation's ports and waterways. Effective training requires both undergraduate and professional level training curriculums. An essential element of undergraduate studies is to ensure that licensed maritime professionals have a full understanding of security procedures, principles, and methods along with a thorough grasp of intermodal transportation and logistics requirements. These trained individuals will be the first line of defense against a waterborne security threat. This training should also produce maritime professionals who will be able to implement methods of tracking an identification of containerized cargo that could potentially threaten the security of our country.

Effective professional level training curriculum involves two elements. The first is advanced and refresher training of licensed maritime and other transportation professionals in port and transportation security. The second element is to provide security and law enforcement professionals, charged with port security responsibilities, with the necessary background in methods and operation of a safe and efficient intermodal transportation system.

SECTION 110. ADDITIONAL REPORTS

Section 121 of the Senate bill requires the Secretary of Transportation to report to Congress on the need for additional security measures to protect the flow of commerce, on the status of port security, and on the steps taken to improve port security. This section would also require the Secretary of Transportation to report on the development of maritime security training programs established under the Senate passed bill. Finally, the section would require the Commissioner of the U.S. Customs Service to report to Congress on the expenditure of funds to improve cargo screening.

The House amendment contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment.

SECTION 111. PERFORMANCE STANDARDS

Section 207 of Senate bill requires the Secretary of Transportation and the Secretary of the Treasury to establish a joint task force to work with ocean shippers in the development of a system to track data for shipments, containers, and contents.

By not later that June 30, 2003, section 101 of the House amendment requires the Under Secretary of Transportation for Security, in consultation with the Transportation Security Oversight Board, to develop and maintain an antiterrorism cargo identification, tracking, and screening system for containerized cargo shipped to and from the United States. This section also requires the Under Secretary to develop performance standards to enhance the physical security of shipping containers, including standards for seals and locks as well as systems to detect any tampering or breaking of the seal or container integrity.

The Conference substitute adopts the House provision with an amendment which substitutes the Under Secretary of Transportation with the Secretary of the Department in which the U.S. Coast Guard is operating and extends the compliance date to January 1, 2004.

In seeking to provide the greatest protection for ports and the communities that surround them against terrorist attacks, the Conferees believe it is essential that the Federal government and local port authorities be encouraged to use state of the art technology as part of a comprehensive approach to security. The Conferees also want to encourage the private sector to continually advance state of the art technology as a means of enhancing detection capabilities and thus enhancing detection capabilities and thus enhancing deterrence over time.

The Conferees are interested in those projects that incorporate technologies capable of automatically detecting weapons of mass destruction, shielded nuclear material, explosives, and chemical weapons in fully loaded cargo containers without the need for humans to open and manually inspect the containers. The Conferees understand that pulsed fast neutron technology is capable of meeting this threshold. The Conferees also hope that other technologies will be identified and developed as part of the ongoing process of advancing technology and ultimately enhancing port security.

The Conferees also want to emphasize the importance of using readily available and less costly off the shelf technologies to protect transportation systems. These previously developed and thoroughly tested technologies often prove to be just as effective as unproven and expensive new technologies without the years of waiting. Private companies already provide the various levels of government with automatic vehicle identification sensors, electronic seal sensors, a chain of custody tracking system, entrance and exit security control systems, and trusted traveler identification and screening.

In order to better respond to the security threat posed by the high volume of international shipping containers entering the U.S., the Conferees believe that the Secretary must, at a minimum, obtain certain types of information on all cargos and containers entering the country. While securing information about the nature and ownership of the specific cargo is vital, the Secretary is encouraged to collect specific information on the individual containers aboard the vessel. This information should include the owner and any lease, lien, or security interest holder of the container whenever this information is sufficient to affect the control of the container.

SECTION 112. REPORT ON FOREIGN-FLAG VESSELS

Section 108(d) of the Senate bill requires the Secretary of Transportation to report to Congress a list of all nations whose flag vessels have entered the United States ports in the previous year. The report must also contain a breakdown of countries whose vessel registration or classification procedures have been found by the Secretary to be noncompliant with international classifications and whose laws or regulations are not sufficient to allow tracking of ownership registration histories of registered flag vessels.

The House amendment contains no comparable provision.

The Conference substitute adopts the Senate provision with a technical amendment replacing the ''Secretary of Transportation''

with the Secretary of the department in which the Coast Guard is operating.

SECTION 113. REVISION OF PORT SECURITY PLANNING GUIDE

Section 113 of the Senate bill directs the Secretary of Transportation to publish a revised version of the document ''Port Security: A National Planning Guide,'' within three years after the enactment of the Senate passed bill and to make the document available on the Internet.

The House amendment contains no comparable provision.

The Conference substitute adopts the Senate provision.

TITLE II—MARITIME POLICY IMPROVEMENT

SECTION 201. SHORT TITLE

The Senate bill contains no comparable provision.

Section 201 of the House amendment states that this title may be cited as the ''Maritime Policy Improvement Act of 2002.''

The Conference substitute adopts the House provision.

SECTION 202. VESSEL COASTAL VENTURE

The Senate bill contains no comparable provision.

Section 202 of the House amendment amends section 1120(g) of the Coast Guard Authorization Act of 1996 (Public Law 104–324) to deem the vessel COASTAL VENTURE to have been constructed in the United States.

The Conference substitute adopts the House provision.

SECTION 203. EXPANSION OF AMERICAN MERCHANT MARINE MEMORIAL WALL OF HONOR

The Senate bill contains no comparable provision.

Section 203 of the House amendment authorizes the Secretary of Transportation to make a grant to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor in San Pedro, California.

The Conference substitute adopts the House provision.

SECTION 204. DISCHARGE OF AGRICULTURAL CARGO RESIDUE

The Senate bill contains no comparable provision.

Section 204 of the House amendment requires the discharge from a vessel of any agricultural cargo residue material in the form of hold washings to be governed exclusively under the provisions of MARPOL Annex V (MARPOL V).

The Conference substitute adopts the House provision.

The substitute requires the discharge from a vessel of any agricultural cargo residue material in the form of hold washings to be governed exclusively under the provisions of MARPOL Annex V (MARPOL V) as implemented by the Act to Prevent Pollution from Ships (APPS) (section 1901 et seq., title 33, United States Code). Agricultural cargo residue material refers to residue from agricultural cargo carried in bulk, such as corn, wheat, rice, soybeans, and grains, routinely carried on ships.

In 2000, the Coast Guard announced a plan to change its enforcement policy to apply other laws to U.S. flag vessels to regulate the discharge of agricultural cargo residue material that has traditionally been governed by MARPOL V. This proposed change would place an unwarranted burden on U.S. flag bulk grain vessels which are required by agriculture inspection rules to wash their cargo holds. This is routinely done on the high seas, and based on industry practices, it is not anticipated that the discharge of agricultural cargo residue material will take place in marine sanctuaries designated by the Secretary of Commerce pursuant to section 1431 et seq., title 16, United States Code. The discharge of agricultural cargo residue is consistent with MARPOL V, and is not expected to have an adverse impact on the marine environment. Section 204 is not intended in any way to undermine other provisions of MARPOL V, as implemented by APPS, which provides that when agricultural cargo residue is mixed with other MARPOL regulated discharges having other requirements, then the more stringent discharge requirements apply.

SECTION 205. RECORDING AND DISCHARGING MARITIME LIENS

The Senate bill contains no comparable provision.

Section 205 of the House amendment would extend the provisions of current law for preferred mortgages to a valid lien against a vessel not covered by a preferred mortgage.

The Conference substitute adopts the House provision with an amendment.

SECTION 206. TONNAGE OF R/V DAVIDSON

The Senate bill contains no comparable provision.

Section 206 of the House amendment deems the research vessel DAVIDSON to be less than 100 gross tons, for purposes of applying the optional regulatory measurement under section 14305 of title 46, United States Code.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 207. MISCELLANEOUS CERTIFICATES OF DOCUMENTATION

The Senate bill contains no comparable provision.

Section 207 of the house amendment waives certain coastwise trade laws for individually listed vessels.

The Conference substitute adopts the House provision with an amendment.

SECTION 208. EXEMPTION FOR VICTORY SHIPS

The Senate bill contains no comparable provision.

Section 208 of the House amendment adds the vessels SS *RED OAK VICTORY* and SS *AMERICAN VICTORY* to a list of three vessels subject to section 3302(l) of title 46, United States Code.

The Conference substitute adopts the House provision with an amendment. The amendment adds the vessel LST–325 to this list of vessels.

SECTION 209. CERTIFICATES OF DOCUMENTATION FOR 3 BARGES

The Senate bill contains no comparable provision.

Section 209 of the House amendment waives the coastwise trade laws of the United States for three barges as long as these barges are only used in firework displays.

The Conference substitute adopts the House provision with a technical amendment

SECTION 210. CERTIFICATE OF DOCUMENTATION FOR THE EAGLE

The Senate bill contains no comparable provision.

Section 210 of the House amendment waives certain U.S. coastwise trade laws for the vessel EAGLE under certain specific circumstances.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 211. WAIVER FOR VESSELS IN NEW WORLD CHALLENGE RACE

The Senate bill contains no comparable provision.

Section 211 of the House amendment allows ten sailboats participating in the New World Challenge Race to transport non-paying guests, before and during stops of that race.

The Conference substitute adopts the House provision.

SECTION 212. VESSEL ASPHALT COMMANDER

The Senate bill contains no comparable provision.

Section 212 of the House amendment allows the owner of the ASPHALT COMMANDER to place this U.S.-flag vessel under a foreign registry.

The Conference substitute adopts the House provision.

SECTION 213. COASTWISE TRADE AUTHORIZATION

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute allows certain foreign-built launch barges to transport topside modules in the coastwise trade of the United States.

Under the current launch barge exemption provision in the thirteenth proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), certain large capacity foreign-built launch barges documented under U.S. law and built as of June 7, 1988, may be used to transport platform jackets between coastwise points in the United States if there are no U.S.-built launch barges with adequate capacity available for use in domestic trade. The Conference substitute (1) grants a limited one-time waiver of the requirements of this launch barge exemption provision, (2) clarifies that U.S.-built, U.S. documented, U.S. citizen-owned vessels have priority over foreign-built vessels to provide these services, and (3) expands the term ''platform jacket'' to include certain drilling rig components that, considered separately and not as part of a bundle of two or more such components, also require (subject to the priority for U.S.-qualified vessels) large capacity launch barges for coastwise transportation. In conjunction with the Conference substitute, the Maritime Administration is encouraged to take appropriate measures to assure that the requirements for coastwise transportation of platform jackets and components are ascertained and made known to qualified U.S. flag operators sufficiently in advance to establish building programs and otherwise determine the availability of qualified U.S. flag vessels.

This is similar to a provision enacted in Section 601(b) of the Coast Guard Authorization Act of 1993 (P.L. 103–206), to permit the use of designated foreign-built, non-self-propelled, unmanned launch barges to transport platform jackets from the Gulf Coast of the United States to complete projects at specified hydrocarbon sites on the U.S. outer continental shelf. All of the launch barges designated under the Conference substitute were built as of June 7, 1988, as required under current law by the launch barge exemption provision, and there are currently no coastwise-qualified vessels with adequate capacity to conduct the specified operations. In the event that one or more launch barges built in the United States are available to provide the service in accordance with accepted engineer and reasonable scheduling requirements, the Conference substitute makes clear that a U.S.-built, coastwise-qualified launch barge must be used if it has the capacity to transport and launch a particular platform jacket involved in that project.

SECTION 214. JONES ACT WAIVER FOR DELAYED VESSEL DELIVERY

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute temporarily authorizes the Secretary to waive the coastwise laws of the United States for not more than three foreign built self-propelled tank vessels under certain circumstances related to the late delivery from a United States shipyard of a coastwise eligible self-propelled tank vessel. The Secretary must determine that the parties to the contract are making a bona fide effort to construct a self-propelled tank vessel in a timely manner, the contract must be executed within 24 months of the date of enactment of the Maritime Transportation Security Act of 2002, the vessel for which the waiver is granted must meet otherwise applicable requirements of law regarding ownership and operation of vessels in the coastwise trade, the shipyard must own a facility capable of constructing the self-propelled tank vessel, the delay in construction of delivery of the self-propelled tank vessel from the shipyard must be due to unusual circumstances, and the Secretary must determine that no other suitable coastwise trade qualified tank vessels (including tank barges) are reasonably available.

In making the determination with respect to reasonable availability, the Secretary shall include as such suitable tank vessels, tank vessels available on a time charter or voyage charter basis and tank vessels available on a less than full capacity basis pursuant to a contract of affreightment. The purpose of subsection (b)(6) is to ensure that the Secretary canvasses the market for available vessels not requiring a waiver prior to granting a waiver under this section. This paragraph is also intended to ensure that the Secretary shall include in reasonably available suitable tank vessel capacity, vessels which may only be available in part or which may not be available for sale or on a bareboat charter basis. The Conferees do not intend the Secretary to grant a waiver pursuant to this section to any person seeking to circumvent the U.S.-build requirement or to avoid contracting for available suitable tank vessel capacity merely because, among other reasons, it will not be under the requester's control or may be only available to such requester at a higher rate than a reflagged vessel.

A waiver may not be granted to a self-propelled tank vessel with substantially greater capacity than the vessel being constructed. The waiver shall terminate on the earlier of: (1) 48 months after the contract delivery date; (2) 60 days after delivery of the vessel being constructed in the United States shipyard; or (3) the date which the Secretary determines that the delay in construction or delivery of the vessel being constructed is no longer due to unusual circumstances. Additionally, the Secretary may suspend the waiver for any period during which a suitable coastwise trade qualified tank vessels (including tank barges) becomes reasonably available. The provision defines unusual circumstances.

SECTION 215. REALIGNMENT OF POLICY RESPONSIBILITY IN THE DEPARTMENT OF TRANSPORTATION

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute eliminates the position of Associate Deputy Secretary, Department of Transportation, and creates the position of Under Secretary of Transportation for Policy.

TITLE III—COAST GUARD PERSONNEL AND MARINE SAFETY

SECTION 301. SHORT TITLE

The Senate bill does not contain a comparable provision.

Section 301 of the House amendment states that this title may be cited as the ''Coast Guard Personnel and Maritime Safety Act of 2002.''

The Conference substitute adopts the House provision.

Subtitle A—Personnel Management

SECTION 311. COAST GUARD BAND DIRECTOR RANK

The Senate bill contain no comparable provision.

Section 311 of the House amendment amends section 336(d) of title 14, United States Code, to authorize the Coast Guard to promote the Coast Guard Band Director from the rank of Commander to the rank of Captain.

The Conference substitute adopts the House provision.

SECTION 312. COMPENSATORY ABSENCE FOR ISOLATED DUTY

The Senate bill contains no comparable provision.

Section 312 of the House amendment amends section 511 of title 14, United States Code, to allow the Secretary of Transportation to grant compensatory absence from duty for Coast Guard military personnel serving at isolated duty stations of the Coast Guard.

The Conference substitute adopts the House provision.

SECTION 313. ACCELERATED PROMOTION OF CERTAIN COAST GUARD OFFICERS

The Senate bill contains no comparable provision.

Section 313 of the House amendment amends section 259, 260(a), and 271(a) of title 14, United States Code, to authorize the Coast Guard to advance officers ahead of their peers within a given promotion zone, without disadvantaging other high performing officers.

The Conference substitute adopts the House provision.

Subtitle B—Marine Safety

SECTION 321. EXTENSION OF TERRITORIAL SEA FOR VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE ACT

The Senate bill contains no comparable provision.

Section 201 of the bill amends section 1203(b) of title 33, United States Code, to require foreign-flag vessels to monitor intership radiotelephone frequencies when operating within the U.S. territorial sea between three and twelve miles offshore.

The Conference substitute adopts the House provision.

SECTION 322. MODIFICATION OF CERTAIN REPORTING REQUIREMENTS

The Senate bill contain no comparable provision.

Section 322 of the House amendment maintains six reports which were eliminated after the enactment of the Federal Reports Elimination and Sunset Act of 1995.

The Conference substitute adopts the House provision with an amendment to terminate an annual report to Congress regarding the Oil Spill Liability Trust Fund.

SECTION 323. OIL SPILL LIABILITY TRUST FUND; EMERGENCY FUND ADVANCEMENT AUTHORITY

The Senate bill contains no comparable provision.

Section 323 of the House amendment amends the Oil Pollution Act of 1990 to authorize the Coast Guard to borrow up to $100 million for additional emergency oil spill cleanup removal from the Oil Spill Liability Trust Fund.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 324. MERCHANT MARINER DOCUMENTATION REQUIREMENTS

The Senate bill contains no comparable provision.

Section 324 of the House amendment amends section 7302 of title 46, United States Code, to authorize the Secretary of Transportation to issue an interim merchant mariner's document valid for a period not to exceed 120 days.

The Conference substitute adopts the House provision.

SECTION 325. PENALTIES FOR NEGLIGENT OPERATIONS AND INTERFERING WITH SAFE OPERATION

The Senate bill contains no comparable provision.

Section 325 of the House amendment raises the maximum civil penalty to $5,000 for the negligent operation of a recreational vessel, or for interfering with the safe operation of a recreational vessel. The penalty for the negligent operation of any other vessel, or for interfering with the safe operation of a commercial vessel, under this amendment will be $25,000.

The Conference substitute adopts the House provision.

Subtitle C—Renewal of Advisory Groups

SECTION 331. COMMERCIAL FISHING INDUSTRY VESSEL ADVISORY COMMITTEE

The Senate bill does not contain a comparable provision.

Section 331 of the House amendment amends section 4508 of title 46, U.S. Code, to authorize the Coast Guard to extend the Commercial Fishing Industry Vessel Advisory Committee from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

SECTION 332. HOUSTON-GALVESTON NAVIGATION SAFETY ADVISORY COMMITTEE

The Senate bill does not contain a comparable provision.

Section 332 of the House amendment amends section 18 of the Coast Guard Authorization Act of 1991 (Public Law 102–241), to authorize the Coast Guard to extend the Houston-Galveston Navigation Safety Advisory Committee from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

SECTION 333. LOWER MISSISSIPPI RIVER WATERWAY ADVISORY COMMITTEE

The Senate bill does not contain a comparable provision.

Section 333 of the House amendment amends section 19 of the Coast Guard Authorization Act of 1991 (Public Law 102–241), to authorize the Coast Guard to extend the Lower Mississippi River Waterway Advisory Committee from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

SECTION 334. NAVIGATION SAFETY ADVISORY COUNCIL

The Senate bill does not contain a comparable provision.

Section 334 of the House amendment amends section 2073 of title 33, U.S. Code, to authorize the Coast Guard to extend the Navigation Safety Advisory Council from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

SECTION 335. NATIONAL BOATING SAFETY ADVISORY COUNCIL

The Senate bill does not contain a comparable provision.

Section 335 of the House amendment amends section 13110 of title 46, U.S. Code, to

authorize the Coast Guard to extend the National Boating Safety Advisory Council from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

SECTION 336. TOWING SAFETY ADVISORY COMMITTEE

The Senate bill does not contain a comparable provision.

Section 336 of the House amendment amends section 1231(a) of title 33, U.S. Code, to authorize the Coast Guard to extend the Towing Safety Advisory Committee from 2000 to 2005 and make technical changes.

The Conference substitute adopts the House provision.

Subtitle D—Miscellaneous

SECTION 341. PATROL CRAFT

The Senate bill does not contain a comparable provision.

Section 341 of the House amendment authorizes the Coast Guard to accept up to seven excess PC–170 patrol ships from the U.S. Navy.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 342. BOATING SAFETY

The Senate bill does not contain a comparable provision.

Section 342 of the House amendment amends the Sportfishing and Boating Safety Act of 1998 to increase the State Recreational Boating Safety Grant Program by one million dollars and to change the definition of state matching amounts for purposes of the State Boating Safety Grant Program.

The Conference substitute adopts the House provision with an amendment limiting the changes to one year.

SECTION 343. CARIBBEAN SUPPORT TENDER

The Senate bill does not contain a comparable provision.

Section 343 of the House amendment authorizes the Coast Guard to operate and maintain a Caribbean Support Tender to provide technical assistance and law enforcement training for foreign coast guards, navies, and other maritime services.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 344. PROHIBITION OF NEW MARITIME USER FEES

The Senate bill does not contain a comparable provision.

Section 344 of the House amendment extends the expiration date for the prohibition of any new maritime user fees from September 30, 2001, to September 30, 2006.

The Conference substitute adopts the House provision.

SECTION 345. GREAT LAKES LIGHTHOUSES

The Senate bill does not contain a comparable provision.

Section 345 of the House amendment requires the Coast Guard to continue to offer advice and technical assistance to organizations in the Great Lakes region that are dedicated to lighthouse stewardship.

The Conference substitute adopts the House provision with an amendment that makes the assistance for Great Lakes lighthouse preservation efforts be subject to the discretion of the Secretary of the department in which the Coast Guard is operating.

SECTION 346. MODERNIZATION OF NATIONAL DISTRESS AND RESPONSE SYSTEM

The Senate bill does not contain a comparable provision.

Section 346 of the House amendment requires the Coast Guard to report to Congress within 60 days after enactment the agency's implementation of National Transportation Safety Board recommendations following the MORNING DEW accident.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 347. CONVEYANCE OF COAST GUARD PROPERTY IN PORTLAND, MAINE

The Senate bill does not contain a comparable provision.

Section 347 of the House amendment authorizes the transfer of 4.13 acres of land, known as the Naval Reserve Pier property, located in Portland, Maine, to the Gulf of Maine Aquarium Development Corporation.

The Conference substitute adopts the House Provision with a technical amendment.

SECTION 348. ADDITIONAL COAST GUARD FUNDING NEEDS AFTER SEPTEMBER 11, 2001

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute requires the Secretary in the department in which the Coast Guard is operating to submit a report to Congress that compares Coast Guard expenditures by mission area on an annualized basis before and after the terrorist attacks of September 11, 2001. The report must also estimate the annual funding amounts and personnel levels that would restore all Coast Guard mission areas to the readiness levels that existed before September 11, 2001. The substitute also requires a report identifying mission targets for fiscal years 2003, 2004, and 2005, and the specific steps necessary to achieve those targets.

SECTION 349. MISCELLANEOUS CONVEYANCES

The Senate bill does not contain a comparable provision.

Section 349 of the House amendment transfers the Coast Guard Slip Point Light Station in Clallam County, Washington, to Clallam County and the Point Pinos Light, located in Monterey County, California, to the City of Pacific Grove, California.

The Conference substitute adopts the House provision with a technical amendment.

TITLE IV—OMNIBUS MARITIME IMPROVEMENTS

SECTION 401. SHORT TITLE

The Senate bill does not contain a comparable provision.

Section 401 of the House amendment states that this title may be cited as the Omnibus Maritime Improvements Act of 2001.

The Conference substitute adopts the House provision.

SECTION 402. EXTENSION OF COAST GUARD HOUSING AUTHORITIES

The Senate bill does not contain a comparable provision.

Section 402 of the House amendment would extend the present Coast Guard housing authorities from October 1, 2001, to October 1, 2006. The Coast Guard Authorization Act of 1996 provides the Coast Guard with the legal authorities to encourage private sector participation in the acquisition or construction of Coast Guard housing on or near Coast Guard installations. The Coast Guard is currently in the process of developing proposals for several potential housing projects using these new authorities.

This section further authorizes the Coast Guard to implement a demonstration project for the acquisition or construction of military family housing and military unaccompanies housing at the Coast Guard installation in Kodiak, Alaska.

The Conference substitute adopts the House provision with an amendment which extends the Coast Guard's housing authorities to October 1, 2007.

SECTION 403. INVENTORY OF VESSELS FOR CABLE LAYING, MAINTENANCE, AND REPAIR

The Senate bill does not contain a comparable provision.

Section 403 of the House amendment requires the Secretary of Transportation to maintain and publish an inventory of U.S.-flag vessels capable of laying, maintaining, or repairing a submarine cable.

The Conference substitute adopts the House provision.

SECTION 404. VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE

The Senate bill does not contain a comparable provision.

Section 404 of the House amendment requires that a vessel engaged in towing assistance of towing escort be a vessel of the United States, and establishes a civil penalty for a person who violates this section.

The Conference substitute adopts the House provisions with a technical amendment. The U.S. Navy has expressed concern that this section could hamper the ability of the Navy to render timely towing and salvage assistance to naval vessels on a worldwide basis. The Conferees want to clarify that the restrictions in section 404 do not apply to U.S. Naval operations.

SECTION 405. SEARCH AND RESCUE CENTER STANDARDS

The Senate bill does not contain a comparable provision.

Section 405 of the House amendment requires the Secretary to establish standards for the safe operation of Coast Guard search and rescue stations, and prohibits an individual on duty in a search and rescue facility from working more than 12 hours in a 24 hour period, except in an emergency.

The Conference substitute adopts the House provision with an amendment which expresses a sense of Congress that the Secretary should establish, implement and maintain minimum standards necessary to ensure that an individual on duty or watch in a Coast Guard search and rescue command center facility not work more than 12 hours in a 24-hour period. The section also includes a reporting requirement.

SECTION 406. VHF COMMUNICATIONS SERVICES

The Senate bill does not contain a comparable provision.

Section 406 of the House amendment authorizes the Coast Guard to allow private VHF Communications companies to place equipment and VHF towers on Coast Guard property. In exchange, the Coast Guard may receive discounted VHF communications services.

The Conference substitute adopts the House provision with a technical amendment and an additional amendment which states that commercial VHF communication equipment placed on real property under the administrative control of the Coast Guard shall not interfere in any manner with any current or future Coast Guard communication equipment.

SECTION 407. LOWER COLUMBIA RIVER MARITIME FIRE AND SAFETY ACTIVITIES

The Senate bill does not contain a comparable provision.

Section 407 of the House amendment authorizes $987,400 for the activities of the Lower Columbia River Maritime Fire and Safety Association.

The Conference substitute authorizes $987,400 for the fire, oil, and toxic spill response communications, training, equipment, and program administration activities conducted by nonprofit or organizations in cooperation with the Coast Guard.

SECTION 408. CONFORMING REFERENCES TO THE FORMER MERCHANT MARINE AND FISHERIES COMMITTEE

The Senate bill does not contain a comparable provision.

Section 408 of the House amendment conforms certain permanent laws of the United States relating to the Coast Guard and maritime transportation by correcting references to the former Merchant Marine and Fisheries Committee of the House of Representatives.

The Conference substitute adopts the House provision.

SECTION 409. RESTRICTION ON VESSEL DOCUMENTATION

The Senate bill does not contain a comparable provision.

Section 409 of the House amendment prohibits a vessel, which has been forfeited to the United States government for a breach of the laws of the United States, from obtaining a certificate of documentation with a fisheries endorsement. This section does not grant the Coast Guard new authority to seize or forfeit vessels.

The Conference substitute adopts the House provision.

SECTION 410. HYPOTHERMIA PROTECTIVE CLOTHING REQUIREMENT

The Senate bill does not contain a comparable provision.

Section 410 of the House amendment requires the Commandant of the Coast Guard to ensure that all Coast Guard personnel are equipped with adequate safety equipment, including hypothermia protective clothing where appropriate, while performing search and rescue missions.

The Conference substitute adopts the House provision.

SECTION 411. RESERVE OFFICER PROMOTIONS

The Senate bill does not contain a comparable provision.

Section 411 of the House amendment makes technical amendments regarding the promotion of Coast Guard Reserve Officers to implement the changes to the Reserve promotion system included in the FY 2001 Department of Defense Authorization Act.

The Conference substitute adopts the House provision.

SECTION 412. REGULAR LIEUTENANT COMMANDERS AND COMMANDERS; CONTINUATION UPON FAILURE OF SELECTION FOR PROMOTION

The Senate bill does not contain a comparable provision.

Section 412 of the House amendment authorizes the Coast Guard to continue commanders and lieutenant commanders scheduled to retire due to failure of selection for promotion.

The Conference substitute adopts the House provision.

SECTION 413. RESERVE STUDENT PRE-COMMISSIONING ASSISTANCE PROGRAM

The Senate bill does not contain a comparable provision.

Section 413 of the House amendment authorizes the Coast Guard to pay an individual's undergraduate or graduate educational tuition when that individual enlists in the Coast Guard Reserve and promises to accept a commission in the Coast Guard Reserve upon completion of the degree.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 414. CONTINUATION ON ACTIVE DUTY BEYOND THIRTY YEARS

The Senate bill does not contain a comparable provision.

Section 414 of the House amendment permits the Coast Guard to offer to captains, who would otherwise be forced to retire after thirty years of duty, the opportunity to continue on active duty. This proposal would allow the Coast Guard to retain these highly experienced individuals at very little additional cost.

The Conference substitute adopts the House provision.

SECTION 415. PAYMENT OF DEATH GRATUITIES ON BEHALF OF COAST GUARD AUXILIARISTS

The Senate bill does not contain a comparable provision.

Section 415 of the House amendment allows the Coast Guard to pay death gratuities to personal representatives of Coast Guard Auxiliarists who die in the line of duty, to the same extent that death gratuities are paid on behalf of Federal employees.

The Conference substitute adopts the House provision.

SECTION 416. ALIGN COAST GUARD SEVERANCE PAY AND REVOCATION OF COMMISSION AUTHORITY WITH DEPARTMENT OF DEFENSE AUTHORITY

The Senate bill does not contain a comparable provision.

Section 416 of the House amendment revises the Coast Guard's severance pay provisions to incorporate the Department of Defense separation pay computations.

The Conference substitute adopts the House provision.

SECITON 417. LONG-TERM LEASE AUTHORITY FOR LIGHTHOUSE PROPERTY

The Senate bill does not contain a comparable provision.

Section 417 of the House amendment authorizes the Coast Guard to lease lighthouse properties for terms not to exceed thirty years.

The Conference substitute adopts the House provision.

SECTION 418. MARITIME DRUG LAW ENFORCEMENT ACT AMENDMENTS

The Senate bill does not contain a comparable provision.

Section 418 of the House amendment amends the Maritime Drug Law Enforcement Act to increase the Coast Guard's drug interdiction jurisdiction from 12 to 24 miles from U.S. shores.

The Conference substitute adopts the House provision.

SECITON 419. WING-IN-GROUND CRAFT

The Senate bill does not contain a comparable provision.

Section 419 of the House amendment grants the Coast Guard statutory authority to regulate wing-in-ground craft and makes them subject to inspection as small passenger vessels.

The Conference substitute adopts the House provision.

SECITON 420. ELECTRONIC FILING OF COMMERCIAL INSTRUMENTS FOR VESSELS

The Senate bill does not contain a comparable provision.

Section 420 of the House amendment removes the requirement for filing an original commercial instrument (for example, a ship mortgage) within ten days of the electronic filing of the instrument.

The Conference substitute adopts the House provision.

SECTION 421. DELETION OF THUMBPRINT REQUIREMENT FOR MERCHANT MARINERS' DOCUMENTS

The Senate bill does not contain a comparable provision.

Section 421 of the House amendment eliminates the requirement for a thumbprint to be placed on a merchant mariners' document (MMD). The thumbprint is no longer needed on the document since it now includes a photograph and must be issued every five years. The result of this change would be to provide the Coast Guard with needed additional space on the MMD to describe mariner qualifications.

The Conference substitute adopts the House provision.

SECTION 422. TEMPORARY CERTIFICATES OF DOCUMENTATION FOR RECREATIONAL VESSELS

The Senate bill does not contain a comparable provisions.

Section 422 of the House amendment authorizes the Secretary of Transportation to issue temporary certificates of documentation, and to delegate to private third parties the authority to issue the certificates for recreational vessels.

The Conference substitute adopts the House provision.

SECTION 423. MARINE CASUALTY INVESTIGATIONS INVOLVING FOREIGN VESSELS

The Senate bill does not contain a comparable provision.

Section 423 of the House amendment authorizes the Coast Guard to conduct marine casualty investigations involving foreign vessels in areas outside U.S. territorial waters consistent with the practices and procedures of international law.

The Conference substitute adopts the House provision.

SECTION 424. CONVEYANCE OF COAST GUARD PROPERTY IN HAMPTON TOWNSHIP, MICHIGAN

The Senate bill does not contain a comparable provision.

Section 424 of the House amendment requires that the Secretary of Transportation convey the property adjacent to Coast Guard Station Saginaw River, located in Hampton Township, Michigan, to BaySail, Inc., a nonprofit corporation. During the five-year period after the Secretary conveys the property, the property shall revert to the United States if BaySail sells, conveys, assigns, exchanges, or encumbers the property. BaySail also must maintain the property and is not allowed to conduct any commercial activity on the property without the approval of the Secretary.

The Conference substitute adopts the House provision with an amendment which makes the transfer of the property subject to the discretion of the Secretary of the department in which the Coast Guard is operating.

SECTION 425. CONVEYANCE OF PROPERTY IN TRAVERSE CITY, MICHIGAN

The Senate bill does not contain a comparable provision.

Section 425 of the House amendment changes the recipient's name of a previous Coast Guard property transfer in Traverse City, Michigan.

The Conference substitute adopts the House provision.

SECTION 426. ANNUAL REPORT ON COAST GUARD CAPABILITIES AND READINESS TO FULFILL NATIONAL DEFENSE RESPONSIBILITIES

The Senate bill does not contain a comparable provision.

Section 426 of the House amendment requires the Secretary of Transportation to submit an annual report to Congress setting forth the capabilities and readiness of the Coast Guard to fulfill its national defense responsibilities.

The Conference substitute adopts the House provision with a technical amendment.

SECTION 427. EXTENSION OF AUTHORIZATION FOR OIL SPILL RECOVERY INSTITUTE

The Senate bill does not contain a comparable provision.

Section 427 of the House amendment extends the Oil Spill Recovery Institute until September 30, 2012.

The Conference substitute adopts the House provision.

SECTION 428. PROTECTION AGAINST DISCRIMINATION

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute amends section 2114 of title 46, United States Code, to expand the protection of seamen against discrimination. This section does not allow for anyone

to discharge or discriminate against any seaman who reports a violation of a maritime law to the Coast Guard or refuses to perform duties which he believes would result in his or another individual's injury.

SECTION 429. ICEBREAKING SERVICES

The Senate bill does not contain a comparable provision.

Section 429 of the House amendment does not allow the Commandant of the Coast Guard to decommission any WYTL-class harbor tugs unless he certifies that sufficient replacement capability has been procured by the Coast Guard to remediate any degradation in current icebreaking services.

The Conference substitute adopts the House provision.

SECTION 430. FISHING VESSEL SAFETY TRAINING

The Senate bill does not contain a comparable provision.

Section 430 of the House amendment allows the Commandant of the Coast Guard to provide support to an entity which engages in fishing vessel safety training.

The Conference substitute adopts the House provision.

SECTION 431. LIMITATION ON LIABILITY OF PILOTS AT COAST GUARD VESSEL TRAFFIC SERVICES

The Senate bill does not contain a comparable provision.

Section 431 of the House amendment limits the liability of pilots working in a Coast Guard Vessel Traffic Service while acting within the scope of their duties and under the supervision of a Coast Guard officer.

The Conference substitute adopts the House provision.

SECTION 432. ASSISTANCE FOR MARINE SAFETY STATION ON CHICAGO LAKEFRONT

The Senate bill does not contain a comparable provisions.

Section 432 of the House amendment authorizes the Secretary of Transportation to provide up to $2 million to the City of Chicago, Illinois, to plan and construct a new marine safety station on the Chicago lakefront.

The Conference substitute allows the Coast Guard to transfer funds to the City of Chicago to pay the Federal share to demolish the old Coast Guard station on Chicago Harbor and construct anew facility at this site for use as a marine safety station. The Federal share of this project may not exceed on third of the total cost of the project or two million dollars, whichever is less.

SECTION 433. EXTENSION OF TIME FOR RECREATIONAL VESSEL AND ASSOCIATED EQUIPMENT RECALLS

The Senate bill does not contain a comparable provision.

Section 434 of the House amendment extends the time for a recreational vessel and associated equipment recall from five to ten years.

The Conference substitute adopts the House provision.

SECTION 434. REPAIR OF MUNICIPAL DOCK, ESCANABA, MICHIGAN

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute allows the Secretary of Transportation to transfer up to $300,000 to the City of Escanaba, Michigan, for the repair of the north wall of the municipal dock in Escanaba.

SECTION 435. VESSEL GLOBAL EXPLORER

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute directs the secretary of the Department in which the Coast Guard is operating to amend the vessel GLOBAL EXPLORER's certificate of documentation to show the vessel's year of construction as 2002.

SECTION 436. ALEUTIAN TRADE

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute amends chapter 51 of title 46, United States Code, regarding vessel load lines. The Aleutian Trade Act of 1990 (Public Law 101–595) provides for continued cargo service to remote communities in Alaska by uninspected fish tender vessels operating in the Aleutian trade while requiring such vessels to meet enhanced safety and manning requirements over a specified period of time. The Act defines Aleutian trade to mean the transportation of all manner of cargo, including fishery related products, for hire on board fish tender vessels to western Aleutian communities receiving weekly common carrier service. The Act extended certain loadline exemptions to those fish tender vessels operating in the Aleutian trade until January 1, 2003. An ambiguity in the statute could be read to continue that exemption beyond this compliance date. Subsection (a) corrects the ambiguity. Subsection (b) clarifies the original intent that after 2003 the loading exemption is only available for fish tender vessels that are not engaged in that transportation of general cargoes in the Aleutian trade. Thus, after 2003, all uninspected fish tender vessels that had previously engaged in the for hire carriage of general cargoes to places receiving weekly common carrier service in the western Aleutian chain will be required to have loadlines. To accommodate the transition, subsection (c) provides additional time for one fish tender vessel operating in the Aleutian trade to be brought into compliance.

SECTION 437. PICTURED ROCKS NATIONAL LAKESHORE BOUNDARY REVISION

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute allows the Administrator of the General Services Administration to transfer to the Secretary of the Interior administrative jurisdiction over certain public lands in the State of Michigan.

SECTION 438. LORAN–C

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute authorizes funding for LORAN–C navigation infrastructure.

The LORAN–C system remains the primary navigation tool for many vessels and general aviation aircraft and serves as a ground-based navigation system to backup and complement existing satellite navigation capabilities. In recent years, the Coast Guard has spent substantial resources to modernize the LORAN–C system allowing it to operate beyond its scheduled life span. The Conferees expect the Coast Guard, in cooperation with the Federal Aviation Administration, to continue this modernization to ensure this critical navigation system is available for forseeable future.

SECTION 439. AUTHORIZATION OF PAYMENT

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute reimburses the State of Hawaii for damages caused by the Coast Guard to the ferry pier at Barber's Point Harbor, Hawaii.

SECTION 440. REPORT ON OIL SPILL RESPONDER IMMUNITY

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute requires the Secretary of the Department in which the Coast Guard is operating, jointly with the Secretaries of Commerce and Interior, to report to Congress on the immunity of a private responder (other than a person responsible for the vessel or facility from which oil is discharged) from liability for criminal and civil penalties for the incidental take of a protected species while carrying out oil spill response actions.

SECTION 441. FISHING AGREEMENTS

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute amends section 10601(a) of title 46, United States Code, by requiring that the owner, charterer, managing operator or a representative thereof, including, but not limited to, the master or individual in charge of a fishing industry vessel, shall make a fishing agreement in writing with each seaman employed on board the vessel.

SECTION 442. ELECTRONIC PUBLISHING OF CASUALTY REPORTS

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute requires the Coast Guard to begin publishing all major marine casualty reports upon enactment of this Act. Additionally, the Conferees direct the Coast Guard to begin electronically publishing the remaining marine casualty reports by the end of the fiscal year 2005.

The Conferees are concerned that marine casualty reports are currently not available in an electronic format that allows the general public easy access to information in the reports that could lead to improved boating safety. The Conferees acknowledge that one of the purposes of marine casualty reports was for enforcement and that the reports often contain personal information which cannot be released to the general public. The Conferees also understand the Coast Guard's concerns that electronically publishing these reports will strain current resources and require changes to technical procedures and additional human review to ensure that no personal information is inadvertently released. This phase-in period for all marine casualty reports is provided to allow the Coast Guard time to implement the technical and policy procedures needed to electronically publish these reports without inadvertently releasing important personal information.

SECTION 443. SAFETY AND SECURITY OF PORTS AND WATERWAYS

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute amends the Ports and Waterways Safety Act to add the safety and security of United States ports and waterways to this law's traditional focus on marine safety and environment protection.

SECTION 444. SUSPENSION OF PAYMENT

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute allows the Coast Guard to suspend the payment of the retired

pay of a member or former member during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability.

SECTION 445. PROHIBITION OF NAVIGATION FEES

The Senate bill does not contain a comparable provision.

The House amendment does not contain a comparable provision.

The Conference substitute prohibits any non-Federal interest from assessing or collecting any fee on vessels or water craft operating on navigable waters subject to the authority of the United States, or under the freedom of navigation on those waters. This section does not prohibit those instances in which Federal law has permitted the imposition of fees and recognizes those circumstances under which non-Federal interests may charge reasonable port and harbor fees for services rendered.

TITLE V—AUTHORIZATION OF APPROPRIATIONS FOR THE COAST GUARD

SECTION 501. SHORT TITLE

The Senate bill does not contain a comparable provision.

Section 501 of the House amendment states that this title may be cited as the ''Coast Guard Authorization Act for Fiscal Year 2002.''

The Conference substitute states that this title may be cited as the ''Coast Guard Authorization for Fiscal Year 2003.''

SECTION 502. AUTHORIZING OF APPROPRIATIONS

The Senate bill does not contain a comparable provision.

Section 502 of the House amendment authorizes $5.9 billion for Coast Guard programs and operations during fiscal year 2002. Section 502(1) of the amendment authorizes approximately $4.2 billion for Coast Guard operating expenses for fiscal year 2002, including $623 million for domestic maritime homeland security requirements.

Section 502(2) of this amendment authorizes $717.8 million in fiscal year 2002 for the Coast Guard's acquisition, construction, and improvement (AC&I) account. including $58.5 million for homeland security.

The Conference substitute authorizes approximately $6 billion for Coast Guard programs and operations during fiscal year 2003. Section 502(1) authorizes approximately $4.3 billion for Coast Guard operating expenses for fiscal year 2003.

Section 102(2) authorizes $725 million in fiscal year 2003 for the Coast Guard's acquisition, construction, and improvement (AC&I) account.

Within the AC&I account, the Conferees strongly support the Coast Guard's integrated approach to the Deepwater Modernization Project and believe this effort to recapitalize the service's offshore surface fleet, aviation assets, and command and control system is essential to prepare the Coast Guard to meet future challenges. With an aging fleet of cutters and aircraft, maintenance and personnel costs will rise dramatically unless the fleets are replaced. Further, the multi-mission nature of the Coast Guard requires a modern and flexible fleet that will continue serving national security and other core missions. The Integrated Deepwater System request for proposal and the recently awarded contract with the systems integrator were predicated on a consistent funding level of $500 million per year in 1998 dollars over the 20-year implementation timeline. The Conferees are concerned that this program already appears likely to be underfunded in its first year creating delays and pushing back the implementation schedule just as the program is beginning.

The Conferees also strongly support the need to modernize the National Distress & Response System. This system is crucial for the Coast Guard to improve its capabilities to respond to and aid mariners in distress. The Conferees strongly support the Coast Guard receiving $90 million in fiscal year 2003 to begin this procurement which is scheduled to be completed by the end of the fiscal year 2006.

Another necessary area of funding is for the Coast Guard's share of the cost of altering or removing bridges that cause hazards to navigation, pursuant to the Truman-Hobbs Act of June 21, 1940, as amended (33 U.S.C. 511 et seq.). The Conferees expect that $2,000,000 of the funding provided will be utilized for the construction of a new Chelesa Street Bridge over the Chelsea River in Boston, Massachusetts.

SECTION 503. AUTHORIZED LEVELS OF MILITARY STRENGTH

The Senate bill does not contain a comparable provision.

Section 503 of the House amendment authorizes 44,000 Coast Guard active duty military personnel as of September 30, 2002.

The Conference substitute authorizes 45,500 Cost Guard active duty military personnel as of September 30, 2003.

The Conference substitute authorizes 45,500 Coast Guard active duty military personnel as of September 30, 2003, which is larger than the Administration's request. The Conferees note that even before September 11, 2001, Coast Guard missions and demands were expanding and taxing the service's personnel whose current strength is comparable to the Coast Guard of 1966. As the Coast Guard assumes its expanding homeland security role while at the same time continues to carry out its traditional missions, it will require additional personnel. Therefore, the Conference substitute increases the end-of-year strength numbers beyond those recommended by the Administration to ensure the Coast Guard has the flexibility to increase its personnel levels to meet these new challenges and demands.

From the Committee on Transportation and Infrastructure, for consideration of the Senate bill and the House amendment, and modifications committed to conference:

DON YOUNG,
HOWARD COBLE,
FRANK A. LOBIONDO,
JIM OBERSTAR,
CORRINE BROWN.

From the Committee on Ways and Means, for consideration of secs. 112 and 115 of the Senate bill, and sec. 108 of the House amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHIL CRANE,
CHARLES B. RANGEL,
Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL INOUYE,
JOHN F. KERRY,
JOHN BREAUX,
RON WYDEN,
MAX CLELAND,
BARBARA BOXER,
JOHN MCCAIN,
TED STEVENS,
TRENT LOTT,
KAY BAILEY HUTCHISON,
OLYMPIA SNOWE,
GORDON SMITH,
BOB GRAHAM,
CHUCK GRASSLEY,
Managers on the Part of the Senate.

PROVIDING FOR CONSIDERATION OF H.R. 5710, HOMELAND SECURITY ACT OF 2002

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 600 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 600

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5710) to establish the Department of Homeland Security, and for other purposes. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security; and (2) one motion to recommit.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair must remind Members not to display communicative badges while under recognition for debate.

The gentleman from Florida (Mr. DIAZ-BALART) is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. DIAZ-BALART asked and was given permission to revise and extend his remarks.)

Mr. DIAZ-BALART. Mr. Speaker, House Resolution 600 is a closed rule allowing for the immediate consideration of the Homeland Security Act of 2002. The rule provides for 1 hour of debate, equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security. The rule further provides the minority the opportunity to offer a motion to recommit.

Mr. Speaker, this Chamber first acted in July to make the President's goal of a Department of Homeland Security a reality. However, we were not able to send a bill to the President's desk because the other body failed to act.

After months of inaction and gridlock, President Bush has been instrumental in forging a compromise between Democrats and Republicans in order to pass legislation for the creation of the Department of Homeland Security as soon as possible.

I am pleased and honored by the opportunity to take to the House floor today this historic legislation to create the Department of Homeland Security. The security of the American people is the primary function of the Government of the United States. The creation of this new Department to coordinate all security activities on behalf of the American people is of the utmost importance. It has been a high

priority for President Bush, and I am pleased to bring it to the floor of the House of Representatives.

Since September 11, 2001, we have been working to rebuild our Nation, not only our bridges and our buildings, rather, but our sense of security. The American people have waited too long for this critical piece of legislation, legislation that is designed to protect all Americans.

This rule provides a second opportunity for consideration of this important measure. The underlying legislation will create a new Federal Department, bringing together for the first time entities that were designed to protect the homeland of the United States. This new Department will ensure coordination among all of the agencies under its charge, as well as any Department that retains functions that could affect the homeland security.

The legislation will help to protect our borders by moving the Coast Guard, Customs Service, and Immigration and Naturalization Service into the Department of Homeland Security. While the Department of State will retain responsibility for issuing visas, the legislation tasks the Department of Homeland Security to develop rules for entry into the United States in order to ensure the best security practices possible.

This historic legislation intensifies our effort to ensure that our Nation's first responders have the resources that they need to address all threats. This includes coordination with the Federal Emergency Management Agency, the Secret Service, and many other agencies, as well as the private sector. Additionally, this legislation promotes and expands upon our efforts in research, development, and technology in homeland security.

I think, Mr. Speaker, it is also important to let the American people know that while we are working to protect our homeland, we are also working to protect the freedom that every American enjoys. Specific legal protections in this legislation are meant to ensure that our freedom is not undermined. It includes the creation of a privacy officer and a civil rights and civil liberties officer. These very important officials will work as close advisers to the Secretary to ensure that our privacy, civil rights, and liberties are protected.

As a strong advocate of workers' rights, I am very pleased to see that a compromise has been reached on collective bargaining issues. The language creates a process by which employees and employees union representatives will consult with the Department in creating the new personnel system. The bill maintains essential employee protections while providing the President the flexibility he needs to ensure the safety of the American people.

I think, Mr. Speaker, that it is an unfortunate reality that we may very well face future attacks within our borders or abroad; but with the creation of this new Department, the American people can rest assured that the Federal Government is doing everything possible to thwart future terrorist attacks.

I would like to thank the Select Committee on Homeland Security for their commitment and their dedication, as well as all the chairmen of the committees of jurisdiction for coming together to craft this vital legislation.

This is a fair rule that will allow consideration of critical legislation, legislation that is long overdue. I ask my colleagues to support both the rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I oppose this rule. The measure appeared at 7 a.m. this morning at the Committee on Rules with no opportunity for Members to review it beforehand, and no amendments are allowed. For those two reasons I will oppose this rule.

I would note that creating a Department of Homeland Security was the Democrat Party's idea and has been a Democratic priority since September 11 made clear America's terrifying vulnerabilities to terrorism. For 8 long months after the terrorist attacks this last year, Democrats were almost alone in insisting that the government be reorganized to make homeland security a cabinet-level priority. Sure, we had the support of a few brave Republicans, but the leadership of the Republican Party strongly opposed the idea. House Republican leaders blocked the Department of Homeland Security, and the White House argued strenuously that America did not need it.

Then, Mr. Speaker, something happened to change Republican minds in Washington. Simply put, the public learned the full magnitude of the FBI's incompetence before September 11. As the entire Nation watched, FBI whistleblower Colleen Rowley explained how the FBI leadership had hindered our investigation of Zacarias Moussaoui; and the White House realized it had a major political problem, so they flip-flopped to save their political skin.

However, unfortunately, they did not stop using homeland security as a political prop since then. In the House, they refused bipartisanship on all substantive matters, and stuffed their own partisan pet projects into the bill. In the other body, the Republicans used procedural tactics to repeatedly block homeland security until after the election so they would have a partisan club to use against Democrats like MAX CLELAND, a decorated war hero.

Make no mistake, Americans do not have the Department of Homeland Security today because Republicans obstructed and politicized it for so long. But nevertheless, Mr. Speaker, the Democrats remain committed to increasing the safety of the American people.

Unfortunately, the so-called compromise on personnel issues does more for the ideology than for the workers we are about to entrust with our homeland security. It sets up a notification and mediation process; but at the end of the day, the administration can still ignore civil service protections if it wants. Mr. Speaker, I believe that this is a mistake that could harm the effectiveness of the new Department.

I am also concerned with what will happen with freedom of information, whether the answer can just be given: ''You may not have that information because it is hidden away in the Department of Homeland Security.''

But it is the civil service system that protects Americans against the spoils system that allows politicians to award their friends and supporters with important government jobs. We should not be stepping away from that. It is crucial that the Department of Homeland Security be staffed by professionals, not the political cronies of whichever party happens to hold the White House.

Because of the procedural way in which this is being brought to the floor, I urge a ''no'' vote on this rule.

Mr. Speaker, I reserve the balance of my time.

□ 1330

Mr. DIAZ-BALART. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. GOSS), the distinguished chairman of the Permanent Select Committee on Intelligence, an extraordinary Member, and an expert in the field of national security.

(Mr. GOSS asked and was given permission to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, I thank my colleague and friend on the Committee on Rules, the gentleman from Florida (Mr. DIAZ-BALART) who I enjoy working with very much, particularly on this very critical piece of legislation, and I congratulate him for his floor management.

This is obviously a rule that we should all be able to support. It is an appropriate rule and this institution has been through this subject recently rather completely, and it seems to me that we should be able to deal with this apace.

This is the historic homeland security legislation that we have been waiting for and the American people have been asking for. Certainly in the wake of the tragic events of September 11, 2001, our great Nation has showed its very steadfast resolve to confront and defeat terror. Every day we pick up the papers and we see examples of Americans dealing with these problems on a global basis. We have an awful lot of men and women out there in uniform and in other agencies doing the hard

work of winning the war on terrorism. The creation of the Department of Homeland Security will further bolster this effort. Coordination, cooperation, communication will be improved and, as we have discovered, are areas where we need improvement. Daily operations will grow stronger. Alertness will be better. The agents responsible for the security of our citizens will be more effective. All of these things will directly flow from this legislation and more.

The Department of Homeland Security will finally allow us to direct some long overdue attention to the problems faced by our immigration system. We live in a hospitable, open and democratic society and we are all extraordinarily proud of it and defend it. It is our liberty. We welcome the orderly flow of immigration and we always have. But regrettably, there are many who take advantage of our generosity by engaging in illegal immigration. Our borders must be protected. Our citizens have asked us to do that, and I believe that this Homeland Security Department will be organized in a way that will help us better deal with the immigration subject in a way that meets the requirements of all Americans and protects our borders from mischief makers.

While this legislation makes great strides towards organizing the protection of our homeland, I believe a considerable amount of work is still going to remain, primarily in the intelligence area. Specifically, I believe there is insufficient provision in this legislation as we have set it up for intelligence consolidation, fusion and analysis. I believe an intelligence analysis center would facilitate the interface of intelligence between agencies that are not very good at it now, thereby increasing reaction speed in a way that could prove critical, and we saw what critical means on September 11, 2001.

Obviously, let me be clear, I very much support the legislation. It is long overdue. It will vastly improve our Nation's defenses, and it obviously is a critically important component on the war on terror, particularly for our homeland where we live. I am pleased to see that the necessary and overdue legislation is about to become a reality. If for no other reason for a lame duck session, I think we have found something that the American people are going to cheer about.

I thank the distinguished gentleman from Florida (Mr. DIAZ-BALART) for yielding me time.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I rise today in opposition to the rule.

I have to say the idea of having a new Department of Homeland Security is a good one, but it should not be at the detriment or to the detriment of hard-working government employees.

Mr. Speaker, this so-called compromise, and I do not think it is a compromise at all, it does not go far enough to ensure the rights of workers in this new department to collectively bargain. Once again, this is just another attempt by the Republican Party to use back channels to destroy the Americans workers' right to organize.

The bill adopts the President's proposals to waive all of the provisions of the civil service laws for employees of the new department, and it would permit the President to strip employees of their union representation for any national security reasons. Basically, it is eliminating effectively the right to collectively bargain.

Why is this necessary? Why in the minds of the administration is this necessary? Historically, civil service has been a way of preventing abuse on the part of the President and the executive branch, and I do not see any relationship between national security and the war against terrorism and workers' rights. There is absolutely no reason to suggest that for national security reasons or because of the war against terrorism that we have to eliminate or cut back on workers' rights. I think what is really happening here is there is an ideological opposition on the part of the President and the Republican Party to collective bargaining, to union representation, to civil service.

It is very troublesome to think that is the case and that somehow national security or the war against terrorism is being used by this administration, the Republican leadership, as an excuse to work their idealogical will against government employees. They should not do that. They should not use this, so to speak, as the excuse to basically cut back or eliminate workers' rights.

I know that there is a rush to pass this. Everyone says we have to have this new department. It is certainly true that we do. But I do not think that those of us who care about workers' rights, who care about collective bargaining should simply say that is okay, that in the name and in the rush to create this new department that somehow we should eliminate workers' rights.

Mr. Speaker, I urge opposition to the rule and opposition to the underlying bill.

Mr. DIAZ-BALART. Mr. Speaker, this underlying legislation does not cut back on workers' rights.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN), a distinguished Member of this House who has been a pillar in the construction of this historic legislation.

Mr. PORTMAN. Mr. Speaker, I thank my colleague from Florida (Mr. DIAZ-BALART) for yielding me time, and I appreciate the input he has had in this legislation. I know he feels deeply about the need to protect our homeland and our families. I appreciate his willingness to take the management responsibility today on the floor.

Mr. Speaker, I would just say that we have before us a true consensus bill. It is one that has been worked out by the Senate, worked out with various interested parties. This bill passed the House of Representatives, as my colleagues will recall, with more than a two to one margin. I hope we would get additional support today so it will be a strong bipartisan show of support for, indeed, moving forward with the necessary new Department of Homeland Security to better protect us.

I do think it is necessary to respond briefly to the comments of my colleague from New Jersey (Mr. PALLONE). I was listening and he said it destroys the rights to collectively bargain. That is not in here. That may be another piece of legislation or maybe one that someone else has told him about. I would urge him to read this legislation. In fact, it guarantees the right to collectively bargain.

Under existing law, existing authority, the President of the United States has the ability under his national security role to be able to pull from individual collective bargaining, individual collective bargaining units or agencies on the basis of national security. This is something that President Kennedy put into effect through executive order. President Carter signed a law to that effect. It has been in the law ever since. Every President since Jimmy Carter has used it and used it judiciously.

All that we do in this legislation is actually narrow that right. We say under the Homeland Security Department the President cannot merely find a national security interest is at stake. It has to be a significant and adverse impact on homeland security. And we further say the President has to notify this Congress 10 days prior to using any such authority.

So I do not know where the gentleman gets this that we are taking current law and making it in any sense worse for civil service or for public employees. In fact, with regard to the President's national security waiver, which is what I assume he is referring to, we narrow it. The right to collectively bargain is explicitly listed in the legislation before us as a guarantee under this department. In fact, the union representation, which will be roughly one out of every three employees or one out of every four employees in this new department would be represented by a union, those union representatives will have a seat at the table.

Although representing just one in four of these employees in this new department, they are guaranteed to have a negotiating role, and this is one of the changes we have made in the legislation over the last few days, is that in fact if there are any disagreements with regard to the necessary new personnel flexibilities that in fact it goes to the Federal Mediation and Conciliation Service for negotiation. If at the end of that process they cannot agree, then, yes, the new personnel practices will be put into place. But in the meantime Congress is notified and you go through this process of negotiation.

I would just underline again that this was something that was carefully thought out over time. The House passed it three and a half months ago. It was bipartisan from the start. The gentlewoman from New York (Ms. SLAUGHTER) has talked about it being a Democrat idea. It has also been a Republican idea. It has been a bipartisan idea. And I would applaud Senator LIEBERMAN and others who pushed it so hard after the tragedy of 9/11.

I would say the creation of this Department of Homeland Security may be the most important thing we do in this Congress. Even though it looks like it will finally happen in terms of enacting it during a lame duck session, nothing is more important to us than protecting the homeland.

I would strongly urge my colleagues on both sides of the aisle to support the good bill before us.

Ms. SLAUGHTER. Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Speaker, I thank the gentlewoman from New York (Ms. SLAUGHTER) very much for yielding me time.

I think it goes without saying that we all want a homeland security bill. We want a good bill. Now, the bill before us today has been characterized as a fair compromise. That is unfortunately not true. It is a very flawed bill.

This bill allows the Department of Homeland Security to eliminate collective bargaining rights for the agency's workforce and allows managers a virtual carte blanche in rewriting civil service rules.

Why are collective bargaining rights important? Collective bargaining is the negotiation between the employer and the labor union on wages, hours, and working conditions. If employees do not feel secure that they receive fair consideration for their employment concerns, one cannot expect to produce a work environment that produces a feeling of personal security for those employees. Let me state, without that feeling of personal security we will have a loss of morale. We will not get an excellent homeland security product from a workforce that does not have a feeling of employment security.

How can granting employees the right to seek redress for resolving labor disputes be interpreted as a threat to national security? The bill allows significant discretionary tampering with respect to four key areas of the civil service process: Pay, job classification, adverse actions and performance appraisals, as well as collective bargaining and employee appeals.

This discretionary tampering is left unchecked because it does not allow unions to collectively bargain through binding negotiations over any of the changes and agreements in these vital areas.

I have read this bill. This bill provides that the Federal Mediation and Conciliation Service could attempt to mediate impasses. That may sound good until you realize that this Mediation and Conciliation Service has no binding authority. So basically they kind of give you a pass-through but the Homeland Security Department retains the authority to alter civil service rules unchecked after a 30-day waiting period. In other words, this bill gives the Department of Homeland Security managers unilateral authority to write their own rules on such important civil service matters as pay, job classifications, firing, and demotions without any involvement for oversight at all from Congress for 5 years.

What is the harm? This allows an immense bureaucratic fiefdom to be created in which managers can bestow favor on their cronies, punish whistleblowers, remember the FBI agent who tried to warn us about September 11, punish people who refuse to tow the political lines without any check on this type of abuse. This bill would allow Department of Homeland Security managers to eliminate collective bargaining rights whenever employees are involved in national security work. This is clearly too broad. Given the name of the new department, Department of Homeland Security, such authority could easily be applied to exempt more than 170,000 employees from belonging to unions.

Let me state, tens of thousands of employees can be transferred from the Border Patrol, from the Customs Service, from the Federal Emergency Management Agency and from many other agencies that have chosen to belong to Federal employee unions for decades, but they will be performing the same work in the new agency that they performed in their old agency. The only difference is the name of their agency.

Why then do these people suddenly become security risks because they want to keep their civil service protections? Why would we remove the collective bargaining rights from these people? This is supposed to be a bill about fighting terrorism. Unfortunately, this bill puts the administration at war with Federal employees, and that is not right. I urge rejection of the underlying bill.

□ 1345

Mr. DIAZ-BALART. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, this legislation means more than moving boxes on an organization chart. For the first time, it provides real authority to those we count on to protect our country and our constituents. The Department of Homeland Security, with the Homeland Security Council in the White House, will create and implement a comprehensive homeland security strategy, a unified approach will replace the ad hoc efforts now going on across agency and State lines.

The Nation and this Congress are strong in their support for a Department of Homeland Security and a coordinated strategy, and I only regret that this legislation was not completed months ago.

The legislation is not perfect, as we have heard, but neither was the National Security Act, which created the Department of Defense in 1947. Our national security organization has evolved and improved over time, and so will our homeland security organization. The compromises in this bill are not perfect either, as we have heard, but they are reasonable, and they do make tremendous strides in protecting the security of every neighborhood in America.

The legislation does more than reorganize. It includes the information-sharing procedures I cosponsored with the gentleman from Georgia (Mr. CHAMBLISS), which passed this House as H.R. 4598 by a vote of 422–2.

It also recognizes that the cutting edge of security technologies resides in the private sector, and includes a point of entry for companies to interact with the Federal Government for procurement.

The legislation does not include an independent commission to investigate 9/11, but I hope this Congress will soon pass the intelligence authorization conference report for fiscal year 2003, which includes such a commission.

I urge Members to support this homeland security legislation. Members may disagree with certain provisions or with the process which has brought it to the floor. But this bill, in the net, is the right thing for the American people and can prove to be this Congress' lasting legacy.

Ms. SLAUGHTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, to conclude before offering an amendment to the resolution, I would simply state that this is a fair rule, as I stated before, and it is a very important bill. The underlying legislation is critically important.

I beg to disagree with the gentleman from Maryland who I believe did not state the facts correctly with regard to the legislation before us. The President currently has waiverability that he is getting in this legislation for this very important new department in other departments, and that power has been used very judiciously and wisely in the past and has not been abused. I think that it is fair that the President in something as important as the security of the homeland and this new department have the power he has already with regard to other departments, and that is what we are giving the President in this legislation. I would simply urge my colleagues to support the legislation.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DIAZ-BALART

Mr. Speaker, I offer an amendment to the resolution.

The SPEAKER pro tempore (Mr. LAHOOD). The Clerk will report the amendment.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. DIAZ-BALART:

Strike all after the resolved clause and insert:

That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5710) to establish the Department of Homeland Security, and for other purposes. The bill shall be considered as read for amendment. The amendment specified in section 2 of this resolution shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security; and (2) one motion to recommit with or without instructions.

Sec. 2. The amendment referred to in the first section of this resolution is as follows:

Amend section 2(10)(B) so as to read:

''(B) an Indian Tribe or authorized tribal organization, or in Alaska a Native Village or Alaska Regional Native Corporation; and''

Mr. DIAZ-BALART. Mr. Speaker, the amendment corrects language currently in the bill which is inconsistent with the 1971 Alaska Native Claims Settlement Act. The amendment maintains the status quo and ensures the future recognition of current Indian Tribes, tribal organizations, Alaskan Native Villages and Alaska Native Regional Corporations. Mr. Speaker, we are very cognizant of the historic nature of the legislation before us today.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the amendment and on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Florida (Mr. DIAZ-BALART).

The amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 237, nays 177, not voting 17, as follows:

[Roll No. 475]

YEAS—237

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Bishop
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Eshoo
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Stenholm
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—177

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Engel
Etheridge
Evans
Fattah
Filner
Ford
Frank
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Harman
Hastings (FL)
Hilliard
Hinojosa
Hoeffel
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Luther
Lynch
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCollum
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Phelps
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Snyder
Solis
Spratt
Strickland
Tanner
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—17

Blagojevich
Condit
Farr
Hinchey
Hooley
Houghton
Hulshof
McCarthy (NY)
McDermott
McKinney
Meek (FL)
Miller, George
Rangel
Roukema
Simmons
Stark
Stump

□ 1415

Messrs. ROTHMAN, BERRY, ABERCROMBIE, CUMMINGS and TOWNS changed their vote from ''yea'' to ''nay.''

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated Against:

Mr. FARR of California. Mr. Speaker, I was unavoidably detained in my congressional office and missed rollcall vote No. 475. Had I been present, I would have voted ''nay.''

RECESS

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 15 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1833

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LAHOOD) at 6 o'clock and 33 minutes p.m.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate agreed 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. 4546) ''An Act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.''

The message also announced that pursuant to the provisions of Public Law 93–642, the Chair, on behalf of the Vice President, announces the appointment of the Senator from Missouri (Mrs. CARNAHAN) to the Board of Trustees of the Harry S Truman Scholarship Foundation, vice the Senator from Montana (Mr. BAUCUS), made on October 22, 2002, during the adjournment.

The message also announced that pursuant to the provisions of Public Law 99–498, the Chair, on behalf of the President pro tempore, and upon the recommendation of the Majority Leader, announces the appointment of Clare Cotton of Massachusetts to the Advisory Committee on Student Financial Assistance, vice Donald R. Vickers of Vermont, made on October 22, 2002, during the adjournment.

HOMELAND SECURITY ACT OF 2002

Mr. ARMEY. Mr. Speaker, pursuant to House Resolution 600, I call up the bill (H.R. 5710) to establish the Department of Homeland Security, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of H.R. 5710 is as follows:

H.R. 5710

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
Sec. 509. Use of commercially available technology, goods, and services.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.

TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.
Sec. 702. Chief Financial Officer.
Sec. 703. Chief Information Officer.
Sec. 704. Chief Human Capital Officer.
Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.
Sec. 706. Consolidation and co-location of offices.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.

Subtitle B—Inspector General

Sec. 811. Authority of the Secretary.
Sec. 812. Law enforcement powers of Inspector General agents.

Subtitle C—United States Secret Service

Sec. 821. Functions transferred.

Subtitle D—Acquisitions

Sec. 831. Research and development projects.
Sec. 832. Personal services.
Sec. 833. Special streamlined acquisition authority.
Sec. 834. Unsolicited proposals.
Sec. 835. Prohibition on contracts with corporate expatriates.

Subtitle E—Human Resources Management

Sec. 841. Establishment of Human Resources Management System.
Sec. 842. Labor-management relations.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 851. Definition.
Sec. 852. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 854. Increased micro-purchase threshold for certain procurements.
Sec. 855. Application of certain commercial items authorities to certain procurements.
Sec. 856. Use of streamlined procedures.
Sec. 857. Review and report by Comptroller General.
Sec. 858. Identification of new entrants into the Federal marketplace.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Sec. 861. Short title.
Sec. 862. Administration.
Sec. 863. Litigation management.
Sec. 864. Risk management.
Sec. 865. Definitions.

Subtitle H—Miscellaneous Provisions

Sec. 871. Advisory committees.
Sec. 872. Reorganization.
Sec. 873. Use of appropriated funds.
Sec. 874. Future Year Homeland Security Program.
Sec. 875. Miscellaneous authorities.
Sec. 876. Military activities.
Sec. 877. Regulatory authority and preemption.
Sec. 878. Counternarcotics officer.
Sec. 879. Office of International Affairs.
Sec. 880. Prohibition of the Terrorism Information and Prevention System.
Sec. 881. Review of pay and benefit plans.
Sec. 882. Office for National Capital Region Coordination.
Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.
Sec. 884. Federal Law Enforcement Training Center.
Sec. 885. Joint Interagency Task Force.
Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.
Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 888. Preserving Coast Guard mission performance.
Sec. 889. Homeland security funding analysis in President's budget.
Sec. 890. Air Transportation Safety and System Stabilization Act.

Subtitle I—Information Sharing

Sec. 891. Short title; findings; and sense of Congress.
Sec. 892. Facilitating homeland security information sharing procedures.
Sec. 893. Report.
Sec. 894. Authorization of appropriations.
Sec. 895. Authority to share grand jury information.
Sec. 896. Authority to share electronic, wire, and oral interception information.
Sec. 897. Foreign intelligence information.
Sec. 898. Information acquired from an electronic surveillance.
Sec. 899. Information acquired from a physical search.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 901. National Homeland Security Council.
Sec. 902. Function.
Sec. 903. Membership.
Sec. 904. Other functions and activities.
Sec. 905. Staff composition.
Sec. 906. Relation to the National Security Council.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.
Sec. 1002. Management of information technology.
Sec. 1003. National Institute of Standards and Technology.
Sec. 1004. Information Security and Privacy Advisory Board.
Sec. 1005. Technical and conforming amendments.
Sec. 1006. Construction.

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

Sec. 1101. Legal status of EOIR.
Sec. 1102. Authorities of the Attorney General.
Sec. 1103. Statutory construction.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1112. Technical and conforming amendments.
Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1114. Explosives training and research facility.
Sec. 1115. Personnel management demonstration project.

Subtitle C—Explosives

Sec. 1121. Short title.
Sec. 1122. Permits for purchasers of explosives.
Sec. 1123. Persons prohibited from receiving or possessing explosive materials.
Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.
Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.
Sec. 1126. Relief from disabilities.
Sec. 1127. Theft reporting requirement.
Sec. 1128. Authorization of appropriations.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.
Sec. 1202. Extension of insurance policies.
Sec. 1203. Correction of reference.
Sec. 1204. Report.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

Sec. 1301. Short title.
Sec. 1302. Agency Chief Human Capital Officers.
Sec. 1303. Chief Human Capital Officers Council.
Sec. 1304. Strategic human capital management.
Sec. 1305. Effective date.

Subtitle B—Reforms Relating to Federal Human Capital Management

Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 1312. Reform of the competitive service hiring process.
Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 1314. Student volunteer transit subsidy.

Subtitle C—Reforms Relating to the Senior Executive Service

Sec. 1321. Repeal of recertification requirements of senior executives.
Sec. 1322. Adjustment of limitation on total annual compensation.

Subtitle D—Academic Training

Sec. 1331. Academic training.
Sec. 1332. Modifications to National Security Education Program.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

Sec. 1401. Short title.
Sec. 1402. Federal Flight Deck Officer Program.
Sec. 1403. Crew training.
Sec. 1404. Commercial airline security study.
Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.
Sec. 1406. Technical amendments.

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

Sec. 1501. Definitions.
Sec. 1502. Reorganization plan.
Sec. 1503. Review of congressional committee structures.

Subtitle B—Transitional Provisions

Sec. 1511. Transitional authorities.
Sec. 1512. Savings provisions.
Sec. 1513. Terminations.
Sec. 1514. National identification system not authorized.
Sec. 1515. Continuity of Inspector General oversight.
Sec. 1516. Incidental transfers.
Sec. 1517. Reference.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY
Sec. 1601. Retention of security sensitive information authority at Department of Transportation.
Sec. 1602. Increase in civil penalties.
Sec. 1603. Allowing United States citizens and United States nationals as screeners.
TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS
Sec. 1701. Inspector General Act of 1978.
Sec. 1702. Executive Schedule.
Sec. 1703. United States Secret Service.
Sec. 1704. Coast Guard.
Sec. 1705. Strategic national stockpile and smallpox vaccine development.
Sec. 1706. Transfer of certain security and law enforcement functions and authorities.
Sec. 1707. Transportation security regulations.
Sec. 1708. National Bio-Weapons Defense Analysis Center.
Sec. 1709. Collaboration with the Secretary of Homeland Security.
Sec. 1710. Railroad safety to include railroad security.
Sec. 1711. Hazmat safety to include hazmat security.
Sec. 1712. Office of Science and Technology Policy.
Sec. 1713. National Oceanographic Partnership Program.
Sec. 1714. Clarification of definition of manufacturer.
Sec. 1715. Clarification of definition of vaccine-related injury or death.
Sec. 1716. Clarification of definition of vaccine.
Sec. 1717. Effective date.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term ''terrorism'' means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of ''United States'' for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government

personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the department.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

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

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

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

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the

Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

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

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and''.

SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from

receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''Critical Infrastructure Information Act of 2002''.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term ''covered Federal agency'' means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later

than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)(A), by inserting ''or'' at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

''(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.''.

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number

of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting ''or 2511(2)(i)'' after ''2511(3)''.

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''or disseminates by electronic means'' after ''or other publication''; and

(2) by inserting ''knowing the content of the advertisement and'' before ''knowing or having reason to know''.

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting ''except as provided in paragraph (5),'' before ''a fine under this title'';

(3) in paragraph (4)(C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

''(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.''.

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting '', statutory authorization'' after ''subpoena''.

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting '', statutory authorization,'' after ''court order'' the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(C) an immediate threat to a national security interest; or

''(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;''.

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain'';

(B) in paragraph (1)(A), by striking ''one year'' and inserting ''5 years'';

(C) in paragraph (1)(B), by striking ''two years'' and inserting ''10 years''; and

(D) by striking paragraph (2) and inserting the following:

''(2) in any other case—

''(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.''.

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the ''Office'').

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term ''law enforcement technology'' includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as ''Centers'') and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting ''coordinate and'' before ''provide''.

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting '', including cost effectiveness where practical,'' before ''of projects''; and

(2) by striking ''and'' after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

''(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.''.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, as provided in section 310.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

''(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

''(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

''(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

''(A) AUTHORITY TO ISSUE DECLARATION.—

''(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

''(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

''(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

''(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

''(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

''(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

''(ii)(I) the individual was within a category of individuals covered by the declaration; or

''(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

''(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

''(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

''(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

''(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

''(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

''(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

''(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

''(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

''(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

''(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

''(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

''(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

''(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

''(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

''(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

''(ii) the United States shall not be liable based on the acts or omissions of such person; and

''(iii) the Attorney General shall not be obligated to defend such action.

''(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

''(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

''(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

''(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

''(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

''(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

''(ii) specified in a declaration under paragraph (2).

''(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

''(i) a manufacturer or distributor of such countermeasure;

''(ii) a health care entity under whose auspices such countermeasure was administered;

''(iii) a qualified person who administered such countermeasure; or

''(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

''(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.''.

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities

of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term ''homeland security research'' means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any ''work for others'' basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary,

consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a non-interference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the ''Advisory Committee''). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) TERMINATION.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the ''Homeland Security Institute'' (in this section referred to as the ''Institute'').

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded reseach and development centers.

(e) USE OF CENTERS.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) TERMINATION.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

''Commissioner of Customs, Department of the Treasury''

and inserting

''Commissioner of Customs, Department of Homeland Security.''.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary

of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term ''customs revenue function'' means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term ''customs revenue services'' means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) CONTINUING REPORTS.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(2) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(3) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

''(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 426 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

''(2) DEADLINE.—

''(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

''(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

''(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

''(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

''(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

''(ii) the need to ensure that such installations and modifications are effective; and

''(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

''(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

''(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

''(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

''(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

''(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of the Aviation Security Improvement Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.''.

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

''(A) The Secretary of Homeland Security, or the Secretary's designee.''.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security''.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

''(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.''.

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this 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)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of

an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the ''Bureau of Border Security''.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of

the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking ''not later than one year after the date of enactment of this Act;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 441 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the ''appropriate committees of Congress'' are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for

Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term ''covered entity'' has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States

shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed ''FIRESAT''.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 506. DEFINITION.

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal

Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a ''Johnny Micheal Spann Patriot Trust''.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled ''Statistical Yearbook of the Immigration and Naturalization Service'' prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

(J) All other adjudications performed by the Immigration and Naturalization Service.

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) REPORT.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.''.

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations

under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term ''nontraditional Government contractor'' has the same meaning as the term ''nontraditional defense contractor'' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the

period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ''or'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; or''; and

(C) by adding at the end the following:

''(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.''.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as I partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of

homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.
''9701. Establishment of human resources management system.

"§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

''(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

''(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

''(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

''(C) IMPLEMENTATION.—

''(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

''(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

''(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

''(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

''(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

''(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

''(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) WAIVER.—If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) RULE OF CONSTRUCTION.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C.

427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the ''Support Anti-terrorism by Fostering Effective Technologies Act of 2002'' or the ''SAFETY Act''.

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such

technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal government customers (''Seller'') shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term ''qualified anti-terrorism technology'' means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term ''insurance carrier'' means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term ''liability insurance'' means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term ''non-Federal Government customers'' means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

(b) TERMINATION.—Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1806(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the ''Posse Comitatus Act''), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the ''Insurrection Act''), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

''(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

''(II) an estimate of the current service levels of homeland security spending;

''(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

''(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

''(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

''(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

''(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

''(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.''.

(b) REPEAL OF DUPLICATIVE REPORTS.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

''(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.''.

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) SHORT TITLE.—This subtitle may be cited as the ''Homeland Security Information Sharing Act''.

(b) FINDINGS.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ''homeland security information'' means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ''intelligence community'' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''State and local personnel'' means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting '', or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ''or of a foreign government'' after ''(including personnel of a state or subdivision of a state'';

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: ''or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation'';

(ii) in subclause (IV)—

(I) by inserting ''or foreign'' after ''may disclose a violation of State'';

(II) by inserting ''or of a foreign government'' after ''to an appropriate official of a State or subdivision of a State''; and

(III) by striking ''or'' at the end;

(iii) by striking the period at the end of subclause (V) and inserting ''; or''; and

(iv) by adding at the end the following:

''(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(C) in subparagraph (C)(iii)—

(i) by striking ''Federal'';

(ii) by inserting ''or clause (i)(VI)'' after ''clause (i)(V)''; and

(iii) by adding at the end the following: ''Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

''(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

''(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: ''Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering

activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking ''section 2517(6)'' and inserting ''paragraphs (6) and (8) of section 2517 of title 18, United States Code,''; and

(2) by inserting ''and (VI)'' after ''Rule 6(e)(3)(C)(i)(V)''.

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the ''Homeland Security Council'' (in this title referred to as the ''Council'').

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the ''Federal Information Security Management Act of 2002''.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

"SUBCHAPTER II—INFORMATION SECURITY

"§ 3531. Purposes

''The purposes of this subchapter are to—

''(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

''(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

''(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

''(4) provide a mechanism for improved oversight of Federal agency information security programs;

''(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

''(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.''.

"§ 3532. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

''(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

''(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

''(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

''(C) availability, which means ensuring timely and reliable access to and use of information; and

''(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

''(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

''(A) involves intelligence activities;

''(B) involves cryptologic activities related to national security;

''(C) involves command and control of military forces;

''(D) involves equipment that is an integral part of a weapon or weapons system; or

''(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

''(3) the term 'information technology' has the meaning given that term in section 11101 of title 40; and

''(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

''(A) computers and computer networks;

''(B) ancillary equipment;

''(C) software, firmware, and related procedures;

''(D) services, including support services; and

''(E) related resources.''.

"§ 3533. Authority and functions of the Director

''(a) The Director shall oversee agency information security policies and practices, by—

''(1) promulgating information security standards under section 11331 of title 40;

''(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

''(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(A) information collected or maintained by or on behalf of an agency; or

''(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

''(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

''(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

''(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

''(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

''(A) a summary of the findings of evaluations required by section 3535;

''(B) significant deficiencies in agency information security practices;

''(C) planned remedial action to address such deficiencies; and

''(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).''.

''(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

''§ 3534. Federal agency responsibilities

''(a) The head of each agency shall—

''(1) be responsible for—

''(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(i) information collected or maintained by or on behalf of the agency; and

''(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

''(i) information security standards promulgated by the Director under section 11331 of title 40; and

''(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

''(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

''(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

''(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

''(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

''(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

''(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

''(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

''(A) designating a senior agency information security officer who shall—

''(i) carry out the Chief Information Officer's responsibilities under this section;

''(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

''(iii) have information security duties as that official's primary duty; and

''(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

''(B) developing and maintaining an agencywide information security program as required by subsection (b);

''(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

''(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

''(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

''(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

''(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

''(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

''(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

''(2) policies and procedures that—

''(A) are based on the risk assessments required by paragraph (1);

''(B) cost-effectively reduce information security risks to an acceptable level;

''(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

''(D) ensure compliance with—

''(i) the requirements of this subchapter;

''(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

''(iii) minimally acceptable system configuration requirements, as determined by the agency; and

''(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

''(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

''(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

''(A) information security risks associated with their activities; and

''(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

''(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

''(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

''(B) may include testing relied on in a evaluation under section 3535;

''(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

''(7) procedures for detecting, reporting, and responding to security incidents, including—

''(A) mitigating risks associated with such incidents before substantial damage is done; and

''(B) notifying and consulting with, as appropriate—

''(i) law enforcement agencies and relevant Offices of Inspector General;

''(ii) an office designated by the President for any incident involving a national security system; and

''(iii) any other agency or office, in accordance with law or as directed by the President; and

''(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

''(c) Each agency shall—

''(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

''(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

''(A) annual agency budgets;

''(B) information resources management under subchapter 1 of this chapter;

''(C) information technology management under subtitle III of title 40;

''(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

''(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

''(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

''(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

''(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

''(A) as a material weakness in reporting under section 3512 of title 31; and

''(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

''(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

''(A) the time periods, and

''(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

''(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

''(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

''§ 3535. Annual independent evaluation

''(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

''(2) Each evaluation by an agency under this section shall include—

''(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

''(B) an assessment (made on the basis of the results of the testing) of compliance with—

''(i) the requirements of this subchapter; and

''(ii) related information security policies, procedures, standards, and guidelines; and

''(C) separate presentations, as appropriate, regarding information security relating to national security systems.

''(b) Subject to subsection (c)—

''(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

''(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

''(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

''(1) only by an entity designated by the agency head; and

''(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(d) The evaluation required by this section—

''(1) shall be performed in accordance with generally accepted government auditing standards; and

''(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

''(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

''(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

''(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

''(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

''(h) The Comptroller General shall periodically evaluate and report to Congress on—

''(1) the adequacy and effectiveness of agency information security policies and practices; and

''(2) implementation of the requirements of this subchapter.

''§ 3536. National security systems

''The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

''(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

''(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

''(3) complies with the requirements of this subchapter.

''§ 3537. Authorization of appropriations

''There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

''§ 3538. Effect on existing law

''Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.''.

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading ''SUBCHAPTER II'' are amended to read as follows:

''3531. Purposes.
''3532. Definitions.
''3533. Authority and functions of the Director.
''3534. Federal agency responsibilities.
''3535. Annual independent evaluation.
''3536. National security systems.
''3537. Authorization of appropriations.
''3538. Effect on existing law.''.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking ''(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)'' and inserting ''(b) OBJECTIVES OF THE PROGRAM.—'';

(ii) in subsection 2224(b), by striking ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.''; and

(iii) in subsection 2224(c), by inserting '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure''.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

''§ 11331. Responsibilities for Federal information systems standards

''(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

''(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

''(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

''(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

''(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

''(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

''(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

''(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

''(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

''(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

''(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

''(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

''(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

''11331. Responsibilities for Federal information systems standards.''.

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

''(a) The Institute shall—

''(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

''(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

''(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

''(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

''(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

''(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

''(B) guidelines recommending the types of information and information systems to be included in each such category; and

''(C) minimum information security requirements for information and information systems in each such category;

''(2) a definition of and guidelines concerning detection and handling of information security incidents; and

''(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

''(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

''(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

''(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

''(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

''(2) provide the public with an opportunity to comment on proposed standards and guidelines;

''(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

''(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

''(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

''(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

''(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

''(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

''(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

''(d) The Institute shall—

''(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

''(2) provide assistance to agencies regarding—

''(A) compliance with the standards and guidelines developed under subsection (a);

''(B) detecting and handling information security incidents; and

''(C) information security policies, procedures, and practices;

''(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

''(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

''(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

''(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

''(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

''(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

''(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

''(e) As used in this section—

''(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

''(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

''(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

''(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

''(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.''.

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking ''Computer System Security and Privacy Advisory Board'' and inserting ''Information Security and Privacy Advisory Board'';

(2) in subsection (a)(1), by striking ''computer or telecommunications'' and inserting ''information technology'';

(3) in subsection (a)(2)—

(A) by striking ''computer or telecommunications technology'' and inserting ''information technology''; and

(B) by striking ''computer or telecommunications equipment'' and inserting ''information technology'';

(4) in subsection (a)(3)—

(A) by striking ''computer systems'' and inserting ''information system''; and

(B) by striking ''computer systems security'' and inserting ''information security'';

(5) in subsection (b)(1) by striking ''computer systems security'' and inserting ''information security'';

(6) in subsection (b) by striking paragraph (2) and inserting the following:

''(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and'';

(7) in subsection (b)(3) by inserting ''annually'' after ''report'';

(8) by inserting after subsection (e) the following new subsection:

''(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.'';

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

''(h) As used in this section, the terms ''information system'' and ''information technology'' have the meanings given in section 20.''.

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL COMPUTER SYSTEM SECURITY TRAINING AND PLAN.—

(1) REPEAL.—Section 11332 of title 40, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of

title 40, United States Code, as amended by striking the item relating to section 11332.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''sections 11331 and 11332(b) and (c) of title 40'' and inserting ''section 11331 of title 40 and subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

''(c) INVENTORY OF INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

''(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

''(3) Such inventory shall be—

''(A) updated at least annually;

''(B) made available to the Comptroller General; and

''(C) used to support information resources management, including—

''(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

''(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

''(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

''(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

''(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

''(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.''.

(3) Section 3506(g) of such title is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''section 11332 of title 40'' and inserting ''subchapter II of this chapter''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the ''Bureau'').

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the ''Director''). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''; and

(2) in section 9(a)(1)(L)(i), by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Tax and Trade Bureau''.

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by

striking ''(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms'' and inserting ''by manufacturers of tobacco products to the Tax and Trade Bureau''.

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking ''the Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,''.

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

''(k) 'Attorney General' means the Attorney General of the United States.'';

(2) in section 846(a), by striking ''the Attorney General and the Federal Bureau of Investigation, together with the Secretary'' and inserting ''the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives''; and

(3) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking ''Secretary'' and inserting ''Attorney General'';

(2) in section 921(a)(4), by striking ''Secretary of the Treasury'' and inserting ''Attorney General'';

(3) in section 921(a), by striking paragraph (18) and inserting the following:

''(18) The term 'Attorney General' means the Attorney General of the United States'';

(4) in section 922(p)(5)(A), by striking ''after consultation with the Secretary'' and inserting ''after consultation with the Attorney General'';

(5) in section 923(*l*), by striking ''Secretary of the Treasury'' and inserting ''Attorney General''; and

(6) by striking ''Secretary'' each place it appears, except before ''of the Army'' in section 921(a)(4) and before ''of Defense'' in section 922(p)(5)(A), and inserting the term ''Attorney General''.

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

''(a) The Attorney General—

''(1) shall enforce the provisions of this chapter; and

''(2) has the authority to issue regulations to carry out the provisions of this chapter.''.

(h) Section 1952(c) of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

''(5) the term 'Attorney General' means the Attorney General of the United States''; and

(2) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking ''or the Bureau of Alcohol, Tobacco and Firearms'' and inserting '', the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,''.

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking ''SECRETARY.—Except'' and inserting ''SECRETARY.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

''(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

''(i) Chapter 53.

''(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

''(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.''.

(l) Section 2006(2) of title 28, United States Code, is amended by inserting '', the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,'' after ''the Secretary of the Treasury''.

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives'';

(2) in subsection (a), by striking ''Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking ''or the Bureau'' and inserting ''or either Bureau'';

(B) in paragraph (2)—

(i) by striking ''or the Bureau'' and inserting ''or either Bureau''; and

(ii) by striking ''and the Director of the Bureau'' and inserting ''the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(C) in paragraph (3), by striking ''or the Bureau'' and inserting ''or either Bureau''.

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''.

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking ''Secretary of the Treasury'' each place it appears and inserting ''Attorney General''; and

(2) in subparagraph (3)(B), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting ''or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General'' after ''section 80304 of this title.''; and

(2) by inserting '', the Attorney General,'' after ''by the Secretary''.

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking ''(b) and (c)'' and inserting ''(b), (c), and (d)'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

''(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).''.

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

''§ 3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

''(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

''(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

''(A) the seizure, summary and judicial forfeiture, and condemnation of property;

''(B) the disposition of such property;

''(C) the remission or mitigation of such forfeiture; and

''(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

''(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.''.

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the ''Safe Explosives Act''.

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

''(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.''; and

(2) by adding at the end the following:

''(r) 'Alien' means any person who is not a citizen or national of the United States.

''(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.''.

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking ''and'' at the end;

(2) by striking subsection (a)(3) and inserting the following:

''(3) other than a licensee or permittee knowingly—

''(A) to transport, ship, cause to be transported, or receive any explosive materials; or

''(B) to distribute explosive materials to any person other than a licensee or permittee; or

''(4) who is a holder of a limited permit—

''(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

''(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder.''; and

(3) by striking subsection (b) and inserting the following:

''(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

''(1) a licensee;

''(2) a holder of a user permit; or

''(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.''.

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting ''or limited permit'' after ''user permit''; and

(B) by inserting before the period at the end the following: '', including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person'';

(2) in the second sentence, by striking ''$200 for each'' and inserting ''$50 for a limited permit and $200 for any other''; and

(3) by striking the third sentence and inserting ''Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.''.

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);'';

(2) in paragraph (4)—

(A) by inserting ''(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that'' before ''the applicant''; and

(B) by adding at the end the following:

''(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and'';

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

''(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.''.

(e) APPLICATION APPROVAL.—Section 843(c) of title 18, United States Code, is amended by striking ''forty-five days'' and inserting ''90 days for licenses and permits,''.

(f) INSPECTION AUTHORITY.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking ''permittees'' and inserting ''holders of user permits''; and

(B) by inserting ''licensees and permittees'' before ''shall submit'';

(2) in the second sentence, by striking ''permittee'' the first time it appears and inserting ''holder of a user permit''; and

(3) by adding at the end the following: ''The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) POSTING OF PERMITS.—Section 843(g) of title 18, United States Code, is amended by inserting ''user'' before ''permits''.

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

''(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

''(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

''(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

''(i) confirms the determination;

''(ii) explains the grounds for the determination;

''(iii) provides information on how the disability may be relieved; and

''(iv) explains how the determination may be appealed.''.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''or who has been committed to a mental institution;''; and

(3) by adding at the end the following:

''(7) is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(8) has been discharged from the armed forces under dishonorable conditions;

''(9) having been a citizen of the United States, has renounced the citizenship of that person.''.

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking ''or'' at the end; and

(2) by inserting after paragraph (4) the following:

''(5) who is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(6) who has been discharged from the armed forces under dishonorable conditions;

''(7) who, having been a citizen of the United States, has renounced the citizenship of that person''; and

(3) by inserting ''or affecting'' before ''interstate'' each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(i) FURNISHING OF SAMPLES.—

''(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

''(A) samples of such explosive materials or ammonium nitrate;

''(B) information on chemical composition of those products; and

''(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

''(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.''.

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word ''shall'' the following: ''or any institution or organization receiving Federal financial assistance,''.

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

''(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

''(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

''(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.''.

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

''(p) THEFT REPORTING REQUIREMENT.—

''(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

''(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.''.

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary of Transportation'';

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting ''AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—'';

(B) in the first sentence by striking ''the 180-day period following the date of enactment of this Act, the Secretary of Transportation'' and inserting ''the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary''; and

(C) in the last sentence by striking ''this paragraph'' and inserting ''this subsection''.

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

''(f) EXTENSION OF POLICIES.—

''(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

''(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

''(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

''(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.''.

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking ''(b)'' and inserting ''(c)''.

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall

transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

"§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Agency Chief Human Capital Officers ..... 1401".

SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

"§ 3319. Alternative ranking and selection procedures

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a

compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

''(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

''(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

''(B) holds a position in or under an agency which is described in paragraph (2).

''(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

''(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

''(B) An agency's certification under this subsection shall be for a period of 2 calendar

years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

''(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

''(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).''.

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting ''or as otherwise provided under subsection (d),'' after ''under law,''.

(2) Section 5307(c) of such title is amended by striking ''this section,'' and inserting ''this section (subject to subsection (d)),''.

Subtitle D—Academic Training

SEC. 1331. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism Act''.

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

''(b) PROCEDURAL REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

''(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

''(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

''(A) The type of firearm to be used by a Federal flight deck officer.

''(B) The type of ammunition to be used by a Federal flight deck officer.

''(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

''(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

''(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

''(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

''(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

''(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

''(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

''(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

''(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

''(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

''(M) Any other issues that the Under Secretary considers necessary.

''(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

''(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

''(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

''(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

''(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

''(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

''(2) TRAINING.—

''(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

''(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

''(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

''(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

''(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

''(C) TRAINING IN USE OF FIREARMS.—

''(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

''(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

''(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

''(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

''(A) the pilot is employed by an air carrier;

''(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

''(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

''(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

''(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

''(f) AUTHORITY TO CARRY FIREARMS.—

''(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

''(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

''(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

''(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

''(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

''(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

''(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

''(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

''(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

''(k) APPLICABILITY.—

''(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

''(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

''44921. Federal flight deck officer program.''.

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking ''The Administrator'' and inserting the following:

''(1) IN GENERAL.—The Under Secretary'';

(2) by adding at the end the following:

''(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

''(A) require both classroom and effective hands-on situational training in the following elements of self defense:

''(i) recognizing suspicious activities and determining the seriousness of an occurrence;

''(ii) deterring a passenger who might present a problem;

''(iii) crew communication and coordination;

''(iv) the proper commands to give to passengers and attackers;

''(v) methods to subdue and restrain an attacker;

''(vi) use of available items aboard the aircraft for self-defense;

''(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

''(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

''(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

''(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

''(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

''(C) establish the required number of hours of training and the qualifications for the training instructors;

''(D) establish the intervals, number of hours, and elements of recurrent training;

''(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

''(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

''(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

''(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

''(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge.''; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

''(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.''.

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

''(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.''.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking ''Secretary'' the first and third places it appears and inserting ''Under Secretary''; and

(2) in paragraph (2) by striking ''Secretary'' each place it appears and inserting ''Under Secretary''.

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term ''agency'' includes any entity, organizational unit, program, or function.

(2) The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term ''completed administrative action'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''and the Administrator of the Federal Aviation Administration each'' after ''for Security''; and

(B) by striking ''criminal violence and aircraft piracy'' and inserting ''criminal violence, aircraft piracy, and terrorism and to ensure security''; and

(2) in subsection (b)(1)—

(A) by striking '', the Under Secretary'' and inserting ''and the establishment of a Department of Homeland Security, the Secretary of Transportation'';

(B) by striking ''carrying out'' and all that follows through ''if the Under Secretary'' and inserting ''ensuring security under this title if the Secretary of Transportation''; and

(C) in subparagraph (C) by striking ''the safety of passengers in transportation'' and inserting ''transportation safety''.

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

''(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

''(A) be an unwarranted invasion of personal privacy;

''(B) reveal a trade secret or privileged or confidential commercial or financial information; or

''(C) be detrimental to the security of transportation.

''(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

''(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty

or power under this subsection to another department, agency, or instrumentality of the United States.''.

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).''.

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking ''citizen of the United States'' and inserting ''citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))''.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears; and

(2) by striking ''; and'' each place it appears in paragraph (1) and inserting '';'';

SEC. 1702. EXECUTIVE SCHEDULE.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting ''Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(2) in section 5313, by inserting ''Deputy Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(3) in section 5314, by inserting ''Under Secretaries, Department of Homeland Security.'', ''Director of the Bureau of Citizenship and Immigration Services.'' as new items after ''Affairs.'' the third place it appears;

(4) in section 5315, by inserting ''Assistant Secretaries, Department of Homeland Security.'', ''General Counsel, Department of Homeland Security.'', ''Officer for Civil Rights and Civil Liberties, Department of Homeland Security.'', ''Chief Financial Officer, Department of Homeland Security.'', ''Chief Information Officer, Department of Homeland Security.'', and ''Inspector General, Department of Homeland Security.'' as new items after ''Affairs.'' the first place it appears; and

(5) in section 5315, by striking ''Commissioner of Immigration and Naturalization, Department of Justice.''.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) IN GENERAL.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking ''of the Treasury'', each place it appears and inserting ''of Homeland Security''.

(2) Section 208 of title 3, United States Code, is amended by striking ''of Treasury'' each place it appears and inserting ''of Homeland Security''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(2) Section 801(1) of such title is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(3) Section 983(d)(2)(B) of such title is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(4) Section 2665(b) of such title is amended by striking ''Department of Transportation'' and inserting ''Department in which the Coast Guard is operating''.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking ''Secretaries of the Army, Air Force, and Transportation'' both places it appears and inserting ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security''; and

(B) in subsection (b), by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(6) Section 7361(b) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(7) Section 12522(c) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking ''of Transportation'' and inserting ''of Homeland Security''; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking ''of Transportation'' and inserting ''of Homeland Security''.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking ''after consultation with the Secretary of Transportation''.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking ''of Transportation'' in the fourth paragraph and inserting ''of Homeland Security'';

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking ''Secretaries of Army, Navy, Air Force, or Transportation'' and inserting ''Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,''; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting ''and'' after the semicolon at the end of paragraph (1);

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

''§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

''(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

''(b) OFFICERS AND AGENTS.—

''(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

''(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

''(A) enforce Federal laws and regulations for the protection of persons and property;

''(B) carry firearms;

''(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

''(D) serve warrants and subpoenas issued under the authority of the United States; and

''(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

''(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

''(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

''(d) DETAILS.—

''(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

''(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

''(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

''(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

''(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

''(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

''(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

''(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) preclude or limit the authority of any Federal law enforcement agency; or

''(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.''.

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

''1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.''.

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting ''for a period not to exceed 90 days'' after ''effective''; and

(2) in section 114(l)(2)(B), by inserting ''ratified or'' after ''unless''.

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking ''Secretary of Transportation'' in the first sentence of subsection (a) and inserting ''Secretary concerned'';

(2) by striking ''Secretary'' each place it appears (except the first sentence of subsection (a)) and inserting ''Secretary concerned'';

(3) by striking ''Secretary's duties under chapters 203–213 of this title'' in subsection (d) and inserting ''duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)'';

(4) by striking ''chapter.'' in subsection (f) and inserting ''chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).''; and

(5) by adding at the end the following new subsection:

''(g) DEFINITIONS.—In this section—

''(1) the term 'safety' includes security; and

''(2) the term 'Secretary concerned' means—

''(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

''(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.''.

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after ''1970.'' the following: ''When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.''.

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting ''and laws, regulations, and orders related to railroad security'' after ''safety'' in the first sentence;

(2) by inserting ''or security'' after ''safety'' each place it appears after the first sentence; and

(3) by striking ''Transportation'' in the second sentence and inserting ''Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),''.

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking ''transportation'' the first place it appears in subsection (b)(1) and inserting ''transportation, including security,'';

(2) by striking ''aspects'' in subsection (b)(1)(B) and inserting ''aspects, including security,''; and

(3) by adding at the end the following:

''(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.''.

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking ''chapter or a regulation prescribed under this chapter'' in subsection (a)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security'';

(2) by striking ''chapter or a regulation prescribed under this chapter.'' in subsection (a)(2) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.''; and

(3) by striking ''chapter or a regulation prescribed under this chapter,'' in subsection (b)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,''.

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the Office of Homeland Security,'' after ''National Security Council,''.

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

''(14) Other Federal officials the Council considers appropriate.''.

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking ''under its label any vaccine set forth in the Vaccine Injury Table'' and inserting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine''; and

(2) in the second sentence, by inserting ''including any component or ingredient of any such vaccine'' before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.''.

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

''(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''.

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

The SPEAKER pro tempore. The amendment contained in section 2 of H. Res. 600 is considered as adopted.

The text of H.R. 5710, as amended, pursuant to section 2 of H. Res. 600 is as follows:

H.R. 5710

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Homeland Security Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.

Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
Sec. 509. Use of commercially available technology, goods, and services.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.

TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.
Sec. 702. Chief Financial Officer.
Sec. 703. Chief Information Officer.
Sec. 704. Chief Human Capital Officer.
Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.
Sec. 706. Consolidation and co-location of offices.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.

Subtitle B—Inspector General

Sec. 811. Authority of the Secretary.
Sec. 812. Law enforcement powers of Inspector General agents.

Subtitle C—United States Secret Service

Sec. 821. Functions transferred.

Subtitle D—Acquisitions

Sec. 831. Research and development projects.
Sec. 832. Personal services.
Sec. 833. Special streamlined acquisition authority.
Sec. 834. Unsolicited proposals.
Sec. 835. Prohibition on contracts with corporate expatriates.

Subtitle E—Human Resources Management

Sec. 841. Establishment of Human Resources Management System.
Sec. 842. Labor-management relations.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 851. Definition.
Sec. 852. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 854. Increased micro-purchase threshold for certain procurements.
Sec. 855. Application of certain commercial items authorities to certain procurements.
Sec. 856. Use of streamlined procedures.
Sec. 857. Review and report by Comptroller General.
Sec. 858. Identification of new entrants into the Federal marketplace.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Sec. 861. Short title.
Sec. 862. Administration.
Sec. 863. Litigation management.
Sec. 864. Risk management.
Sec. 865. Definitions.

Subtitle H—Miscellaneous Provisions

Sec. 871. Advisory committees.
Sec. 872. Reorganization.
Sec. 873. Use of appropriated funds.
Sec. 874. Future Year Homeland Security Program.
Sec. 875. Miscellaneous authorities.
Sec. 876. Military activities.
Sec. 877. Regulatory authority and preemption.
Sec. 878. Counternarcotics officer.
Sec. 879. Office of International Affairs.
Sec. 880. Prohibition of the Terrorism Information and Prevention System.
Sec. 881. Review of pay and benefit plans.
Sec. 882. Office for National Capital Region Coordination.
Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.
Sec. 884. Federal Law Enforcement Training Center.
Sec. 885. Joint Interagency Task Force.
Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.
Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 888. Preserving Coast Guard mission performance.
Sec. 889. Homeland security funding analysis in President's budget.
Sec. 890. Air Transportation Safety and System Stabilization Act.

Subtitle I—Information Sharing

Sec. 891. Short title; findings; and sense of Congress.
Sec. 892. Facilitating homeland security information sharing procedures.
Sec. 893. Report.
Sec. 894. Authorization of appropriations.
Sec. 895. Authority to share grand jury information.
Sec. 896. Authority to share electronic, wire, and oral interception information.
Sec. 897. Foreign intelligence information.
Sec. 898. Information acquired from an electronic surveillance.
Sec. 899. Information acquired from a physical search.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 901. National Homeland Security Council.
Sec. 902. Function.
Sec. 903. Membership.
Sec. 904. Other functions and activities.
Sec. 905. Staff composition.
Sec. 906. Relation to the National Security Council.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.
Sec. 1002. Management of information technology.
Sec. 1003. National Institute of Standards and Technology.
Sec. 1004. Information Security and Privacy Advisory Board.
Sec. 1005. Technical and conforming amendments.
Sec. 1006. Construction.

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

Sec. 1101. Legal status of EOIR.
Sec. 1102. Authorities of the Attorney General.
Sec. 1103. Statutory construction.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1112. Technical and conforming amendments.
Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1114. Explosives training and research facility.
Sec. 1115. Personnel management demonstration project.

Subtitle C—Explosives

Sec. 1121. Short title.
Sec. 1122. Permits for purchasers of explosives.
Sec. 1123. Persons prohibited from receiving or possessing explosive materials.
Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.
Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.
Sec. 1126. Relief from disabilities.
Sec. 1127. Theft reporting requirement.
Sec. 1128. Authorization of appropriations.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.
Sec. 1202. Extension of insurance policies.

Sec. 1203. Correction of reference.
Sec. 1204. Report.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

Sec. 1301. Short title.
Sec. 1302. Agency Chief Human Capital Officers.
Sec. 1303. Chief Human Capital Officers Council.
Sec. 1304. Strategic human capital management.
Sec. 1305. Effective date.

Subtitle B—Reforms Relating to Federal Human Capital Management

Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 1312. Reform of the competitive service hiring process.
Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 1314. Student volunteer transit subsidy.

Subtitle C—Reforms Relating to the Senior Executive Service

Sec. 1321. Repeal of recertification requirements of senior executives.
Sec. 1322. Adjustment of limitation on total annual compensation.

Subtitle D—Academic Training

Sec. 1331. Academic training.
Sec. 1332. Modifications to National Security Education Program.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

Sec. 1401. Short title.
Sec. 1402. Federal Flight Deck Officer Program.
Sec. 1403. Crew training.
Sec. 1404. Commercial airline security study.
Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.
Sec. 1406. Technical amendments.

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

Sec. 1501. Definitions.
Sec. 1502. Reorganization plan.
Sec. 1503. Review of congressional committee structures.

Subtitle B—Transitional Provisions

Sec. 1511. Transitional authorities.
Sec. 1512. Savings provisions.
Sec. 1513. Terminations.
Sec. 1514. National identification system not authorized.
Sec. 1515. Continuity of Inspector General oversight.
Sec. 1516. Incidental transfers.
Sec. 1517. Reference.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

Sec. 1601. Retention of security sensitive information authority at Department of Transportation.
Sec. 1602. Increase in civil penalties.
Sec. 1603. Allowing United States citizens and United States nationals as screeners.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 1701. Inspector General Act of 1978.
Sec. 1702. Executive Schedule.
Sec. 1703. United States Secret Service.
Sec. 1704. Coast Guard.
Sec. 1705. Strategic national stockpile and smallpox vaccine development.
Sec. 1706. Transfer of certain security and law enforcement functions and authorities.
Sec. 1707. Transportation security regulations.
Sec. 1708. National Bio-Weapons Defense Analysis Center.
Sec. 1709. Collaboration with the Secretary of Homeland Security.
Sec. 1710. Railroad safety to include railroad security.
Sec. 1711. Hazmat safety to include hazmat security.
Sec. 1712. Office of Science and Technology Policy.
Sec. 1713. National Oceanographic Partnership Program.
Sec. 1714. Clarification of definition of manufacturer.
Sec. 1715. Clarification of definition of vaccine-related injury or death.
Sec. 1716. Clarification of definition of vaccine.
Sec. 1717. Effective date.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term ''terrorism'' means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of ''United States'' for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate

efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the department.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

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

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks

within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

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

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

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

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking ''and'' at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and''.

SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information

relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the ''Critical Infrastructure Information Act of 2002''.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term ''agency'' has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term ''covered Federal agency'' means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term ''critical infrastructure information'' means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) PENALTIES.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as ''NET Guard'', comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the ''Cyber Security Enhancement Act of 2002''.

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)(A), by inserting ''or'' at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

''(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.''.

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting ''or 2511(2)(i)'' after ''2511(3)''.

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''or disseminates by electronic means'' after ''or other publication''; and

(2) by inserting ''knowing the content of the advertisement and'' before ''knowing or having reason to know''.

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting ''except as provided in paragraph (5),'' before ''a fine under this title'';

(3) in paragraph (4)(C), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

''(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.''.

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting '', statutory authorization'' after ''subpoena''.

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting '', statutory authorization,'' after ''court order'' the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(C) an immediate threat to a national security interest; or

''(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;''.

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting '', or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State'' after ''commercial gain'';

(B) in paragraph (1)(A), by striking ''one year'' and inserting ''5 years'';

(C) in paragraph (1)(B), by striking ''two years'' and inserting ''10 years''; and

(D) by striking paragraph (2) and inserting the following:

''(2) in any other case—

''(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

''(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.''.

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the ''Office'').

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for

law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term ''law enforcement technology'' includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as ''Centers'') and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting ''coordinate and'' before ''provide''.

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting '', including cost effectiveness where practical,'' before ''of projects''; and

(2) by striking ''and'' after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting ''; and'', and by adding at the end the following:

''(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

''(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.''.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as ''select agents'' in Appendix A of part 72 of

title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

(3) The Plum Island Animal Disease Center of the Department of Agriculture, as provided in section 310.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

''(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

''(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

''(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

''(A) AUTHORITY TO ISSUE DECLARATION.—

''(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

''(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

''(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

''(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

''(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

''(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

''(ii)(I) the individual was within a category of individuals covered by the declaration; or

''(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

''(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

''(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

''(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

''(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

''(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

''(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

''(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

''(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

''(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

''(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

''(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

''(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

''(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

''(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

''(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

''(ii) the United States shall not be liable based on the acts or omissions of such person; and

''(iii) the Attorney General shall not be obligated to defend such action.

''(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

''(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

''(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the

United States in which such person resides or has its principal place of business.

''(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

''(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

''(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

''(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

''(ii) specified in a declaration under paragraph (2).

''(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

''(i) a manufacturer or distributor of such countermeasure;

''(ii) a health care entity under whose auspices such countermeasure was administered;

''(iii) a qualified person who administered such countermeasure; or

''(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

''(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.''.

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term ''Fund'' means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term ''homeland security research'' means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term ''HSARPA'' means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of

any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any ''work for others'' basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the ''Advisory Committee''). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) TERMINATION.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the ''Homeland Security Institute'' (in this section referred to as the ''Institute'').

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded reseach and development centers.

(e) USE OF CENTERS.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) TERMINATION.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation,

including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

''Commissioner of Customs, Department of the Treasury''

and inserting

''Commissioner of Customs, Department of Homeland Security.''.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term ''customs revenue function'' means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term ''customs revenue services'' means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) CONTINUING REPORTS.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

''(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).'';

(2) in paragraph (4), by striking ''(other than the excess fees determined by the Secretary under paragraph (5))''; and

(3) by striking paragraph (5) and inserting the following:

''(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and

2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

''(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.''.

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

''(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 426 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to

subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

''(2) DEADLINE.—

''(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

''(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

''(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

''(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

''(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

''(ii) the need to ensure that such installations and modifications are effective; and

''(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

''(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

''(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

''(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

''(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

''(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of the Aviation Security Improvement Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.''.

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

''(A) The Secretary of Homeland Security, or the Secretary's designee.''.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking ''Secretary of Transportation'' and inserting ''Secretary of Homeland Security''.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

''(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.''.

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term ''affected agency'' means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term ''consular office'' has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this 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)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the ''Bureau of Border Security''.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such

as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking ''not later than one year after the date of enactment of this Act;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term ''unaccompanied alien child'' means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—The Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''employee'' means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term ''covered entity'' means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term ''transfer date'' means the date on which the transfer of functions specified under section 441 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the ''appropriate committees of Congress'' are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the

Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term ''covered entity'' has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed ''FIRESAT''.

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 506. DEFINITION.

In this title, the term ''Nuclear Incident Response Team'' means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a ''Johnny Micheal Spann Patriot Trust''.

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i)

and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled ''Statistical Yearbook of the Immigration and Naturalization Service'' prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

(J) All other adjudications performed by the Immigration and Naturalization Service.

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) REPORT.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of

any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

''SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

''SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.''.

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

''(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

''(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

''(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

''(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

''(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

''(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

''(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

''(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

''(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

''(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

''(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

''(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

''(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

''(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.''.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term ''memoranda of understanding'' means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term ''nontraditional Government contractor'' has the same meaning as the term ''nontraditional defense contractor'' as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ''or'' at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; or''; and

(C) by adding at the end the following:

''(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.''.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as I partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

''CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

''Sec.
''9701. Establishment of human resources management system.

''§ 9701. Establishment of human resources management system

''(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

''(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

''(1) be flexible;

''(2) be contemporary;

''(3) not waive, modify, or otherwise affect—

''(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this part (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

''(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

''(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

''(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

''(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

''(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

''(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

''(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

''(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

''(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

''(C) IMPLEMENTATION.—

''(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

''(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

''(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

''(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

''(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

''(ii) give each employee representative adequate access to information to make that participation productive.

''(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

''(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

''(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

''(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

''(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

''(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

''(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

''(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

''(i) should ensure that employees of the Department are afforded the protections of due process; and

''(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

''(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

''(A) shall be issued only after consultation with the Merit Systems Protection Board;

''(B) shall ensure the availability of procedures which shall—

''(i) be consistent with requirements of due process; and

''(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

''(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

''(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

''(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(3) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

''97. Department of Homeland Security ..... 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NONSEPARATION OR NONREDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

(1) IN GENERAL.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) EXCLUSIONS ALLOWABLE.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) PROVISIONS RELATING TO BARGAINING UNITS.—

(1) LIMITATION RELATING TO APPROPRIATE UNITS.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) LIMITATION RELATING TO POSITIONS OR EMPLOYEES.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) WAIVER.—If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) COORDINATION RULE.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) RULE OF CONSTRUCTION.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term ''executive agency'' has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) TEMPORARY THRESHOLD AMOUNTS.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINITIONS.—In this section, the term ''simplified acquisition threshold definitions'' means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) SMALL BUSINESS RESERVE.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) AUTHORITY.—

(1) IN GENERAL.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) COMMERCIAL ITEM LAWS.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED PURCHASE PROCEDURES.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the ''Support Anti-terrorism by Fostering Effective Technologies Act of 2002'' or the ''SAFETY Act''.

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property,

personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal government customers (''Seller'') shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term ''qualified anti-terrorism technology'' means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term ''insurance carrier'' means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term ''liability insurance'' means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term ''non-Federal Government customers'' means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership.

Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

(b) TERMINATION.—Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1806(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office

for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the ''Posse Comitatus Act''), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the ''Insurrection Act''), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term ''non-homeland security missions'' means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term ''homeland security missions'' means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

''(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

''(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

''(II) an estimate of the current service levels of homeland security spending;

''(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

''(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

''(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

''(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

''(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

''(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.''.

(b) REPEAL OF DUPLICATIVE REPORTS.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

''(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.''.

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) SHORT TITLE.—This subtitle may be cited as the ''Homeland Security Information Sharing Act''.

(b) FINDINGS.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with

subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term ''homeland security information'' means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term ''intelligence community'' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term ''State and local personnel'' means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting '', or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6,'' after ''Rule 6''; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting ''or of a foreign government'' after ''(including personnel of a state or subdivision of a state'';

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: ''or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation'';

(ii) in subclause (IV)—

(I) by inserting ''or foreign'' after ''may disclose a violation of State'';

(II) by inserting ''or of a foreign government'' after ''to an appropriate official of a State or subdivision of a State''; and

(III) by striking ''or'' at the end;

(iii) by striking the period at the end of subclause (V) and inserting ''; or''; and

(iv) by adding at the end the following:

''(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat.''; and

(C) in subparagraph (C)(iii)—

(i) by striking ''Federal'';

(ii) by inserting ''or clause (i)(VI)'' after ''clause (i)(V)''; and

(iii) by adding at the end the following: ''Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

''(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the

official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

''(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: ''Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.''.

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking ''section 2517(6)'' and inserting ''paragraphs (6) and (8) of section 2517 of title 18, United States Code,''; and

(2) by inserting ''and (VI)'' after ''Rule 6(e)(3)(C)(i)(V)''.

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after ''law enforcement officers'' the following: ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)''.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the ''Homeland Security Council'' (in this title referred to as the ''Council'').

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the ''Federal Information Security Management Act of 2002''.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

''SUBCHAPTER II—INFORMATION SECURITY

''§ 3531. Purposes

''The purposes of this subchapter are to—

''(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

''(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

''(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

''(4) provide a mechanism for improved oversight of Federal agency information security programs;

''(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

''(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.''.

''§ 3532. Definitions

''(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

''(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

''(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

''(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

''(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

''(C) availability, which means ensuring timely and reliable access to and use of information; and

''(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

''(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

''(A) involves intelligence activities;

''(B) involves cryptologic activities related to national security;

''(C) involves command and control of military forces;

''(D) involves equipment that is an integral part of a weapon or weapons system; or

''(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

''(3) the term 'information technology' has the meaning given that term in section 11101 of title 40; and

''(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the

automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

''(A) computers and computer networks;

''(B) ancillary equipment;

''(C) software, firmware, and related procedures;

''(D) services, including support services; and

''(E) related resources.''.

''§ 3533. Authority and functions of the Director

''(a) The Director shall oversee agency information security policies and practices, by—

''(1) promulgating information security standards under section 11331 of title 40;

''(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

''(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(A) information collected or maintained by or on behalf of an agency; or

''(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

''(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

''(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

''(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

''(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

''(A) a summary of the findings of evaluations required by section 3535;

''(B) significant deficiencies in agency information security practices;

''(C) planned remedial action to address such deficiencies; and

''(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(e)(7) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).''.

''(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

''§ 3534. Federal agency responsibilities

''(a) The head of each agency shall—

''(1) be responsible for—

''(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

''(i) information collected or maintained by or on behalf of the agency; and

''(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

''(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

''(i) information security standards promulgated by the Director under section 11331 of title 40; and

''(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

''(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

''(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

''(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

''(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

''(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

''(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

''(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter, including—

''(A) designating a senior agency information security officer who shall—

''(i) carry out the Chief Information Officer's responsibilities under this section;

''(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

''(iii) have information security duties as that official's primary duty; and

''(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

''(B) developing and maintaining an agencywide information security program as required by subsection (b);

''(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

''(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

''(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

''(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

''(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

''(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

''(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

''(2) policies and procedures that—

''(A) are based on the risk assessments required by paragraph (1);

''(B) cost-effectively reduce information security risks to an acceptable level;

''(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

''(D) ensure compliance with—

''(i) the requirements of this subchapter;

''(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

''(iii) minimally acceptable system configuration requirements, as determined by the agency; and

''(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

''(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

''(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

''(A) information security risks associated with their activities; and

''(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

''(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

''(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

''(B) may include testing relied on in a evaluation under section 3535;

''(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

''(7) procedures for detecting, reporting, and responding to security incidents, including—

''(A) mitigating risks associated with such incidents before substantial damage is done; and

''(B) notifying and consulting with, as appropriate—

''(i) law enforcement agencies and relevant Offices of Inspector General;

''(ii) an office designated by the President for any incident involving a national security system; and

''(iii) any other agency or office, in accordance with law or as directed by the President; and

''(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

''(c) Each agency shall—

''(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

''(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

''(A) annual agency budgets;

''(B) information resources management under subchapter 1 of this chapter;

''(C) information technology management under subtitle III of title 40;

''(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

''(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

''(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

''(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

''(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

''(A) as a material weakness in reporting under section 3512 of title 31; and

''(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

''(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

''(A) the time periods, and

''(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

''(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

''(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

''§ 3535. Annual independent evaluation

''(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

''(2) Each evaluation by an agency under this section shall include—

''(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

''(B) an assessment (made on the basis of the results of the testing) of compliance with—

''(i) the requirements of this subchapter; and

''(ii) related information security policies, procedures, standards, and guidelines; and

''(C) separate presentations, as appropriate, regarding information security relating to national security systems.

''(b) Subject to subsection (c)—

''(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

''(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

''(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

''(1) only by an entity designated by the agency head; and

''(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(d) The evaluation required by this section—

''(1) shall be performed in accordance with generally accepted government auditing standards; and

''(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

''(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

''(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

''(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

''(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

''(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

''(h) The Comptroller General shall periodically evaluate and report to Congress on—

''(1) the adequacy and effectiveness of agency information security policies and practices; and

''(2) implementation of the requirements of this subchapter.

''§ 3536. National security systems

''The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

''(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

''(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

''(3) complies with the requirements of this subchapter.

''§ 3537. Authorization of appropriations

''There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

''§ 3538. Effect on existing law

''Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.''.

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading ''SUBCHAPTER II'' are amended to read as follows:

''3531. Purposes.

''3532. Definitions.

''3533. Authority and functions of the Director.

''3534. Federal agency responsibilities.

''3535. Annual independent evaluation.

''3536. National security systems.

''3537. Authorization of appropriations.

''3538. Effect on existing law.''.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking ''(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)'' and inserting ''(b) OBJECTIVES OF THE PROGRAM.—'';

(ii) in subsection 2224(b), by striking ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.''; and

(iii) in subsection 2224(c), by inserting '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure''.

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

"§ 11331. Responsibilities for Federal information systems standards

''(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

''(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

''(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

''(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

''(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

''(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

''(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

''(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

''(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

''(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

''(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

''(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

''(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

''11331. Responsibilities for Federal information systems standards.''.

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

''(a) The Institute shall—

''(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

''(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

''(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

''(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

''(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

''(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

''(B) guidelines recommending the types of information and information systems to be included in each such category; and

''(C) minimum information security requirements for information and information systems in each such category;

''(2) a definition of and guidelines concerning detection and handling of information security incidents; and

''(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

''(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

''(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

''(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

''(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

''(2) provide the public with an opportunity to comment on proposed standards and guidelines;

''(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

''(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

''(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

''(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

''(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

''(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

''(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

''(d) The Institute shall—

''(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

''(2) provide assistance to agencies regarding—

''(A) compliance with the standards and guidelines developed under subsection (a);

''(B) detecting and handling information security incidents; and

''(C) information security policies, procedures, and practices;

''(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

''(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

''(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

''(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

''(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

''(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

''(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

''(e) As used in this section—

''(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

''(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

''(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

''(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

''(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.''.

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking ''Computer System Security and Privacy Advisory Board'' and inserting ''Information Security and Privacy Advisory Board'';

(2) in subsection (a)(1), by striking ''computer or telecommunications'' and inserting ''information technology'';

(3) in subsection (a)(2)—

(A) by striking ''computer or telecommunications technology'' and inserting ''information technology''; and

(B) by striking ''computer or telecommunications equipment'' and inserting ''information technology'';

(4) in subsection (a)(3)—

(A) by striking ''computer systems'' and inserting ''information system''; and

(B) by striking ''computer systems security'' and inserting ''information security'';

(5) in subsection (b)(1) by striking ''computer systems security'' and inserting ''information security'';

(6) in subsection (b) by striking paragraph (2) and inserting the following:

''(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and'';

(7) in subsection (b)(3) by inserting ''annually'' after ''report'';

(8) by inserting after subsection (e) the following new subsection:

''(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.'';

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

''(h) As used in this section, the terms ''information system'' and ''information technology'' have the meanings given in section 20.''.

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL COMPUTER SYSTEM SECURITY TRAINING AND PLAN.—

(1) REPEAL.—Section 11332 of title 40, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, as amended by striking the item relating to section 11332.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''sections 11331 and 11332(b) and (c) of title 40'' and inserting ''section 11331 of title 40 and subchapter II of this title''; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

''(c) INVENTORY OF INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

''(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

''(3) Such inventory shall be—

''(A) updated at least annually;

''(B) made available to the Comptroller General; and

''(C) used to support information resources management, including—

''(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

''(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

''(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

''(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

''(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

''(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.''.

(3) Section 3506(g) of such title is amended—

(A) by adding ''and'' at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking ''section 11332 of title 40'' and inserting ''subchapter II of this chapter''; and

(ii) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

''POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL'';

(2) in subsection (a)—

(A) by inserting ''Attorney General,'' after ''President,''; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

''(g) ATTORNEY GENERAL.—

''(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

''(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.''.

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the ''Bureau'').

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the ''Director''). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of

law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''; and

(2) in section 9(a)(1)(L)(i), by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Tax and Trade Bureau''.

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking ''(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms'' and inserting ''by manufacturers of tobacco products to the Tax and Trade Bureau''.

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking ''the Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,''.

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

''(k) 'Attorney General' means the Attorney General of the United States.'';

(2) in section 846(a), by striking ''the Attorney General and the Federal Bureau of Investigation, together with the Secretary'' and inserting ''the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives''; and

(3) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking ''Secretary'' and inserting ''Attorney General'';

(2) in section 921(a)(4), by striking ''Secretary of the Treasury'' and inserting ''Attorney General'';

(3) in section 921(a), by striking paragraph (18) and inserting the following:

''(18) The term 'Attorney General' means the Attorney General of the United States'';

(4) in section 922(p)(5)(A), by striking ''after consultation with the Secretary'' and inserting ''after consultation with the Attorney General'';

(5) in section 923(*l*), by striking ''Secretary of the Treasury'' and inserting ''Attorney General''; and

(6) by striking ''Secretary'' each place it appears, except before ''of the Army'' in section 921(a)(4) and before ''of Defense'' in section 922(p)(5)(A), and inserting the term ''Attorney General''.

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

''(a) The Attorney General—

''(1) shall enforce the provisions of this chapter; and

''(2) has the authority to issue regulations to carry out the provisions of this chapter.''.

(h) Section 1952(c) of title 18, United States Code, is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

''(5) the term 'Attorney General' means the Attorney General of the United States''; and

(2) by striking ''Secretary'' each place it appears and inserting ''Attorney General''.

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking ''or the Bureau of Alcohol, Tobacco and Firearms'' and inserting '', the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,''.

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking ''SECRETARY.—Except'' and inserting ''SECRETARY.—

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

''(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

''(i) Chapter 53.

''(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

''(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.''.

(l) Section 2006(2) of title 28, United States Code, is amended by inserting '', the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,'' after ''the Secretary of the Treasury''.

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives'';

(2) in subsection (a), by striking ''Bureau of Alcohol, Tobacco, and Firearms,'' and inserting ''Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking ''or the Bureau'' and inserting ''or either Bureau'';

(B) in paragraph (2)—

(i) by striking ''or the Bureau'' and inserting ''or either Bureau''; and

(ii) by striking ''and the Director of the Bureau'' and inserting ''the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''; and

(C) in paragraph (3), by striking ''or the Bureau'' and inserting ''or either Bureau''.

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting ''and'' after the semicolon;

(B) in clause (iv), by striking ''; and'' and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Tax and Trade Bureau''.

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking ''Bureau of Alcohol, Tobacco, and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking ''Secretary of the Treasury'' each place it appears and inserting ''Attorney General''; and

(2) in subparagraph (3)(B), by striking ''Bureau of Alcohol, Tobacco and Firearms'' and inserting ''Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice''.

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting ''or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General'' after ''section 80304 of this title.''; and

(2) by inserting '', the Attorney General,'' after ''by the Secretary''.

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking ''(b) and (c)'' and inserting ''(b), (c), and (d)'';

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

''(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of

the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).''.

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking ''Secretary of the Treasury'' and inserting ''Attorney General''.

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

''§ 3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

''(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

''(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

''(A) the seizure, summary and judicial forfeiture, and condemnation of property;

''(B) the disposition of such property;

''(C) the remission or mitigation of such forfeiture; and

''(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

''(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

''(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.''.

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the ''Safe Explosives Act''.

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

''(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.''; and

(2) by adding at the end the following:

''(r) 'Alien' means any person who is not a citizen or national of the United States.

''(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.''.

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking ''and'' at the end;

(2) by striking subsection (a)(3) and inserting the following:

''(3) other than a licensee or permittee knowingly—

''(A) to transport, ship, cause to be transported, or receive any explosive materials; or

''(B) to distribute explosive materials to any person other than a licensee or permittee; or

''(4) who is a holder of a limited permit—

''(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

''(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder.''; and

(3) by striking subsection (b) and inserting the following:

''(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

''(1) a licensee;

''(2) a holder of a user permit; or

''(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.''.

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting ''or limited permit'' after ''user permit''; and

(B) by inserting before the period at the end the following: '', including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person'';

(2) in the second sentence, by striking ''$200 for each'' and inserting ''$50 for a limited permit and $200 for any other''; and

(3) by striking the third sentence and inserting ''Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.''.

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);'';

(2) in paragraph (4)—

(A) by inserting ''(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that'' before ''the applicant''; and

(B) by adding at the end the following:

''(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and'';

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

''(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.''.

(e) APPLICATION APPROVAL.—Section 843(c) of title 18, United States Code, is amended by striking ''forty-five days'' and inserting ''90 days for licenses and permits,''.

(f) INSPECTION AUTHORITY.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking ''permittees'' and inserting ''holders of user permits''; and

(B) by inserting ''licensees and permittees'' before ''shall submit'';

(2) in the second sentence, by striking ''permittee'' the first time it appears and inserting ''holder of a user permit''; and

(3) by adding at the end the following: ''The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) POSTING OF PERMITS.—Section 843(g) of title 18, United States Code, is amended by inserting ''user'' before ''permits''.

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

''(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

''(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

''(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

''(i) confirms the determination;

''(ii) explains the grounds for the determination;

''(iii) provides information on how the disability may be relieved; and

''(iv) explains how the determination may be appealed.''.

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''or who has been committed to a mental institution;''; and

(3) by adding at the end the following:

''(7) is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(8) has been discharged from the armed forces under dishonorable conditions;

''(9) having been a citizen of the United States, has renounced the citizenship of that person.''.

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking ''or'' at the end; and

(2) by inserting after paragraph (4) the following:

''(5) who is an alien, other than an alien who—

''(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

''(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

''(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

''(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

''(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

''(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

''(6) who has been discharged from the armed forces under dishonorable conditions;

''(7) who, having been a citizen of the United States, has renounced the citizenship of that person''; and

(3) by inserting ''or affecting'' before ''interstate'' each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(i) FURNISHING OF SAMPLES.—

''(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

''(A) samples of such explosive materials or ammonium nitrate;

''(B) information on chemical composition of those products; and

''(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

''(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.''.

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word ''shall'' the following: ''or any institution or organization receiving Federal financial assistance,''.

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

''(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

''(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

''(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.''.

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

''(p) THEFT REPORTING REQUIREMENT.—

''(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

''(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.''.

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''The Secretary of Transportation'';

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting ''AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—'';

(B) in the first sentence by striking ''the 180-day period following the date of enactment of this Act, the Secretary of Transportation'' and inserting ''the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary''; and

(C) in the last sentence by striking ''this paragraph'' and inserting ''this subsection''.

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

''(f) EXTENSION OF POLICIES.—

''(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

''(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

''(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

''(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.''.

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking ''(b)'' and inserting ''(c)''.

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Chief Human Capital Officers Act of 2002''.

SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

''Sec.
''1401. Establishment of agency Chief Human Capital Officers.
''1402. Authority and functions of agency Chief Human Capital Officers.

''§ 1401. Establishment of agency Chief Human Capital Officers

''The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

''(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

''(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

''(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

''§ 1402. Authority and functions of agency Chief Human Capital Officers

''(a) The functions of each Chief Human Capital Officer shall include—

''(1) setting the workforce development strategy of the agency;

''(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

''(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

''(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

''(5) identifying best practices and benchmarking studies, and

''(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

''(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

''(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

''(A) are the property of the agency or are available to the agency; and

''(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

''(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''14. Agency Chief Human Capital Officers ..... 1401''.

SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

''(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

''(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

''(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

''(ii) integrating those strategies into the budget and strategic plans of those agencies;

''(B) closing skill gaps in mission critical occupations;

''(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

''(D) sustaining a culture that cultivates and develops a high performing workforce;

''(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

''(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.''.

SEC. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

''(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.'';

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

''(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).''.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

''(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and''.

SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking ''and'' after the semicolon;

(B) in paragraph (2), by striking the period and inserting ''; and''; and

(C) by adding at the end of the following:

''(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

''(A) public notice has been given; and

''(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.''; and

(2) by inserting after section 3318 the following:

''§ 3319. Alternative ranking and selection procedures

''(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

''(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

''(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

''(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

''(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

''(1) the number of employees hired under that system;

''(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

''(3) the way in which managers were trained in the administration of that system.

''(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

''3319. Alternative ranking and selection procedures.''.

SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''§ 3521. Definitions

''In this subchapter, the term—

''(1) 'agency' means an Executive agency as defined under section 105; and

''(2) 'employee'—

''(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

''(i) is serving under an appointment without time limitation; and

''(ii) has been currently employed for a continuous period of at least 3 years; and

''(B) shall not include—

''(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

''(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

''(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

''(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

''(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

''(vi) any employee who—

''(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

''(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

''(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

''§ 3522. Agency plans; approval

''(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

''(b) The plan of an agency under subsection (a) shall include—

''(1) the specific positions and functions to be reduced or eliminated;

''(2) a description of which categories of employees will be offered incentives;

''(3) the time period during which incentives may be paid;

''(4) the number and amounts of voluntary separation incentive payments to be offered; and

''(5) a description of how the agency will operate without the eliminated positions and functions.

''(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

''§ 3523. Authority to provide voluntary separation incentive payments

''(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

''(b) A voluntary incentive payment—

''(1) shall be offered to agency employees on the basis of—

''(A) 1 or more organizational units;

''(B) 1 or more occupational series or levels;

''(C) 1 or more geographical locations;

''(D) skills, knowledge, or other factors related to a position;

''(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

''(F) any appropriate combination of such factors;

''(2) shall be paid in a lump sum after the employee's separation;

''(3) shall be equal to the lesser of—

''(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

''(B) an amount determined by the agency head, not to exceed $25,000;

''(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

''(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

''(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

''(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''§ 3524. Effect of subsequent employment with the Government

''(a) The term 'employment'—

''(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

''(2) in subsection (c) does not include employment under such a contract.

''(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

''(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States

Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

''(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

''(B) in case of an emergency involving a direct threat to life or property, the individual—

''(i) has skills directly related to resolving the emergency; and

''(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

''(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

''§ 3525. Regulations

''The Office of Personnel Management may prescribe regulations to carry out this subchapter.''.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

''CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'';

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

''SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

''3521. Definitions.

''3522. Agency plans; approval.

''3523. Authority to provide voluntary separation incentive payments.

''3524. Effect of subsequent employment with the Government.

''3525. Regulations.''.

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

''(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

''(B) is serving under an appointment that is not time limited;

''(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(i) 1 or more organizational units;

''(ii) 1 or more occupational series or levels;

''(iii) 1 or more geographical locations;

''(iv) specific periods;

''(v) skills, knowledge, or other factors related to a position; or

''(vi) any appropriate combination of such factors;''.

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

''(ii) is serving under an appointment that is not time limited;

''(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

''(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

''(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

''(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

''(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

''(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

''(I) 1 or more organizational units;

''(II) 1 or more occupational series or levels;

''(III) 1 or more geographical locations;

''(IV) specific periods;

''(V) skills, knowledge, or other factors related to a position; or

''(VI) any appropriate combination of such factors.''.

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking ''and a member of a uniformed service'' and inserting '', a member of a uniformed service, and a student who provides voluntary services under section 3111''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking ''chapter 81 of this title'' and inserting ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81''.

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking ''3393a'';

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

''(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.''; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting ''or'' at the end;

(ii) in paragraph (2), by striking ''or'' at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'';

(4) in chapter 83—

(A) in section 8336(h)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8339(h), in the first sentence, by striking '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive''; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking ''for failure to be recertified as a senior executive under section 3393a or''; and

(B) in section 8421(a)(2), by striking '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age''.

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

''(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

''(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

''(B) holds a position in or under an agency which is described in paragraph (2).

''(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

''(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

''(B) An agency's certification under this subsection shall be for a period of 2 calendar years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

''(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

''(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).''.

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting ''or as otherwise provided under subsection (d),'' after ''under law,''.

(2) Section 5307(c) of such title is amended by striking ''this section,'' and inserting ''this section (subject to subsection (d)),''.

Subtitle D—Academic Training

SEC. 1331. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

''§ 4107. Academic degree training

''(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

''(1) contributes significantly to—

''(A) meeting an identified agency training need;

''(B) resolving an identified agency staffing problem; or

''(C) accomplishing goals in the strategic plan of the agency;

''(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

''(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

''(b) In exercising authority under subsection (a), an agency shall—

''(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

''(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

''(B) provide employees effective education and training to improve organizational and individual performance;

''(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

''(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

''(A) a noncareer appointment in the senior Executive Service; or

''(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

''(4) to the greatest extent practicable, facilitate the use of online degree training.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

''4107. Academic degree training.''.

SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or''; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

''(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and''.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the ''Arming Pilots Against Terrorism Act''.

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

''§ 44921. Federal flight deck officer program

''(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

''(b) PROCEDURAL REQUIREMENTS.—

''(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

''(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

''(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

''(A) The type of firearm to be used by a Federal flight deck officer.

''(B) The type of ammunition to be used by a Federal flight deck officer.

''(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

''(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

''(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

''(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

''(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

''(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

''(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

''(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

''(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

''(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

''(M) Any other issues that the Under Secretary considers necessary.

''(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

''(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

''(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

''(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

''(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

''(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

''(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

''(2) TRAINING.—

''(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

''(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

''(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

''(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

''(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

''(C) TRAINING IN USE OF FIREARMS.—

''(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

''(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

''(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

''(d) DEPUTIZATION.—

''(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

''(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

''(A) the pilot is employed by an air carrier;

''(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

''(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

''(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

''(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

''(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

''(f) AUTHORITY TO CARRY FIREARMS.—

''(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

''(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

''(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

''(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

''(h) LIMITATION ON LIABILITY.—

''(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

''(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

''(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

''(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

''(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

''(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

''(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

''(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

''(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

''(k) APPLICABILITY.—

''(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the

extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

''(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.''.

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

''44921. Federal flight deck officer program.''.

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking ''The Administrator'' and inserting the following:

''(1) IN GENERAL.—The Under Secretary'';

(2) by adding at the end the following:

''(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

''(A) require both classroom and effective hands-on situational training in the following elements of self defense:

''(i) recognizing suspicious activities and determining the seriousness of an occurrence;

''(ii) deterring a passenger who might present a problem;

''(iii) crew communication and coordination;

''(iv) the proper commands to give to passengers and attackers;

''(v) methods to subdue and restrain an attacker;

''(vi) use of available items aboard the aircraft for self-defense;

''(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

''(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

''(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

''(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

''(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

''(C) establish the required number of hours of training and the qualifications for the training instructors;

''(D) establish the intervals, number of hours, and elements of recurrent training;

''(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

''(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

''(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

''(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

''(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge.''; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

''(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.''.

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

''(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.''.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking ''Secretary'' the first and third places it appears and inserting ''Under Secretary''; and

(2) in paragraph (2) by striking ''Secretary'' each place it appears and inserting ''Under Secretary''.

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term ''agency'' includes any entity, organizational unit, program, or function.

(2) The term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term ''completed administrative action'' includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) STATUTORY REPORTING REQUIREMENTS.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''and the Administrator of the Federal Aviation Administration each'' after ''for Security''; and

(B) by striking ''criminal violence and aircraft piracy'' and inserting ''criminal violence, aircraft piracy, and terrorism and to ensure security''; and

(2) in subsection (b)(1)—

(A) by striking '', the Under Secretary'' and inserting ''and the establishment of a Department of Homeland Security, the Secretary of Transportation'';

(B) by striking ''carrying out'' and all that follows through ''if the Under Secretary'' and inserting ''ensuring security under this title if the Secretary of Transportation''; and

(C) in subparagraph (C) by striking ''the safety of passengers in transportation'' and inserting ''transportation safety''.

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

''(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

''(1) IN GENERAL.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

''(A) be an unwarranted invasion of personal privacy;

''(B) reveal a trade secret or privileged or confidential commercial or financial information; or

''(C) be detrimental to the security of transportation.

''(2) AVAILABILITY OF INFORMATION TO CONGRESS.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

''(3) LIMITATION ON TRANSFERABILITY OF DUTIES.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.''.

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).''.

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking ''citizen of the United States'' and inserting ''citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))''.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting ''Homeland Security,'' after ''Transportation,'' each place it appears; and

(2) by striking ''; and'' each place it appears in paragraph (1) and inserting '';'';

SEC. 1702. EXECUTIVE SCHEDULE.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting ''Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(2) in section 5313, by inserting ''Deputy Secretary of Homeland Security.'' as a new item after ''Affairs.'';

(3) in section 5314, by inserting ''Under Secretaries, Department of Homeland Security.'', ''Director of the Bureau of Citizenship and Immigration Services.'' as new items after ''Affairs.'' the third place it appears;

(4) in section 5315, by inserting ''Assistant Secretaries, Department of Homeland Security.'', ''General Counsel, Department of Homeland Security.'', ''Officer for Civil Rights and Civil Liberties, Department of Homeland Security.'', ''Chief Financial Officer, Department of Homeland Security.'', ''Chief Information Officer, Department of Homeland Security.'', and ''Inspector General, Department of Homeland Security.'' as new items after ''Affairs.'' the first place it appears; and

(5) in section 5315, by striking ''Commissioner of Immigration and Naturalization, Department of Justice.''.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) IN GENERAL.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking ''of the Treasury'', each place it appears and inserting ''of Homeland Security''.

(2) Section 208 of title 3, United States Code, is amended by striking ''of Treasury'' each place it appears and inserting ''of Homeland Security''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) TITLE 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(2) Section 801(1) of such title is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(3) Section 983(d)(2)(B) of such title is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(4) Section 2665(b) of such title is amended by striking ''Department of Transportation'' and inserting ''Department in which the Coast Guard is operating''.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking ''Secretaries of the Army, Air Force, and Transportation'' both places it appears and inserting ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security''; and

(B) in subsection (b), by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(6) Section 7361(b) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(7) Section 12522(c) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking ''of Transportation'' and inserting ''of Homeland Security''; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking ''of Transportation'' and inserting ''of Homeland Security''.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking ''after consultation with the Secretary of Transportation''.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking ''of Transportation'' in the fourth paragraph and inserting ''of Homeland Security'';

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security'';

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking ''Secretaries of Army, Navy, Air Force, or Transportation'' and inserting ''Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,''; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security'';

(B) by inserting ''the Secretary of Health and Human Services and'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(C) by inserting ''of Health and Human Services'' after ''as are determined by the Secretary''; and

(2) in subsections (a)(2) and (b), by inserting ''of Health and Human Services'' after ''Secretary'' each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting ''and'' after the semicolon at the end of paragraph (1);

(B) by striking ''; and'' at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

''§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

''(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

''(b) OFFICERS AND AGENTS.—

''(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

''(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

''(A) enforce Federal laws and regulations for the protection of persons and property;

''(B) carry firearms;

''(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

''(D) serve warrants and subpoenas issued under the authority of the United States; and

''(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

''(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

''(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

''(d) DETAILS.—

''(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

''(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

''(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

''(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

''(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

''(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

''(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

''(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

''(1) preclude or limit the authority of any Federal law enforcement agency; or

''(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.''.

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

''1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.''.

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting ''for a period not to exceed 90 days'' after ''effective''; and

(2) in section 114(l)(2)(B), by inserting ''ratified or'' after ''unless''.

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking ''consultation with'' and inserting ''collaboration with the Secretary of Homeland Security and''.

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking ''Secretary of Transportation'' in the first sentence of subsection (a) and inserting ''Secretary concerned'';

(2) by striking ''Secretary'' each place it appears (except the first sentence of subsection (a)) and inserting ''Secretary concerned'';

(3) by striking ''Secretary's duties under chapters 203–213 of this title'' in subsection (d) and inserting ''duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)'';

(4) by striking ''chapter.'' in subsection (f) and inserting ''chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).''; and

(5) by adding at the end the following new subsection:

''(g) DEFINITIONS.—In this section—

''(1) the term 'safety' includes security; and

''(2) the term 'Secretary concerned' means—

''(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

''(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.''.

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after ''1970.'' the following: ''When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.''.

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting ''and laws, regulations, and orders related to railroad security'' after ''safety'' in the first sentence;

(2) by inserting ''or security'' after ''safety'' each place it appears after the first sentence; and

(3) by striking ''Transportation'' in the second sentence and inserting ''Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),''.

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking ''transportation'' the first place it appears in subsection (b)(1) and inserting ''transportation, including security,'';

(2) by striking ''aspects'' in subsection (b)(1)(B) and inserting ''aspects, including security,''; and

(3) by adding at the end the following:

''(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.''.

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking ''chapter or a regulation prescribed under this chapter'' in subsection (a)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security'';

(2) by striking ''chapter or a regulation prescribed under this chapter.'' in subsection (a)(2) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.''; and

(3) by striking ''chapter or a regulation prescribed under this chapter,'' in subsection (b)(1) and inserting ''chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,''.

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the Office of Homeland Security,'' after ''National Security Council,''.

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

''(14) Other Federal officials the Council considers appropriate.''.

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking ''under its label any vaccine set forth in the Vaccine Injury Table'' and inserting ''any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine''; and

(2) in the second sentence, by inserting ''including any component or ingredient of any such vaccine'' before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: ''For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.''.

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

''(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.''.

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

The SPEAKER pro tempore. Pursuant to House Resolution 600, the gentleman from Texas (Mr. ARMEY) and, without objection, the gentleman from California (Mr. WAXMAN) each will control 30 minutes.

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Texas (Mr. ARMEY).

GENERAL LEAVE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 5710 and to insert extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. ARMEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, what we are doing now is revisiting the issue of homeland defense. You will recall, Mr. Speaker, that in June the President challenged Congress to pass such a bill, and we went to work on it with a select committee appointed by the Speaker and the minority leader. On July 23 of this year the House passed H.R. 5005 by a vote of 295 to 132, more than two-thirds of the House.

Mr. Speaker, since that time we have waited upon the other body in terms of our hopes to have this work completed, and just last Friday the President again challenged Congress to work on this bill. During this period of time, from last Friday until today, we have had extensive consultation between Members of this body on the select committee, the committee of jurisdiction, the President, Members of the other body, and all of the committees that have jurisdiction on this bill.

In light of some of the concerns that we knew were fairly well known to us on the other side of the building, we were able to very quickly move through those issues that still remain, fully vet them with all interested parties, including the committees of jurisdiction in both bodies, and work out what we believe will be in the form of the bill before us right now a bill that can comfortably pass both bodies and be sent to the President for signature.

I should mention, Mr. Speaker, that this bill is essentially the same bill that was passed by the House of Representatives last July. There have been a few modifications that have been made to the bill but nothing that has not been fully vetted with the committees of jurisdiction and little that Members of this body will find objectionable.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I agree we need homeland security legislation. It is clear that the Federal Departments are not working together as they should to protect our Nation. Unfortunately, the bill that we are considering today has serious flaws. In fact, I think it may cause more problems than it solves.

I want to show two charts to this body. Here is how our homeland security agencies are organized today. This

one right here. You can see all the different Departments. And the next chart over here is how they will be organized after the new Department is created. We are getting more bureaucracy. We are doing so at a tremendous cost to the taxpayer.

According to the Congressional Budget Office, just creating and managing the new Department will cost $4.5 billion, and this does not include any additional spending to make our Nation more secure against terrorist attacks. This bill gives the new Department a vast array of responsibilities that have nothing to do with homeland security, such as administering the national flood insurance program and cleaning up oil spills.

This bloats the size of the bureaucracy and dilutes the Department's counterterrorism mission. At the same time, the bill has no effective mechanism to coordinate the activities of the new Department with those of the FBI and the CIA and the other agencies that continue to have major homeland security functions.

I opposed this bill when it was before the House in July. I had hoped that it would be improved by a deliberative process before it was brought back for final passage, but instead we were given a massive new bill this morning that is being rushed through the House with no opportunity for deliberation and amendment. We do not even know the full implications of what we are doing in this bill.

Now, I want to talk about one of the hidden provisions we found buried in this massive bill today. Section 304 severely restricts the abilities of persons killed or injured by the small pox vaccine to receive any form of compensation. In fact, if you do not take the vaccine, but are disfigured or blinded because of your contact with someone who did, your ability to receive compensation is severely curtailed. Now think about this for a minute. This was not in the House-passed bill. This was not in the bill considered on the Senate floor. Suddenly this bill appears with this provision in it.

Now, I authored the vaccine compensation system that compensates children who may be injured when they get a vaccine where there is a bad result. But what we are saying in this hidden provision in the fine print is if you are hurt, you are out of luck. The vaccine manufacturer is going to be protected. The vaccine manufacturer for all practical purposes is going to be immune from liability.

Now this may be a legitimate decision on which we can have a disagreement, but I would feel differently had it been brought up honestly, up front, debated. I cannot believe that more than 10 people in the Congress even know that this provision is in the bill to create a Department of Homeland Security. I feel that this is a special interest provision and should not have been brought up in this particular way.

Another new provision reverses the policy adopted overwhelmingly by the House that prohibited the new Department from contracting with expatriate companies that have fled the United States to avoid paying their taxes. There was an overwhelming vote in the House, a bipartisan vote, to say to those companies that fled this Nation to act as if they are a foreign nation so they would not have to pay taxes would not be permitted to contract with the Department of Homeland Security. Well, now we got this bill and that provision is missing.

Moreover, the most egregious special interest provisions from the House bill remain in this legislation. The bill gives immunity to companies that make faulty bomb detectors, gas masks, or other homeland security products even if they engage in intentional wrong doing. Can you imagine that? The bill also allows large campaign contributors to lobby the new Department for special favors in absolute secret. We used to have a Freedom of Information Act that could get this information out before the public, and now we have a new exception created to the Freedom of Information Act that would allow these secret negotiations.

While the fine print of the bill contains loopholes and special amenities for corporate America, Federal workers take it on the chin. Their right to engage in collective bargaining is eliminated. They are no longer guaranteed the right to appeal grievances to the Merit System Protection Board.

I do not know what we are thinking. This new Department, this new bureaucracy will not work without dedicated Federal workers. Yet this bill treats them like second-class citizens, and this bill also rebuffs the families of the victims of September 11. All they asked for was an independent commission to examine what happened on September 11. But although this commission won overwhelming bipartisan support in the Senate, it was suddenly dropped from the bill.

There is an old adage that those who do not remember the past are condemned to repeat it, but that is what we are doing today. The Department of Energy was created 25 years ago, and it is still dysfunctional. The Department of Transportation was created 35 years ago, but it still has major structural problems; and it took nearly 40 years for the reorganization of the Department of Defense to work.

When we consider a bill like this, there is a temptation to ignore the defects and just vote for it; and perhaps, most likely, that is what will happen tonight. But voting against this bill could be politically damaging sometime in the future. But some things are more important than politics. Genuinely enhancing our national security is more important than politics, and getting this bill right is more important than politics.

Mr. Speaker, we should come back next year and make sure we create this new Department in the best way possible.

Mr. Speaker, I reserve the balance of my time.

Mr. ARMEY. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY), an early leader in the effort to create such a Department as this.

Mr. THORNBERRY. Mr. Speaker, I thank the majority leader for yielding me time, and I thank him for his work on this measure. It may well be his most important contribution to the safety and security of his grandchildren. I also want to appreciate the staff who have worked so long and hard to make this possible.

Mr. Speaker, having worked on this issue for close to 2 years, I have had many doubts that it would ever come to this point; but now I believe it will happen.

□ 1845

This is not a perfect bill, and it is relatively easy for me and others to find fault, ways that we wish it would be different. But all of those individual differences we may have with provisions are no competition in my mind to the fact that time is slipping by. If we do not do it this week, we are at least 3 months further along, 3 months during which our enemies are plotting and planning against us, more time during which we are not as prepared as we could and should be, more months where we are not making preparations to protect ourselves.

Time is a critical factor. Just yesterday we had another threat, and whether it is bin Laden's voice or not, it is clear it is someone who intends to kill more Americans. He is very explicit in the threat. We cannot sit by and have differences over this provision or that provision keep us from acting.

Mr. Speaker, organizational reform is no panacea. It does not solve all of the problems with the FBI or the CIA. It does not do everything, but what it can do is take 22 agencies, existing agencies that are scattered around the government, bring them together under one chain of command so we can actually work together as a team and make things happen.

That does not mean it solves all of our problems, but it is an important step. It does not create more bureaucracy, it tries to get a handle on the bureaucracy we have and make it work more effectively. It is an important step for us to take tonight. Hopefully the other body will follow suit and the President can sign it into law so we can begin to make this country safer.

Mr. WAXMAN. Mr. Speaker, I yield 3½ minutes to the gentleman from Ohio (Mr. KUCINICH), a very important member of our committee.

Mr. KUCINICH. Mr. Speaker, I want to thank the gentleman from California (Mr. WAXMAN) for the time he has spent in pointing out that this reorganization really has not made the case that America is going to be safer once this bill passes. As a matter of fact, as the gentleman points out,

there is good reason to believe that a reorganization that will take at least 10 years and possibly more would cause a delay in real measures that could be taken to make this country somewhat safer. The American people want to feel safer; and 12,000 people in the last year were killed by handguns. This bill will not help them. Nor will it help the thousands of other Americans who die of violent crimes each year in this country.

What we have here is a paradoxical condition where the party which has gained the trust and support of the American people because of their challenge to big government suddenly becomes the party of big government advocating big government without really big services, big costs without big benefits, big security promises without big protections.

Americans ought to be concerned that we have the largest government department being created here in years without any indication as to how long the people of this country are going to have to wait to be safer.

So what is the alternative? One immediate alternative would be to provide more funds for local law enforcement. Every one of us knows that inevitably law enforcement in this country falls to the responsibility of the people at the local level. They know the communities. That is where we ought to be putting the billions of dollars that are going into creating a new bureaucracy.

There are a few other issues. Public safety depends on truth telling, exposing bureaucratic failings and busting cover-ups. The truth tellers are civil servants who blow the whistle, and in the largest Federal agency of all time being created today surely there are whistles to be blown, but this bill has dropped the protections. Our committee sat hours on end trying to ensure protections for whistleblowers. We passed the protections out of committee. They were stripped out of the bill.

Today if someone blows the whistle, is legally fired, they will not be able to get their job back or receive damages for unlawful firing. Whistleblower protection is critical for homeland security; without such protections, this bill fails.

In addition to that, we are talking about creating 22 different agencies into one large entity. That does not constitute efficient and effective government. I urge Members to vote no.

Before I conclude, the gentleman from California (Mr. WAXMAN) pointed out something about section 304(c) of the bill. I received a note from the American Association of Physicians and Surgeons, and they raise serious questions about the Secretary having unlimited power to define a real or potential threat to take any measures he decides, or to do it for as long as he wants. These are questions which have been raised about the administration of countermeasures against smallpox, will there be quarantines for smallpox immunizations, the definition of a bioterrorist incident. The American people need to know if this legislation is going to result in millions of Americans being forced to take smallpox immunizations and not having any legal protections if they are injured by those vaccinations.

Mr. ARMEY. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON), an extremely well-informed member of our Committee on Armed Services.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Speaker, the only tragedy in this debate is it has taken us 12 months after 9/11 to move on organizing our homeland security and 5 months after the President challenged us with a plan to bring together 22 agencies with 170,000 employees and a $38 billion budget.

The only tragedy is we passed this in June and here we are today finally getting around to doing the job of the American people. This may not be a perfect plan, but I can guarantee this is better than what we had before 9/11, and even what we have today. It addresses the issue of coordinating our intelligence.

In fact, one of the four key components of this new agency is something we in Congress called for in 1999 and 2000 and which the administration back then looked at us and laughed. It is required in this plan to have a coordination of intelligence and data fusion. This plan provides for support for our first responders. In fact, for the first time, the President has called for $3.5 billion of new money to support local emergency responders, police, fire, and EMS. It provides for transportation security and the transfer of technology and the research necessary to understand emerging threats like chemical and biological weapons.

This new piece of legislation finally implements a program that we paid for back in 1997 to use our satellites above to detect wildland fires so we can go into those areas of the West and deal with them immediately. That should have been done 5 years ago. This plan provides for that through a provision that was added in the final conference.

Mr. Speaker, I think of the firefighters across America who to this day cannot communicate with each other because they are on different frequencies, and we say we want more time. They do not have more time. The time to pass this bill is tonight. Hopefully it will pass with overwhelming bipartisan support, and then we will take the next step, and the next step is to deal with the oversight jurisdiction, and that is the role of the Congress.

Mr. WAXMAN. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois (Mr. DAVIS), the ranking member of the Subcommittee on Civil Service, Census, and Agency Organization.

Mr. DAVIS of Illinois. Mr. Speaker, I am pleased to see homeland security under serious consideration, but as a member of the Subcommittee on Civil Service, Census and Agency Organization, as one who has looked closely at this legislation, I am very concerned about provisions in this proposal that would grant the Secretary of the Department of Homeland Security and the Director of Personnel Management blanket authority to set pay and other conditions of employment without regard to existing civil service rules and protections.

As a matter of fact, passage of this bill could in fact diminish or take away hard-won worker rights and protections that it has taken years and years of blood, sweat and tears to achieve. This bill which purports to be a compromise would permit administration officials to completely disregard civil service laws in hiring, firing, promoting and setting pay for more than 170,000 employees from 22 agencies that will make up the new agency.

Today these employees are not subject to the whims of agency officials when it comes to their pay promotions and collective bargaining rights, but tomorrow they could be. While this compromise legislation may be a victory for the President, it is a defeat for the men and women who go to work every day to serve and protect their country. Many of us have fought to develop and promote safeguards for small businesses and small business development. I am also disappointed that a provision that would have ensured that small businesses were considered and included in contracts awarded by the new department was omitted from the bill.

A provision that would have established an Office of Small Business and Disadvantaged Business Utilization in the Department of Homeland Security was included in the original bill passed by the House but has been excluded from this bill.

Federal workers, small and disadvantaged businesses, and real compromise have all fallen victim to the imbalance of power that looms ahead in the legislative and executive branches of government. Passage of this bill will cause insecurity among workers and small business owners as they see themselves set back in the name of homeland security. I urge my colleagues to oppose this legislation and vote no.

Mr. ARMEY. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the Committee on the Judiciary, a committee of jurisdiction.

Mr. SENSENBRENNER. Mr. Speaker, the most important part of this bill is its dismantling of the dysfunctional Immigration and Naturalization Service. The bill abolishes the agency and separates immigration enforcement from immigration services, the key to reform.

The immigration enforcement half of the INS becomes the Bureau of Border Security in the Directorate of Border and Transportation Security. The head

of the enforcement bureau, the Assistant Secretary, will report to the Under Secretary of Border and Transportation Security and must have 5 years of law enforcement experience and 5 years of management experience. This work experience requirement will ensure that immigration enforcement is headed by someone with the expertise to enforce our immigration laws. The separation of this function from immigration services will allow the Assistant Secretary to focus on a single mission.

As current events have shown with the July 4 Los Angeles Airport shooter, Lee Malvo, and other recent alien criminals who have been released by the INS, an unencumbered immigration enforcement unit is long overdue.

The equally important immigration services half of the INS becomes the Bureau of Citizenship and Immigration Services apart from other DHS components. The Director of the services bureau reports directly to the Deputy Secretary of Homeland Security. This will ensure that immigration services receives the attention and resources that it needs, and that it will not be forgotten and neglected in a department otherwise devoted to fighting terrorism. Our government must remain welcoming to immigrants who follow our laws.

In addition, the bill requires separate budgets and accounts for the immigration services and enforcement bureaus so that each bureau receives all of its designated money and no poaching occurs, as has been known to happen between the two components in the current INS.

While the bill permits the President to consolidate components within the two bureaus to make them more efficient, it prohibits the President from merging the two bureaus back into one agency. This should ensure that the INS as we know it is history and our years-long effort to restructure this failed agency will be accomplished.

Mr. Speaker in addition to the monumental immigration and border security reforms contained in this bill, this legislation will profoundly affect Federal law enforcement. This legislation moves the Secret Service, Customs Service, Coast Guard, Border Patrol, Office of Domestic Preparedness, Federal Law Enforcement Training Center, and other law enforcement functions into the DHS.

□ 1900

At its core, homeland security is a law enforcement function, and law enforcement should be the predominant role. The Committee on the Judiciary will closely follow the integration of these important law enforcement entities to make sure they have the support and authority that they need to protect the country from terrorism and other criminal enterprises.

Finally, this legislation moves the law enforcement function of the Bureau of Alcohol, Tobacco, and Firearms to the Department of Justice as a distinct entity and makes important changes to the way we enforce explosives law and regulations.

I urge the membership to support this bill.

Mr. WAXMAN. Mr. Speaker, I am pleased to yield 4½ minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank the very distinguished ranking member of the Committee on Government Reform for yielding me this time.

Mr. Speaker, I rise in opposition to this legislation on several grounds. Up until now, this proposal has been heavy on message but troubling in its substance. Unlike the rhetoric, approval of this legislation will have some real consequences for the Federal agencies we are about to reshuffle, the 170,000 Federal employees who work for these affected agencies, and the American people.

Its origins are telling. You may recall that the Office of Homeland Security was created by an executive order on October 8, 2001. Unfortunately its director, Governor Ridge, was barred by the President from testifying before Congress, overruled in White House councils, and preempted by more powerful Cabinet members. Then as public opinion began to sour against an administration that refused to even let Governor Ridge testify in public before the Congress, the administration reversed itself and after some reshuffling of Federal agencies on chalkboards in the basement of the White House, the administration proposed the creation of the Department of Homeland Defense.

It is a clever proposal, but it is not the solution. We are in a war against a new and deadly threat, and we need the resources abroad both for our diplomats to build alliances and for our armed services to prosecute this war. And at home we need the resources to protect our citizens. If we were serious about this threat, we would see a budget. But we just passed another continuing resolution that keeps everything funded at spending levels that were proposed and approved more than 18 months ago, a budget developed before September 11, 2001.

Where is the money for first responders? $2.6 billion is what is needed and what the President's party just voted against this afternoon. Where is the money for the Transportation Security Administration, which assumed responsibility for airport security in just 6 days, on November 19? Where is the money to improve border security or hire more FBI agents? It is not there because we have not passed the fiscal 2003 appropriation bills, as the gentleman from California (Mr. WAXMAN) has made clear.

Instead, we are now considering a proposal to incorporate 22 existing Federal agencies and transfer more than 170,000 Federal employees. I am not sure that consolidating Federal agencies is sufficient to address the challenges that confront us. The difficulty in stitching together vast and disparate organizational cultures has overwhelmed some of the best CEOs in the private sector. It is a process that most CEOs will tell you takes years to complete and more resources than previously assumed. CBO estimates it will take 5 to 10 years to get this new agency up and running. This effort is going to divert us from the important task of protecting this Nation from possible future attacks. It may strengthen the lines of communication and accountability, but it does not provide the resources to get the job done.

The bipartisan Commission on National Security found that the Customs Service, the Border Patrol, and the Coast Guard were all on the verge of being overwhelmed by a mismatch between their growing duties and their mostly static resources. There are less than 7,000 customs inspectors and 619 canine officers to screen thousands of cargo containers and hundreds of thousands of vehicles entering the United States every day. Historically, most of these agencies have been starved of the resources they need to effectively carry out their mission. With 170,000 civil servants, they are going to have difficulty establishing a coherent and effective mission.

To be successful, we need to offer superior resources, equipment, and training. The workforce has to be given the incentive and expectation to improve performance. At a minimum, the new Department ought to be able to offer its employees pay parity and benefits. These adjustments are certain to add additional costs.

So why is the White House not asking for passage of the 2003 budget? That is what the White House ought to be asking us to do. The only response we have heard is that this reshuffling of agencies is going to be budget neutral.

It raises more questions than it answers. How are the agencies going to respond to programs that have nothing to do with homeland security? The Coast Guard's role in maritime safety and FEMA's role in national disasters are just a couple of examples. The CIA, the FBI and other intelligence agencies, they are the ones that are going to be gathering data. There is no access to raw data that these intelligence agencies monitor on the part of the Department of Homeland Security.

I do not think this is a good proposal. It ought to be opposed. We ought to come up with something better, and we ought to give what is better the resources necessary to carry out their function.

Mr. ARMEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Mrs. TAUSCHER), an original sponsor of this bill and one of the early innovators in the notion of homeland security.

Mrs. TAUSCHER. Mr. Speaker, I rise in support of this bill. This legislation is not perfect, but we must streamline the current bureaucracy if we are going

to protect the American people. I have been working for more than a year to create a Cabinet-level Department of Homeland Security. I would like to applaud the gentleman from Texas (Mr. THORNBERRY) for his prescient knowledge about this issue and for taking the Hart-Rudman report 6 months before September 11 and crafting good legislation that we could follow.

This legislation today accomplishes that by bringing together the homeland security components of our government, including the national laboratories, Coast Guard, Border Patrol, and first responders. I am glad that this bill gives the TSA flexibility to allow larger airports like Oakland, San Francisco, San Jose and Sacramento more time to configure their explosive detection systems. This will save commuters from long lines and ensure that limited resources are being spent on the best equipment available. I also support the extension of war risk insurance for the aviation industry that is included in this bill.

To those that claim that this bill will only create a bigger government, I say this is not about making more bureaucracy, this is about making the bureaucracy work better. To those that think it is far from perfect, I say, I agree. I am concerned that this bill does not create a center to analyze intelligence inside the new agency. And I am deeply concerned that this bill could allow the President to weaken the labor protections of civil service employees. But this bill is just a starting point, and I am committed to work to fix these issues.

We must take this important step toward coordinating the dozens of government agencies responsible for fighting terrorism. Just as we must transform our military to be lighter, faster and more lethal at the time of asymmetrical threats, we must transform this Federal bureaucracy to be more responsive to threats to the homeland.

I urge my colleagues to support this bill, and I urge this Congress to continue to work to cure this bill.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time. Who could be against homeland security? I guess anybody out there in the public would want to know why should there even be a debate about what we do about homeland security. But the reality is that all of us are for homeland security. The question is how do we get there. That is what this debate is all about.

About 2 weeks ago I participated in a debate on homeland security at Case Western Reserve University in my congressional district. On the panel with me was a gentleman from GAO and a professor who has looked over departments and consolidation over the years. One of the things that the professor raised was the fact that even with this new Department of Homeland Security, there are going to be so many more responsibilities placed on local governments, at the State level, at the county level, at the Federal level. And in this bill, though it is presumed that it is, there are not dollars there to support these local agencies to do that job.

When I think about it, and we thought about it in the session, if something happens in Cleveland, Ohio, I am not going to call the FBI; I am going to call 911, and 911 is going to call the Cleveland Police Department. But in this legislation, I do not believe there is adequate increase of dollars going to cities. It would have been nice when we had the opportunity to continue the COPS program that we had given or designated more dollars to local police departments. Another question I have is coordination. Another question I have is this whole issue of public employees who have given their time and effort to the Federal Government losing their labor rights as a result of a consolidation.

I think that all of us are concerned about homeland security, that all of us want to tell this world and the people that live in the United States that we are going to protect them. But before we rush down the line to make a decision on this new 170,000-person Department of Homeland Security, we must make a commitment to the people of the United States that we are really going to secure their homeland.

Mr. ARMEY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Missouri (Mr. BLUNT) and, with heartfelt congratulations, the whip-elect, for the purpose of having a colloquy with the distinguished gentleman from Alaska, the chairman of the Committee on Transportation and Infrastructure.

Mr. BLUNT. Mr. Speaker, I thank the majority leader for his kind comments and for yielding me the time.

I would like to engage in a short discussion with Chairman YOUNG on two issues which are very important to me and I feel need some clarification. This relates to the training of pilots to carry firearms in the cockpit of our commercial airlines and to the training of cabin crew members in self-defense methods. As the House knows, these provisions were included in this bill; and I feel they are important provisions. However, I want to make clear in my own mind and in the record that these programs are not intended to be a new cost factor for the Federal Government or for our economically challenged airline industry. I understand they are voluntary. Just as our Constitution protects the rights of all citizens to own firearms for self-protection, we have provided the ability for airline pilots to voluntarily request that they be allowed to carry firearms for the protection of their passengers and crew while performing their duties in flight and other cabin crew to be trained in self-defense methods if they choose to do so. Nevertheless, I want to make sure the following is completely clear:

One, the Federal Government and air carriers are not obligated to compensate a pilot or cabin crew member for participating in any training program, qualification or requalification to carry a firearm or to train in self-defense. Again, the word there is ''obligated.'' It does not mean that they cannot do it at the airline level, but they are not obligated to do it. And, number two, these training programs cannot be an excuse or reason to disrupt or otherwise interfere with any carrier's scheduled service. Therefore, an air carrier will certainly not be required to disrupt its scheduled service to accommodate a flight crew member's training after that crew member has already been scheduled for duty. These sections are not intended to cause further operational burdens on the airline industry. I just want to be sure in my own mind in this discussion with Chairman YOUNG that I understand what this does in a proper way.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. BLUNT. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, this gentleman, of course, is the chairman of the Committee on Transportation and Infrastructure. I agree with the gentleman's points. As the sponsor of the original bill for allowing the pilots to be armed in the cockpit, this is neither a mandate to disrupt schedules nor a requirement that either the Federal Government or air carrier compensate any crew member for these voluntary programs. I want to stress voluntary programs. It just gives a chance for the pilots themselves to arm and to properly train.

Mr. BLUNT. I thank the gentleman for that clarification.

Mr. WAXMAN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Florida (Ms. BROWN).

(Ms. BROWN of Florida asked and was given permission to revise and extend her remarks.)

Ms. BROWN of Florida. Mr. Speaker, I do have a question for Chairman YOUNG at the appropriate time. I want to make my statement and put it in the RECORD, but on that same subject as far as the gun provision as put in the RECORD and the colloquy, can you clarify for me whether or not these pilots are going to be trained to carry these guns and how will it affect the public if the pilot accidentally kills someone?

Mr. YOUNG of Alaska. If my good friend will yield, I can suggest to her respectfully, under the bill they have to have the training; and I would rather have my pilot be armed and defend that cockpit as against an F–16 to be shot down. That is the whole intent. So in the bill they are trained, yes. All this says is that it is a voluntary process they go through, but the training is necessary.

Ms. BROWN of Florida. But they will be trained?

Mr. YOUNG of Alaska. Oh, absolutely.

Ms. BROWN of Florida. Yes, sir.

Let me just say as far as the bill is concerned that it is still the same flawed bill that this House passed in August. The problems with creating an agency of this size are still there. I do not see any new solutions. This bill is still taking agencies with important non-homeland security duties and placing them in agencies with no mission statement.

□ 1915

The first agency to respond to the terrorist acts of September 11 was the United States Coast Guard. Within minutes, they were guarding our ports, bridges, and waterways from home. It was so reassuring to know that they were out there protecting us while other agencies were still in shock, all under the supervision, by the way, of the Department of Transportation.

I am strongly opposed to transferring the Coast Guard to the Department of Homeland Security. Moving the Coast Guard to the new department is not in the best interest of the Coast Guard, the Department of Homeland Security, or the American people.

Each year the Coast Guard conducts over 40,000 search and rescue cases. They inspect U.S. and foreign flag ships and protect millions of U.S. citizens who travel on cruise ships and ferries each year. Over 80 percent of the Coast Guard's operation budget is spent on missions that have nothing to do with border protection or Homeland Security.

Another reason why I oppose this bill is because of the horrible labor provisions. This bill does away with American workers' basic right to join together and stand up for their rights. This is just another example of the Bush administration's union-busting policy. Under the pretext of national security, the compromise legislation does away with all provisions of our Nation's civil service laws for employees of this new department and allows the President to strip employees of their rights to collective bargaining. In this bill employee unions could appeal even anti-worker personnel rules; yet they have no real power to overturn this.

We have heard many problems with the new Transportation Security Agency. The problems TSA is facing are a perfect example of why we need to be more deliberate in creating a homeland security agency. The Republican Party is supposed to be the party of small government, but today they are creating a huge monster.

Mr. ARMEY. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from Connecticut (Mr. SHAYS), chairman of the subcommittee of jurisdiction, who has held over 30 hearings on this subject.

Mr. SHAYS. Mr. Speaker, we have been given a great opportunity to protect our countrymen and the world.

The Bremer Commission, the Gilmore Commission, the Hart-Rudman Commission, all warned us to wake up to the terrorist threat. Unfortunately that call came on September 11.

We need to know, as these commissions urged, what is the threat, what is our strategy? And how are we going to reorganize to deal with implement this strategy?

The threat is real. We are at war with terrorists to shut them down before they use weapons of mass destruction against us. This threat requires a new strategy. It requires detection and prevention. It requires us to be proactive and in some cases preemptive.

This new strategy requires us to reorganize, to take various government departments and bring them together in a focused, unified approach under the four pillars outlined by the President. The first has a border and transportation focus. The second is emergency preparedness and response; one place for first responders to come to in our government and one place for resources to go out to them.

The third pillar provide chemical, biological, and nuclear countermeasures. And the final pillar is information analysis, the plug into the intelligence community.

We need to reorganize our government to be able to implement our new strategy and confront the new terrorist threat facing this Nation and the world. We need to wake up and do it now.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the homeland security bill has a number of problems with it that invite my opposition. First, it has aviation provisions that will diminish security and safety. It will give inequitable benefits to airlines and private security companies. It extends the current deadline for screening all checked baggage for explosives, with the most modern explosive detection systems. Rather than encouraging delay, we ought to be pushing the Transportation Security Administration to meet existing deadlines. We should force TSA to use equipment that is now sitting in warehouses and give them the funding they need to acquire that equipment and meet the deadline rather than extend the deadline.

The bill requires TSA to allow unlimited numbers of pilots to carry guns. The Bush administration, their Secretary of Transportation, the Transportation Security Administration agree with me that there are many unanswered questions about widespread arming of pilots, whether that would create more safety hazards than security benefits. There should be no more than a trial program until these issues are resolved with a very small number of pilots.

The bill gives much needed relief to the airline from insurance costs. Yes, I am for that. But it provides no help, no assistance to airline workers who lost their jobs, lost their health insurance, deserve better from this Congress, were promised better by this Congress from this very well. The bill limits the liability of private security companies, including foreign-owned companies, for the tragedy of September 11. That is an abomination. That should not be permitted in this legislation.

The bill continues to have the Commandant of the Coast Guard report directly to the Secretary of Homeland Security. It allows all of the Coast Guard's homeland security missions, however, to be transferred from the Coast Guard, an agency that has defended our shores for over 200 years.

Mr. Speaker, I rise in opposition to H.R. 5710, the Homeland Security Act of 2002.

The aviation provisions in the bill will diminish security and safety, and give inequitable benefits to airlines and private security companies. In particular, H.R. 5710 would extend the deadlines for installing explosive detection systems (EDS) to screen checked baggage at airports; provides the airlines with $1 billion in relief from insurance costs, while providing no assistance to those airline workers who have lost their jobs and their health insurance; limits the liability of private security companies, including foreign owned companies, for their roles in the tragedy of September 11th; and requires the Transportation Security Administration (TSA) to allow unlimited numbers of pilots to carry guns.

Screening of checked baggage is a major building block in the comprehensive security program we need—a program with redundancies similar to the redundant safety systems, which have resulted in our airlines' outstanding safety record.

Extension of the December 31 deadline will do great harm. It will take all the pressure off TSA and the airports, and we will fail to install many explosive detection machines that could have been in place by December 31. This will increase the risk that we will fail to detect an explosive device in baggage checked by a suicide bomber.

Rather than encouraging additional delay, we should be pushing TSA to make every effort to meet the existing deadlines. We should force TSA to use equipment now sitting in waterhouses, and give them the funding they need to meet the deadline. Existing law allows TSA to deal with cases where a brief delay is needed. The Aviation Security Act requires that all baggage that cannot be inspected by EDS must be either matched with a passenger on the aircraft, or inspected by another means, such as a manual search, or canine detection in combination with other means.

Before we extend any deadline for EDS deployment, we should ensure that such extension requires the TSA to improve the interim program by mandating positive bag match for connecting passengers, and by requiring that more bags be subject to direct inspection.

The American traveling public wants to feel secure when they fly, and part of that security is knowing that their bags have been thoroughly screened for explosives when they board an aircraft.

As to extending the war risk provisions for another year, I support legislation to give the

industry relief from the extraordinary problems created by September 11th and those that will arise from a war with Iraq. The Aviation Subcommittee has reported out legislation to deal with many of these problems; increased costs for insurance against terrorism, the loss of freight and postal business because of security restrictions, inadequate compensation to the airlines for some extraordinary security costs, and the implementation of passenger screening programs that unnecessarily inconvenience passengers who do not threaten security.

But there is a dark cloud hanging over our efforts to help the industry. While H.R. 5710 gives the airline industry financial relief from problems created by terrorism and war, the bill does not extend the same fair treatment to industry employees, who have also suffered disproportionately from terrorism and war. I and my colleagues on this side of the aisle insist that there must be balance in any relief package for the airline industry. H.R. 5710 does not remedy this problem, and therefore I am unable to support it.

This is not a new issue. When we passed a $15 billion assistance bill soon after September 11, I, and many of my colleagues, insisted that if the airline companies were to be afforded relief, so should employees who had lost their jobs. The Republican leadership told us that there was no time to develop a consensus proposal on employee relief, but on the House Floor, Speaker HASTERT promised prompt consideration of employee relief, including financial assistance, ability to retain health insurance, and training for new careers. Regrettably, the leadership has not followed through, and the House has never considered assistance for displaced airline employees.

Aviation industry workers, including employees of airlines, Boeing and aerospace suppliers, and airports, have suffered unprecedented job loss and economic uncertainty. Some 100,000 airline employees are out of work or facing imminent layoff. Another 30,000 Boeing workers are laid-off along with 51,000 additional aerospace employees. And with bankruptcies looming large, it is easy to conclude that the staggering job losses will only grow.

If the airline industry is entitled to special relief because it has suffered disproportionately from terrorism and war, its displaced employees are also deserving of relief.

Moreover, H.R. 5710 includes a special interest provision to immunize airport screening companies whose negligence may have contributed to the September 11 terrorist hijackings.

In the Aviation Security Act, we expressly decided that private screening companies should not be relieved of liability for any of their security deficiencies that played a part in the September 11th tragedies. However, H.R. 5710 would extend this protection to firms such as Globe Aviation Services and Huntleigh USA Corp., the security companies responsible for providing staff at Logan Airport on September 11th and that continue to contract with TSA today.

This provision is nothing more than a special interest provision that protects negligent airport screening companies at the expense of the victims of the September 11th tragedy.

Further, the bill requires TSA to allow unlimited numbers of pilots to carry guns. The Bush Administration agrees with me that there are many unanswered questions as to whether widespread arming of pilots would create more safety hazards than security benefits. Until these issues are resolved, there should be no more than a trial program with a small number of pilots.

I am also opposed to the bill because of provisions which threaten the ability of the Coast Guard and FEMA to carry out all of their important responsibilities, some of which involve security, and some of which do not. For example, in addition to security, the Coast Guard has responsibilities for maritime safety, environmental protection, and drug interdictions and FEMA has responsibilities for aiding recovery from natural disasters, such as floods and hurricanes.

The bill now before us divides these agencies and threatens their ability to continue to fulfill all of their responsibilities.

Although the bill continues to have the Commandant of the Coast Guard report directly to the Secretary of Homeland Security, it allows any or all of the Coast Guard's Homeland Security missions to be transferred from the Coast Guard—an agency that has defended our Nation's shorelines for more than 200 years. Under the bill, only non-homeland security missions of the Coast Guard may not be transferred from the Coast Guard.

We have been told that the intent was to keep the Coast Guard intact. How can you do that if you allow their homeland security missions to be transferred out of the agency?

Similarly, the bill splits the Federal Emergency Management Agency (FEMA) in two by transferring and consolidating FEMA's Office of National Preparedness into a new Office of Domestic Preparedness, which is under the Directorate of Border and Transportation Security, and transferring the remaining portion of FEMA to the Directorate of Emergency Preparedness and Response. By splitting FEMA in two, we threaten the effectiveness of one of our Nation's most effective and most respected agencies.

Moreover, this is essentially the same scheme that this Body rejected in July when, during consideration of the Homeland Security bill, the House unanimously adopted an amendment to ensure that FEMA would be kept intact within the new Department of Homeland Security.

In view of these and other deficiencies ion the bill now before us, I am convinced that the bill will do more harm than good. I urge defeat of the bill.

AVIATION

H.R. 5710, the Homeland Security bill, includes aviation provisions that will diminish security and safety, and give inequitable benefits to airlines and private security companies.

The bill extends the current deadline for screening all checked baggage with explosive detection equipment. Rather than encouraging additional delay, we should be pushing the Transportation Security Administration (TSA) to make every effort to meet the existing deadlines. We should force TSA to use equipment now sitting in warehouses, and give them the funding they need to meet the deadline. Existing law allows TSA to deal with cases where a brief delay is needed.

The bill requires TSA to allow unlimited numbers of pilots to carry guns. The Bush Administration agrees with me that there are many unanswered questions as to whether widespread arming of pilots would create more safety hazards than security benefits. Until these issues are resolved, there should be no more than a trial program with a small number of pilots.

The bill gives the airlines $1 billion relief from insurance costs, while providing no assistance to those airline workers who have lost their jobs and their health insurance.

The bill limits the liability of private security companies, including foreign owned companies, for the tragedy of 9/11.

COAST GUARD

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FEMA

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In addressing the issue of our Nation's homeland security, we must get it right and this bill does not begin to achieve that objective.

I urge my colleagues to defeat this bill.

Mr. ARMEY. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. WELDON), my wife's favorite Congressman.

Mr. WELDON of Florida. Mr. Speaker, I thank the majority leader, and I am truly honored to be described in that fashion. Let me commend the gentleman on the outstanding work he has done in shepherding what I think was one of the most problematic pieces of legislation to come through this body.

Mr. Speaker, I am the chairman of the Committee on Civil Service, Census and Agency Organization, and I want to just specifically comment on the civil service issue which I think was the item that was really holding this up more than anything else. And with 1 minute I cannot get into this in detail, but I feel very, very strongly that this is a good compromise product. And indeed as the gentleman from Ohio (Mr. PORTMAN), my friend, said earlier today, and I am in 100 percent agreement with him, this will be probably the best civil service system within the

Federal Government and can actually serve as a model for how we can reform the entire system so that it does what the American people want, which is really promote and reward excellence within our civil service work force, and that is what the people want who work for our Federal Government and that is what is necessary to protect the American people.

This is called the Department of Homeland Security. Let us remember their mission: Protecting the public.

Mr. ARMEY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio (Mr. PORTMAN), a member of the Select Committee on Homeland Security.

Mr. PORTMAN. Mr. Speaker, I thank the chairman for yielding me this time. His passion and his persistence are the reason that we are here tonight to do this important work, and I appreciate the role he played in moving this legislation through the system as chair of the Select Committee on Homeland Security.

Mr. Speaker, there is an old saying that goes ''Times change and we change with them too.'' Times have changed and it is imperative to the security of our country, security of our families that our government change as well.

On September 11, 2001, the terrorists who struck our homeland killed more civilians than all our foreign enemies combined. We all woke up to the fact that the threats we face now are very different from the ones we faced in the past. During the Cold War, we adapted our government structure to better utilize the resources we had to fight then a superpower. Today we face a more unpredictable and a more agile enemy and a very deadly enemy, and today we must reorganize our government again so we can stop that enemy before it strikes again, and we are not ready. There are over 100 departments and agencies with some involvement in homeland security, and when every one is in charge, no one is in charge. There is no accountability in the current system.

Last summer President Bush presented to the Congress a very ambitious and visionary plan to merge and consolidate responsibilities in a new Department of Homeland Security, similar to what Senator LIEBERMAN had proposed and what various commissions had proposed. He laid out three strategic objectives: First, prevention of attacks; second, minimizing our vulnerabilities; and, third, minimizing the damage and maximizing recovery should an attack occur. These three pillars provided us with a clear framework to align our resources, people and capital, and to align responsibility and accountability. This single unified structure will make us more efficient, will make us more effective in the fight against terrorism. It will not make us immune, but it will make us safer.

I strongly believe in what we are doing tonight, not because we are creating a new department but because we are doing it the right way. We are giving this President and future Presidents the flexibility they will need to make it work. That is budget flexibility; it is organizational flexibility; and, yes, it is personnel flexibility to be sure the right people are in the right place at the right time to protect us. The 21st century threats that we now meet head on cannot be handled by early 20th century civil service rules and bureaucracy. So, yes, the President and the new Secretary of Homeland Security will have the flexibility to design a new human resources management system, but it is one that will preserve fundamental civil service and worker protections while at the same time building a team atmosphere that is absolutely crucial by rewarding and promoting excellence and ensuring that we can do all we can to recruit the best people to this task.

We have before us, Mr. Speaker, a bill that will both protect the homeland and protect workers' rights. It is the right balance.

Mr. Speaker, I urge my colleagues on both sides of the aisle to strongly support this legislation before us tonight. It represents an agreement between the House and the Senate and the White House, and by joining together we will send a strong message to the American people and to the other body that we are committed to doing all we can to protect our families and our country.

Mr. ARMEY. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATTS), the chairman of our conference and a member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Speaker, I thank the gentleman from Texas (Mr. ARMEY) for yielding me this time. I appreciate very much his leadership that he has shown on this issue and his persistence.

Mr. Speaker, I rise to support this historic initiative to bolster the safety of Americans with an effective and focused Homeland Security Department. We are making the bureaucracy work for the American people rather than having the American people work for the bureaucracy.

The House has come back to work in a post-election session so we can pass an initiative that has languished for far too long. One year, 2 months and 2 days have passed since attacks on our Nation provoked the war on terror. Our military has responded with might abroad, but our vulnerability remains unnecessarily high here at home. From seaports to the air, roads to the rail, terrorists have too many opportunities to exploit openings in a hole-ridden fence that is supposed to be our homeland defense.

I have been working on this issue for many years, and I was privileged to be a member of the Select Committee on Homeland Security. I commend my colleagues on that panel for their commitment, and I salute the President for his steadfast perseverance even as many thought we could not get the job done this year.

The domestic terrorism waged on my home State in 1995 opened the eyes of Americans to the evil that can be perpetrated by as few as two people. The bombing of the Oklahoma Federal building forever changed the lives of citizens who thought they were safe. The hijacking of four airplanes on September 11, 2001, multiplied that catastrophe to unspeakable proportions. Today, we are about to take a bold step to respond to such evil by learning from the actions of the past to prepare for unforeseen acts of terror in the future.

The Department of Homeland Security will organize a government that is fractured, divided, and underprepared to handle the all-important task of defending our great Nation from terrorist attack.

My colleagues on the other side of the aisle have tried to muddy the waters by invoking special interests over national security. But that is not what this bill is about. The President needs the freedom and flexibility to protect the homeland. He, just like every Commander in Chief since Jimmy Carter, must continue to have the ability to use presidential prerogative when it comes to the safety of the country.

An amendment I offered months ago in committee remains in today's legislation and will help foster a better relationship between the private sector and the new department by establishing a private sector liaison in the Secretary's office.

□ 1930

This liaison will also work with government researchers and academia to procure the best tools mankind has to offer.

Again, we are talking about the security of our Nation. A promise made is a promise kept. By creating a Department of Homeland Defense, we will be better prepared for acts of terror.

This is an important victory for the safety of Americans from coast to coast, border to border. I urge my colleagues to pass this bill and help secure the future of this great land of ours we call home and the rest of the world calls America.

Mr. WAXMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me thank the gentleman from California (Mr. WAXMAN), of course, for his leadership, and as well the bipartisan committee that was crafted in the House reflecting the work of many of our committees.

Might I say for a moment that I do want to acknowledge the work of the majority leader, a colleague of mine from Texas. Not knowing what legislative agenda we will have tomorrow, I

would say to the gentleman from Texas (Mr. ARMEY), this might be a great swan song; and we thank the gentleman very much for the work that he has done.

I do want to raise some issues, and I appreciate the work of the Committee on Science and acknowledge that this may be the most important legislation created since maybe the creation of the now Defense Department, then the War Department, because it does deal with defense, security, domestic security, and ensuring that America is safe.

But we also have to have an agency that works, a Department that works. The Committee on Science appreciates the creation of the Under Secretary for Science and Technology and a Homeland Security Institute, because part of our security is in fact based upon the knowledge that we have.

I am somewhat disappointed that the idea I had involving involvement and consultation with NASA because of its extensive satellite system was not included, but I would look forward to this legislation being amended forthwith so we can work with this and improve it. I am also concerned about the function of the Inspector General and the issue of purging waste, fraud and abuse; and I am concerned as to the structure of that particular position.

Moving quickly to the immigration issues on the Judiciary Committee, I am gratified that the Department of Children's Affairs does still exist as we had designed it under the immigration legislation and in the Committee on the Judiciary, which separates out a procedure for children who are unaccompanied who are coming in as illegal immigrants. I believe that children need to be handled differently, and the gentlewoman from California (Ms. LOFGREN) and myself were very keen on this issue, and we thank those for their support.

Let me also say I am very much appreciative of the fact that we do have a bureau that deals with immigration services. I think that is good; and I think we should make sure this is a country of immigration, and immigration does not equate to terrorism.

I hope this bill has some ability to bring people together, but I also hope we will look at it in the future and make it a better bill.

Mr. ARMEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. MICA), the chairman of the Subcommittee on Aviation.

Mr. MICA. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, not only is this an excellent bill that gives the President the flexibility he needs to provide homeland and domestic security, but this bill has some excellent provisions relating to aviation security and the future security of the aviation industry and our Nation. Let me address a couple of points that have been made here today.

First of all, the extension on the checked baggage screening requirement. The week of November 12, 2001, when we passed the bill before it was signed into law November 19, we knew that we could not manufacture the equipment necessary, that it would be ludicrous to spend billions of dollars to try to meet arbitrary deadlines with equipment that does not work. But what we provided for here is equipment that will work, that can be installed on a realistic basis; and we have assisted our airlines in not compromising security by putting in place in fact the very best measures.

We also put a provision in here to arm our pilots. They asked for that protection. That is a good provision and it is long overdue, because we know they are the last line of defense; and they have requested this, seeing the gaps in the security system in transition. So I am pleased with that provision.

Finally, the survival of the aviation industry. The war risk provisions and liability provisions are excellent. We held hearings on this issue, and one of the greatest areas of loss for our aviation industry is not being able to either obtain or obtain at reasonable cost liability and war risk insurance.

This does not compromise security, it does not compromise jobs, and it does not compromise the future economy and progress of this Nation.

So, Mr. Speaker, this is not a perfect bill. But it is a good bill, and it has some excellent provisions. I urge my colleagues to support this measure.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from California (Mr. WAXMAN) has 3 minutes remaining, the gentleman from Texas (Mr. ARMEY) has 5 minutes remaining, and the gentleman from Texas has the right to close.

Mr. WAXMAN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I listened to the arguments on the other side from people for whom I have an enormous amount of respect. The gentleman from Texas (Mr. THORNBERRY) has been working on this issue for some time, and the gentlewoman from my own State of California (Mrs. TAUSCHER) has also been very involved in creating such a Department. I, too, have supported the idea of a Department for Homeland Security. But I think this bill creates so much bureaucracy and inefficiency that I fear that it will not accomplish its purpose.

Primarily, what we should do is coordinate the activities of the FBI and the CIA. We know the history of the FBI and its problems. Problems such as Hansen, a double agent, and how the FBI pursued Wen Ho Lee. We know about the ongoing problems of coordinating between the FBI and the CIA. This bill does not do anything to enhance the cooperation between these two agencies.

Instead of giving the White House the authority to review the budgets and to coordinate the activities of the agencies of government involved in defending our homeland, this bill takes all those agencies of government and puts them into a new Department. Now there has to be a new bureaucracy set up in this new Department with all these new employees who used to do other things in other agencies to try to make this whole thing work.

The President was not originally for this Department. The idea came from Senator LIEBERMAN, particularly, and others. Many of us argued there should be a Homeland Security Department with the power to streamline, not bureaucratize. One that would be limited. One that controlled the operations of our border agencies, immigration, customs. We ought to have something along those lines. One with the White House authority written into law.

The President created an Office of Homeland Security and appointed Governor Ridge, but that office does not have the authority to make its decisions stick with other parts of the Federal Government bureaucracy. I, with all due respect, think this is a real problem with this bill.

In addition, we have not heard anybody on the other side get up and defend the smallpox special interest provision, the protection for the manufacturers of the vaccine. No one has even raised that issue on the other side. It was not in any bill that passed the House nor was before the Senate. Suddenly it appears here, condemning people who are injured with the inability to sue if there was negligence on the part of a manufacturer of a vaccine. This is the ordinary way in which they can pursue those claims at the present time.

Why is this special interest provision suddenly in this bill? Why is that here, without any opportunity to have it reviewed or analyzed? Why do we have provisions in this bill that protect the manufacturers who engage in negligent behavior when creating devices to be used for homeland security?

I am troubled by the way this whole bill has been considered, and I would urge my colleagues to vote against the legislation.

Mr. ARMEY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I have listened carefully to the arguments in opposition to this bill. One reason being, Mr. Speaker, when we began this debate I was fascinating myself with the question of how could anybody oppose this bill. These are the four complaints I have heard:

One, there seems to be a concern that the bill is being rushed to the floor. The gentleman from California just pointed out, the President of the United States for a long time did not adopt this idea. It had been proposed by many people, and many Democrats. Only after seeing the thorough need and the thorough possibilities for success did the President in June propose Homeland Defense.

This House of Representatives worked on it, and with the Select Committee working in consultation with

all the committees of jurisdiction in this House, with testimony taken from the chairman and ranking member of each of these committees, produced the bill that was brought to this floor and passed on July 23 with 295 votes. We have waited on the other body; and only after an exhaustive wait did the President propose, insist, last week that we move forward, and now it appears that both bodies will.

Pursuant to the President's insistence of last week, we have worked literally night and day in consultation with all the committees of jurisdiction in both bodies and with the White House to craft this legislation which today we bring to the floor.

In that regard, Mr. Speaker, let me say that we owe an expression of appreciation to so many staff on both sides of the aisle, on both sides of the building and in the White House and the agencies of the government for all of their hard work, night and day, literally, for the last 4 or 5 days.

But may I take just a moment for a special thank you. Those men and women who labor on behalf of all of us in the Office of Legislative Counsel are too seldom recognized; and with the indulgence of this body, let me single them out for special appreciation for the efforts they have made.

No, this was not rushed to the floor. We worked hard on it; we worked together on it. Virtually every Member of this body and the other body was consulted in some way on some part of this bill.

We are told that America does not care about homeland security. Were you not listening? I think they made the point last week. They do care. It is important.

We were told that Members did not get to participate. I know of no piece of legislation brought before this body in my 18 years I have been here where there has been more comprehensive, committee-by-committee, subcommittee-by-subcommittee, Member-by-Member participation in the process of preparing the bill.

We were told that the bill was being offered for political purposes in anticipation of the next election. Mr. Speaker, let me say as my final point, I know of no time in my 18 years in this body where the principal author of a bill brought to this floor had less interest in the next election than this time here.

Mr. BLUMENAUER. Mr. Speaker, from the beginning of the homeland security debate, after studying evidence and listening to Oregonians, my priorities have been clear. Strengthening the capacity of our government agencies to defend our nation from terrorist attacks is necessary and vital to our society. Our nation will benefit from better communication among federal agencies and from improved safety of air travel, our borders, our ports, and our water supplies. However, we must develop a focused strategy to protect our nation rather than taking cosmetic actions.

We need to address the intelligence failures that led up to the event of September 11. We need to work with local governments to coordinate responses to future attacks. The proposed Department does not address either. A massive restructuring of the federal government will not necessarily improve the security of our nation.

As has been documented time and again in jarring detail by the news media, the FBI and CIA were not properly coordinated before September 11. This enormous reorganization, rather than dealing with fundamental problems between these two agencies, adds a third governmental department to the uncoordinated mix.

My own experience is that government reorganizations are difficult and complex. There are many demands on employees and stripping away workers' protecting will only create friction and uncertainty. It would be more simple and fair to make adjustments for those employees that work primarily with intelligence or terrorism investigations than to strip away the collective bargaining rights of all employees included in this new government.

Finally, the timing is problematic. The leadership rushed the first bill through the House in an attempt to pass it into law before the anniversary of September 11. Now, just days after the election, the House and Senate Republicans produce a new bill, exempting labor protections for workers, in back room negotiations. A significant reorganization would be better served by an open, inclusive process. The Homeland Security Department, as proposed in this bill, will detract from our ability to truly protect our nation.

Mr. CONYERS. Mr. Speaker, the tone of bipartisanship the Republicans used to win control of Congress has ended. We saw a draft of this bill, which is the largest reorganization of the Federal government in decades, only late yesterday afternoon. We were not given any opportunity to make improvements, and we now find ourselves on the House floor under a rule that prohibits amendments. I have more concerns with this legislation that I can count, but I will focus on three: the anti-labor, anti-immigration, and pro-corporate irresponsibility provisions.

First, this legislation guts the civil services and collective bargaining protections that currently exist for Federal employees. It makes it difficult for employees of the Homeland Security Department to collective bargain for fair compensation. The argument from the other side seems to be that employees who have rights might not be able to do their jobs effectively. But does anyone remember who the heroes of September 11 were? It was the firefighters and police officers of New York and Virginia, all of whom were members in good standing of organized labor. Can anyone suggest that their civil service and union protections did anything to weaken their resolve? Of course not.

Second, this legislation moves the entire Immigration and Naturalization Service, its services and enforcement functions, into the new Department. To the contrary, in the INS reorganization bill that I supported and we passed earlier this Congress, we kept the services portion of the INS in the Justice Department and moved only the enforcement functions to the Homeland Security Department. By moving both functions of the INS to the Homeland Security Department, this legislation by implication treats all immigrants are terrorists.

Finally, this bill provides civil liability protections for government contractors that provided ''anti-terrorism products.'' The new Secretary could immunize from any tort lawsuit the conduct of any company that sold defective anti-terrorism products to the government or the public. This means that a family that purchases a product to protect itself from terrorism, and finds the product to be useless, might have no cause of action against the contractor. The immunity provision also could shift the burden of identifying the wrongdoers and apportioning blame from the defendant to the victim.

Ms. SCHAKOWSKY. Mr. Speaker, I rise in opposition to H.R. 5710, the Homeland Security Act of 2002. This is the second homeland security bill the House has considered this session and it is still a far cry from a measure that will live up to the promise of its name. I am not convinced this bill will in fact make Americans safer than they are today. Moreover, the bill contains misguided and dangerous provisions that may cause more harm than good.

We all agree we must do more to protect our country from threats posed by those who wish us harm and those who wish to alter the way we live our lives. I am disappointed that the measure before us does not represent a more positive step in that direction. I am also disappointed that provisions I opposed when the House first considered this legislation are still in the bill.

There are a number of serious problems with this legislation that force me to vote against it for a second time.

This bill gives broad new authority to the President to reorganize the massive federal workforce created by this legislation. The bill gives the President an excuse to disregard and to take away hard-won civil service protections and collective bargaining rights for employees of the new Department. At a time when agencies throughout the federal government—in Washington, D.C. and in cities across the country—are having difficulty attracting and retaining qualified employees, this bill could turn employees of the new department into second class workers. What kind of a signal will we send to those federal workers if we ask them to move and tell them that they will lose many of the guaranteed rights that they now enjoy? How many of those workers will decide to leave federal service and move to the private sector? For those workers who do stay, how can we expect them to demonstrate high morale and commitment when they know that they lack the same rights as their federal colleagues in other agencies?

There is no national security rationale for stripping workers of their basic rights. I am particularly concerned about the fate of administrative workers in agencies that are to be transferred to the new department. Many of them are not directly involved with homeland security issues but will nevertheless be denied their rights. Congress enacted civil service protections and collective bargaining rights so that we could attract the very best to government service. We should not give this or any other Administration the right to take them away. As we stand together to fight terrorism, we should also stand together for the rights and well being of federal workers.

The House also missed an opportunity today to provide real protections for whistleblowers. I offered an amendment that would guarantee American patriots who come forward to expose improprieties and threats to

our security a guarantee that, if they are retaliated against for their actions, they will have a right to legal recourse.

This bill creates an exclusion from the Freedom of Information Act to all information dealing with infrastructure vulnerabilities that is voluntarily submitted to the new department. This is an unnecessary provision because, under current law, the government already has the authority to exempt from FOIA information that meets one of several standards, including that which is related to national security and trade secrets. This bill also exempts committees created by the Secretary of Homeland Security from the Federal Advisory Committee Act. This would allow the Secretary to create secret forums where lobbyists for all sorts of special interests could push their agendas with the Administration without concern that the public would find out and regardless of whether their discussions are about security or business goals.

The legislation before us today negates the Congressionally-mandated requirement that all airports have the ability to screen checked baggage for explosives. One of our most frightful and realistic vulnerabilities is the status of our air travel system in this country. It is a sad message to send to our constituents and the flying public that we are not willing to do what it takes to ensure the skies are truly safe. Many on the Republican side have argued that the task of providing equipment to secure our planes and prevent terrorist devices from making their way on board is too costly. We cannot afford to do otherwise.

I am very disappointed to see that the bill before us today takes a step away from providing true security for people by protecting them from discrimination and mistreatment. Unlike H.R. 5005, which establishes an Office for Civil Rights and Civil Liberties with a Director, this new bill simply appoints an officer to review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling. I offered an amendment to establish an Office for Civil Rights and Civil Liberties, and I feel that anything less will fail to adequately meet the goal of ensuring that no one is mistreated by this new department.

I would also like to draw my colleagues' attention to the issue of how our immigration system is organized within this bill. I come from an immigrant-rich district and I have made it a top priority to ensure that newcomers to this country are received in a fair and considerate manner. I am pleased that H.R. 5710 retains the provisions establishing an Ombudsman's office to assist individuals and employers in resolving problems with citizenship and immigration services. The bill also takes steps to hold the Bureau of Citizenship and Immigration Services accountable by requiring it to report how it is handling its immigration caseload and how it is working to eliminate its infamous backlogs. These are very important steps, and I urge my colleagues to continue to work to improve upon these new provisions, as well as the organization of immigration functions, so that the quality and efficiency of the services offered to immigrants are not compromised, and are in fact improved.

Unfortunately, this bill fails to address even the most obvious and immediate homeland security concerns. It does not address the serious problem of information sharing and communication among the intelligence community. The CIA and FBI are left out of this new department and there is no provision in this bill clearly stating the mechanism for past communications failures to be fixed. Instead, what the President and the Republicans in the House put forth is a massive reorganization of the federal government, nothing more than a reshuffling of the deck, with a few added tools for the Administration. Simply shifting people and agencies will not make America safer and that is all we will accomplish if we pass this bill. I urge all members to reject this flawed legislation and to focus on efforts that will actually enhance our security and maintain our American way of life.

Mr. HASTINGS of Florida. Mr. Speaker, I rise in strong opposition to the 11th-hour version of the Homeland Security Act.

When the House originally debated this legislation last August, more than one hundred amendments were submitted to the Rules Committee. Barely ¼ of those amendments were considered in order, despite recommendations from eleven congressional committees. Now we've been presented with a new, 484 page version of the bill, and are not being given any time to assess its merits and flaws.

During our first debate, I introduced an amendment that protected the Equal Employment Opportunity and whistleblower rights of civil servants. My amendment was unanimously approved, a clear indication that federal workers' rights are an important concern for this Congress. In fact, this issue was so important that it caused the first bill to get bogged down in the Senate for more than three months.

Although I note that the protections in my Amendment have been included, the new version gives the Secretary the authority to establish a ''contemporary'' human resources management system, but does not define the word ''contemporary'' in this context. This authority will affect the 170,000 federal workers who will transfer to the new department and deserves careful scrutiny and debate.

Another disturbing item in this bill is the unprecedented authority of the new Secretary, who will be able to transfer funding between departments in the new agency without any congressional authority or oversight. In other words, Congress can approve appropriations for one program, and the Secretary can arbitrarily decide to spend those tax dollars on something else, without congressional approval. This initiative sets a rather alarming precedent for the entire executive branch of government; one that deserves our full and careful attention.

Either we're going to create a new department, or we're going to change the civil service laws and revamp the Executive branch of government. I don't believe we should attempt to do both in one piece of legislation.

The American people are counting on us to create a new department that will reduce our vulnerability and prevent future terrorist attacks. They are also counting on us to do this in a fiscally responsible manner. The earliest the new department would be funded would be January 11, 2003. If we have a year, then let's take a year and do this right. Let's make sure that the new department will deliver what it promises, and let's make sure we know what it will cost.

The Homeland Security Act, as written, is not ready for prime time. We have been given no time to review the bill, and no opportunity to debate the bill and no option to amend the bill, but we are being asked to approve the bill.

Although there are differences between the first and second versions, different, in this case, does not mean better. As I said in my floor statement three months ago, if we don't take the time to do this right, we're going to have to make the time to do it over, and here we go again . . .

Let's give this legislation the time and attention it deserves and create a Department of Homeland Security that will do what we need it to do. We must have Homeland Security legislation that actually improves our homeland security, not just creates a new federal agency with new civil service rules and unmonitored spending authority for its Secretary.

I urge my colleagues to vote ''no'' on this bill.

Mr. HOYER. Mr. Speaker, much of the controversy swirling around this Homeland Security Act relates to our treatment of Federal employees, many of whom stand on the front lines in our war against terrorism.

I share the deep concern of those who believe that the reorganization proposed under this bill will undermine the rights given by law to thousands of our Federal employees.

And let me note: Earlier this year, I specifically asked OPM to cite even one example in our nation's history where union membership had threatened our national security. OPM could offer none.

However, the controversy surrounding the rights of Federal employees is not the basis of my opposition to this Homeland Security Act. And I am deeply concerned that the attention devoted to it obscures the larger point.

As the Baltimore Sun observed on September 23rd:

''Months of debate have made clear that this bureaucratic boondoggle offers no promise of making the homeland more secure. Worse, it takes the focus off the need for tighter oversight of the nation's security systems.''

I am greatly concerned, Mr. Speaker, that this legislation could actually harm our ability and readiness to protect our homeland.

Under this legislation, 22 existing agencies and programs and 170,000 people would be integrated into this new department.

Yet, many of the agencies that are critical to our homeland security would not even be part of this reorganization.

Furthermore, this act fails to recognize that the FBI, DEA and INS are currently grouped within the Department of Justice, but do not effectively communicate with one another.

As special agent Colleen Rowley's testimony indicated earlier this year, the FBI even has trouble communicating within its own agency.

We must not delude ourselves into believing that rearranging deck chairs will protect our ship of state.

What's needed is greater sharing of information within and among the agencies that protect our homeland, so that we may coordinate and synthesize the enormous amounts of information that our government collects.

And we need a lean homeland security office that has the mission and authority to develop and implement a comprehensive strategy for homeland security.

In analyzing this issue, the General Accounting Office warned in July:

It is clear that fixing the wrong problems, or even worse, fixing the right problems poorly, could cause more harm than good in our efforts to defend our country against terrorism.''

This act fails to fix our most obvious problem—effective information sharing among agencies.

I urge my colleagues to vote against it.

Mr. LANGEVIN. Mr. Speaker, I rise today in support of the creation of a Department of Homeland Security and am pleased that we are able to consider this important issue before the end of the 107th Congress.

I am pleased that this legislation largely reflects the recommendations of the U.S. Commission on National Security for the 21st Century, chaired by Senators Gary Hart and Warren Rudman, which assessed the nation's security vulnerabilities and recommended the creation of a Cabinet-level Department of Homeland Security. By consolidating the security functions of 22 separate federal agencies into one department, we can ensure that our nation puts forth a united front against terrorism on our soil. The new department represents a major step forward in our efforts to protect the American people. Furthermore, it will serve as an important resource to police, fire, and emergency medical service workers, who represent the first line of defense against terrorism.

In July, the House passed a similar measure, H.R. 5005, which I supported. However, at that time, I urged my colleagues to improve certain provisions in the bill so that we might safeguard civil service protections for department employees and preserve existing good government laws. I am disappointed that today's bill did not go further in those respects. The proposed Department of Homeland Security could employ as many as 170,000 people, and we should promote a work environment that enhances their ability to protect the American people.

I will support this legislation today because it is the responsibility of Congress to keep America safe from future acts of terror. Furthermore, I will closely monitor its implementation to ensure that we protect the security of our nation as effectively as possible.

Mr. PASTOR. Mr. Speaker, although I am a strong supporter of fully utilizing all possible resources to combat this new and tragic war on terrorism, I have serious reservations over the proposal being presented to us today.

Realistically, this bill would do nothing more than rearrange the deck chairs on the *Titanic.* What we really need is to address basic agency policies and promote efficient exchange of information without diminishing critical agency missions.

Keeping major intelligence gathering sources separated from this agency and moving desks across the hall, begs the question as to what we will be accomplishing by this move? Will it result in a smoother information flow, not just from one Washington office to another, but to the actual communities which must have as much lead time as possible to prepare for attack? Are we actually expanding agency areas of responsibility or will it be business as usual? What are we really doing to ensure dam, water supply, energy sources, and transportation safety? What are we really doing to provide an enhanced capability to address hazardous material, chemical, or biological threats? What are we really doing to improve our risk, threat, and vulnerability assessments? What are we really doing to improve the delivery of emergency food, shelter, and medical care in the event of another tragedy?

Troublesome are inconsistencies found in the bill. For example, is the Administration's repeated statements that this bill would consolidate training programs, yet, under Section 403 we see the Department of Justice's Office of Domestic Programs which does COPS training being placed under ''Border and Transportation Security,'' while other training programs are being place under ''Emergency Preparedness and Response'' under Section 503.

Another example is found under Section 201(d)7, where the Under Secretary for Information Analysis and Infrastructure Protection is charged with exercising primary responsibility for public advisories related to threats to homeland security, while in Section 214(g) it states that the federal government may provide advisories, alerts, warnings to relevant companies, targeted sectors, other government entities, or the general public regarding potential threats. Where is the coordination and are we creating two separate sets of warnings?

Questions have been raised on the coordination mechanism between Homeland Security officials and other Departments. For example, if Homeland Security officials are designated to establish research efforts and attempt to direct Department of Defense agencies on those efforts, who actually has final authority?

In particular, I am troubled that this legislation offers so little to assist first responders, the men and women on the street who willingly put themselves in harm's way for the greater good. We must ensure that these dedicated citizens are provided with all possible resources to both protect them and support their mission.

I am hopeful that this legislation is defeated and the Congress continues to consult with experts in a more circumspect manner and that crafts a measured more approach that maximizes our ability to anticipate, prevent, and react to acts to terrorism.

Mr. BENTSEN. Mr. Speaker, today I rise in support of H.R. 5710, which establishes a Department of Homeland Security as an executive department of the United States, headed by a Secretary of Homeland Security. The primary mission of the Department of Homeland Security will be to anticipate and prevent future terrorist attacks, reduce America's vulnerability to terrorism, and improve upon our existing ability to respond and recover from any possible terrorist attacks. The tragedy of the September 11th terrorist attacks underscored a changing environment for the United States and exposed glaring weaknesses and vulnerabilities in our domestic security infrastructure. As a Congress, we must address our most fundamental priority and responsibility, ensuring the security and liberty of our nation. Today's legislation would do just that, consolidating 22 different agencies with varying responsibilities for border security, bioterrorism defenses, and disaster mismanagement into one streamlined organization, the Department of Homeland Security. Within the Department of Homeland Security will be four primary divisions: the Border and Transportation Security Directorate, the Emergency Preparedness and Response Division, the Science and Technology Directorate, and the Information Analysis and Infrastructure Protection Directorate.

More importantly, H.R. 5710 restructures key agencies by shifting control of their directives to the new Department of Homeland Security. A key example of this is the abolishment of the Immigration and Naturalization Service (INS). Instead, the bill creates two new agency components, one responsible for immigration enforcement and visa matters, and the other handling citizenship matters. This provision is similar to legislation I cosponsored in the previous 106th Congress, which would have split the INS into separate agencies to make it more efficient, accountable, and fair with regard to general immigration and citizenship matters. I am pleased that H.R. 5710 includes these crucial reforms, as the INS is an agency in dire need of overhaul.

Mr. Speaker, I am pleased that H.R. 5710 includes provisions similar to H.R. 4598, the Homeland Security Information Sharing Act, which will require the administration to develop procedures for the sharing of both classified and declassified information between federal agencies and the appropriate state and local authorities. Furthermore, existing barriers against the sharing of foreign intelligence are relaxed as well. As was so clearly demonstrated by the events of September 11th, the failure to share and disseminate crucial intelligence and timely threat information through the appropriate channels can have devastating consequences. While I understand the necessity of protecting intelligence-gathering methods, I believe that in order for there to be truly effective and comprehensive homeland security, state and local officials must be adequately informed of pending threats facing their communities. I believe H.R. 5710 strikes that careful balance between the protection of intelligence methods and the dissemination of necessary intelligence to state and local authorities, information crucial to them in protecting their communities.

Mr. Speaker, while I am in strong support of the core concepts behind the Department of Homeland Security, I continue to have some concerns about specific aspects of the legislation. I am concerned about provisions which would allow the new Department to establish a new personnel management system and pay systems for its employees, outside of the existing civil service system, which could possibly undermine important civil service protections. However, I am pleased that the current version of homeland security legislation, H.R. 5710, is an improvement over the House-passed H.R. 5005 in regards to civil service protection, because it allows for a period of notification, provides venues of mediation, and includes provisions for appeal procedures.

In addition, H.R. 5710 also limits legal liability for certain anti-terrorism products certified by the new Department. While the desire to promote the widespread commercial use of innovative new technology against terrorism is laudable, I believe it should not come at the expense of important legal accountability and safety standards.

However, I also find that there is much in H.R. 5710 that is very necessary for passage and enactment including authorization for Department of Health and Human Services to administer the smallpox vaccine to segments of the public, and the creation of tax-deductible charitable funds to be used to compensate

military, law enforcement, and intelligence personnel killed in the line of duty as a result of a terrorist action.

For all these reasons, Mr. Speaker, I will support H.R. 5710, and support the effort to create this timely and vital cabinet-level Department. I urge my colleagues to join me as we take the steps necessary towards protecting our country from future potential attacks and to send a message to the American people before we adjourn the 107th Congress that this Congress, their Congress is determined and resolute in protecting them and their families at all costs.

Mr. BOEHLERT. Mr. Speaker, I rise in strong support of H.R. 5710, a bill too long delayed, which will establish a Department of Homeland Security. I want to acknowledge the perseverance of the President and the Leadership, which has enabled this bill to come before us today. I also want to acknowledge the long weekends and nights of hard work that went into this bill, especially by Margaret Peterlin and the rest of the Majority Leader's staff. We appreciate the close working relationship our staff on the Science Committee has had with the Leadership staff.

Mr. Speaker, I'll be quite brief today because I outlined the Science Committee's perspective on this bill when H.R. 5005 passed in July.

Let me just say now that I am delighted that the Department of Homeland Security will have an Under Secretary for Science and Technology. As I keep saying, the war against terrorism, like Cold War, will be won as much in the laboratory as on the battlefield. With that in mind, we felt it essential that the Department have a directorate and an Under Secretary with clear responsibility for R&D across the Department. I'm pleased that just about everyone has come around to this point of view.

I believe that cybersecurity and R&D will be among the areas in which the Department will make its greatest contribution. These are areas in which the Department will not just improving coordination among existing agencies, but will have to build new capacity from the relatively limited building blocks that are being transferred into the Department. I urge passage of this bill.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise in reluctant opposition to the Homeland Security Act today. There is not one Member of Congress who does not want to stand in a united front in our war against terrorism. And like all Members of this body, I recognize the importance of strengthening homeland security. The people of the 30th Congressional District of Texas have entrusted me to do both. However, in keeping with that trust, I could not vote for legislation that creates a sprawling bureaucracy while leaving so many important security questions unanswered.

Let me be clear that I remain committed to providing all of the resources necessary to combat terrorism through a strong, efficient Department of Homeland Security. I am also extremely supportive of the provision in this legislation that extends the December 31, 2002 deadline an additional year for airports to install explosives detection equipment. In my district in Texas, DFW Airport desperately needs more time to install the equipment necessary for the baggage screening deadline. I worked with leadership to ensure DFW would be granted this extension, and I commend negotiators of this legislation for including this desperately needed provision.

Unfortunately, the underlying legislation remains unacceptable for a number of reasons, and I must oppose the bill. I strongly oppose the provision in this legislation that will arm commercial airline pilots and strip away civil service protections for our nation's federal workers. As I have repeatedly said during this debate, arming pilots is simply not the answer to improving our airline security. If we truly want to increase safety aboard our nation's aircraft, we should concentrate our resources on putting Air Marshals on 100 percent of all flights. I must continue to stress to my colleagues that there are many unanswered questions as to whether widespread arming of pilots would create more safety hazards than security benefits.

I also remain concerned that Republicans, under the guise of homeland security, have made this legislation on assault on the civil service protections of our nation's federal workers. Among its provisions, legislation would allow DHS to arbitrarily reduce salaries of employees without giving them a legitimate appeals process comparable to employees of other federal departments. I cannot support this attempt to rob workers of their key employment protections.

I am also concerned about the disregard the formation of DHS has shown for the committee process. When the Science Committee marked up the Homeland Security legislation in July, I offered an amendment that would have aligned federally funded research at the new department with existing policies at the Departments of Defense and Energy. My amendment was based upon a sound, proven policy for dealing with classified research as articulated in 1985 by former President Ronald Reagan in National Security Decision Directive 189. My amendment was adopted by a bipartisan majority of almost 2 to 1. Yet when the Homeland Security legislation proceeded to the Select Committee, my amendment was stripped from the Science Committee's mark.

When I asked my friend and colleague from North Texas, Mr. ARMEY, why an amendment that passed in committee with overwhelming support was not included, he told me that the Science Committee did not support the amendment. I was unable to offer my amendment on the floor of the House, presumably for the same reason. As a result, once the Department of Homeland Security is signed into law, we will have federal agencies that conduct classified research in two very different ways, regardless of the fact that one of these ways has been proven to be sound policy in its almost two decades of use. This is very unfortunate, because it is contrary to the expert advice provided at the Science Committee's October 10, 2002, hearing entitled, ''Conducting Research During the War on Terrorism: Balancing Openness and Security''. Witnesses from academia and the Bush Administration attested to the wisdom of NSDD–189 and how it has been a guiding principle in conducting federally funded classified research.

It is my sincere hope that Congress will heed the advice of expert witnesses and two decades of proven science policy and reconsider the guidelines for federally funded classified research at the new DHS.

I realize that this legislation will pass today, and as I have mentioned, I sincerely wish I could lend my support to it in extending the current deadline for screening all checked baggage with explosive detection equipment. But since this bill includes provisions that will diminish aviation security and protections, I regret that I must vote against this bill.

Mr. SMITH of Texas. Mr. Speaker, the President has stated about the creation of a Homeland Security Department: ''[we] face an urgent need, and we must move quickly, this year, before the end of the congressional session.'' We fulfill that request today by passing H.R. 5710, the Homeland Security Act.

This bipartisan legislation accomplishes many goals. The Gilmore Commission stated in 2000 that the national strategy against terrorism must address intelligence, deterrence, prevention, preemption, crisis management, and consequence management. This bill does just that.

H.R. 5710 includes the provisions of H.R. 3482, the Cyber Security Enhancement Act, legislation I introduced that passed the House overwhelmingly in July. These provisions strengthen the penalties against those who commit cyber crimes. They also establish the Office of Science and Technology within the National Institute of Justice, which guarantees the ability of NIJ to continue managing the important work of that office.

H.R. 5710 also includes legislation I cosponsored to require information sharing among Federal, state, and local law enforcement agencies.

The Department of Homeland Security will have a strong law enforcement role, but this role is distinct from that of the Department of Justice, which remains the principal law enforcement agency of the United States.

The role of the Department of Justice is further enhanced by the transfer to it the Bureau of Alcohol, Tobacco and Firearms and the law enforcement training functions of the Federal Law Enforcement Training Center.

The Homeland Security bill will improve our nation's immigration system by restructuring the INS. The INS has proven time after time that in its current form it is unable to handle the implementation of our nation's immigration laws. Among other improvements, the INS will be split into two agencies—one to handle services and one to handle enforcement. This will greatly improve the effectiveness and efficiency of our immigration system.

Defending against terrorists who can strike almost any time anywhere requires a change in how we approach the problem. The Department of Homeland Security will have a clear focus and clear mission to protect Americans from terrorists whether inside or outside our borders.

I urge my colleagues to support final passage.

Mr. THOMAS. Mr. Speaker, I rise in support of H.R. 5710 creating the Homeland Security Act of 2002.

The protection that we seek today with the creation of the new Department is for our people, our property, and our economy. The U.S. Customs Service has been on the frontline supporting and defending our nation for more than 200 years, since its creation by the fifth Act of Congress as the first Federal agency of the new Republic. The many functions of Customs are as important today as they were at the start of our nation.

Passage of the Homeland Security Act of 2002 is the right decision for the country. This

country is only as safe and secure as the economy that supports it. Last year over $1 trillion in merchandise was imported into the country. That is indispensable fuel for our economy Customs collected over $20 billion of revenue. I am pleased the final bill keeps important elements recommended by the Ways and Means Committee in order to protect the trade functions of the Customs Service that are so vital to the strength of this land. In particular, the bill keeps Customs core revenue functions whole, which ensures that the many trade and enforcement functions will be carried out.

Our bipartisan agreement in this bill:

Transfers the Customs Service in its entirety to the Department of Homeland Security Division for Border and Transportation Security.

Identifies revenue-related offices and functions within Customs (about 25 percent of the agency) and prohibits reorganization or decrease in their resources or staff.

Requires that adequate staffing of customs revenue services be maintained, and requires timely notice to Congress of actions that would reduce such service.

Maintains the Commissioner of Customs as Senate-confirmed.

Transfers all authority exercised by Customs to Homeland Security with the exception of revenue collecting authority, which would remain at the Treasury Department. Treasury may delegate this authority to Homeland Security.

On this last point I would like to clarify that our purpose has been for the Treasury Department to remain integrated in the revenue, trade, and macroeconomic aspects of Customs' work. As such, we do not expect a wholesale abandonment of involvement by Treasury. We will scrutinize any delegation to assure that it fits within the purpose envisioned by Congress.

For these reasons I urge a ''yes'' vote on House Resolution 5710.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise in strong support of this bill and to commend my good friend, Majority Leader ARMEY for his efforts in putting together this bipartisan package. This legislation will allow us to have a coordinated response to any future terrorist threat. H.R. 5710 includes many critical provisions I authored that will allow us to work closely with the private sector to deploy the latest technology solutions, address ongoing information security weaknesses within the federal government, and facilitate necessary information sharing among our critical infrastructures.

The events of September 11th and the ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security. From my work in the Government Reform Committee, it is clear that the state of federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malevolent attacks and benign interruptions.

Poor information security management has persisted in both the public and private sectors long before IT became the ubiquitous engine driving governmental, business, and even home activities. As our reliance on technology and our desire for interconnectivity have grown, our vulnerability to attacks on Federal information systems has grown exponentially. The high degree of interdependence between information systems, both internally and externally, exposes the Federal government's computer networks to potentially serious disruptions.

Title X of H.R. 5710, the Federal Information Security Management Act (FISMA), will require that agencies utilize information security best practices that will ensure the integrity, confidentiality, and availability of Federal information systems. It builds on the foundation laid by the Government Information Security Reform Act (GISRA), which requires every Federal agency to develop and implement security policies that include risk assessment, risk-based policies, security awareness training, and periodic reviews.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will:

1. Remove GISRA's sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations of agency information security practices;

2. Require all agencies to implement a risk-based management approach to developing and implementing information security measures for all information and information systems;

3. Streamline and make technical corrections to GISRA to clarify and simplify its requirements;

4. Strengthen the role of NIST in the standards-setting process; and

5. Require OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

At a time when uncertainty threatens confidence in our nation's preparedness, the Federal government must make information security a priority. We demand that in our networked era, where technology is the driver, every Federal information system must be managed in a way that minimizes both the risk that breach or disruption will occur and the harm that would result should such a disruption take place. Chairman ARMEY understands this and has shown tremendous leadership by this including this critical language in this legislation.

Additionally, the bill includes the Critical Infrastructure Protective Act, which I developed after reviewing Presidential Decision Directive (PDD) 63 that identified the ongoing statutory barriers to information sharing. This important bill includes a FOIA exemption for critical infrastructure information along with recognition for private sector information sharing organizations (ISOs). It also includes a use protection for information shared with the government and a process based on the Defense Production Act of 1959 to address potential antitrust concerns.

In Presidential Decision Directive 63 issued by the previous Administration, concerns about the Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information sharing with the private sector.

The critical infrastructure of the United States is largely owned and operated by the private sector. Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally, these sectors operated largely independently of one another and coordinated with government to protect themselves against threats posed by traditional warfare. Today, these sectors must learn how to protect themselves against unconventional threats such as terrorist attacks, and cyber intrusions.

We must, as a nation, prepare both our public and private sectors to protect ourselves against such efforts. As we discovered when we went to the caves in Afghanistan, the Al Qaeda groups had copies of GAO reports and other government information obtained through FOIA. While we work to protect our nation's assets in this war against terrorism, we also need to ensure that we are not arming terrorists.

Today, the private sector has established many information sharing organizations (ISOs) for the different sectors of our nation's critical infrastructure. Information regarding potential physical or cyber vulnerabilities is now shared within some industries, but it is not shared with the government, and it is not shared across industries. The private sector stands ready to expand this model but has also expressed concerns about voluntarily sharing information with the government and the unintended consequences it could face for acting in good faith.

Specifically, there has been concern that industry could potentially face antitrust violations for sharing information with other industry partners, have their shared information be subject to the Freedom of Information Act, or face potential liability concerns for information shared in good faith. Additionally, this FOIA exemption extends the protection for FOIA to information shared at the state and local government level. Also, this bill gives the Secretary of Homeland Security the authority to share information protected under this FOIA exemption to share it with other impacted federal agencies while continuing to enjoy the protection. My language included in H.R. 5005 will address all three of these concerns. Additionally, consumers and operators will have the confidence they need to know that information will be handled accurately, confidentially, and reliably.

The Critical Infrastructure Information Act procedures are closely modeled after the successful Year 2000 Information and Readiness Disclosure Act by providing a limited FOIA exemption, civil litigation protection for shared information, and a new process for resolving potential antitrust concerns for information, shared among private sector companies for the purpose of correcting, avoiding, communicating or disclosing information about a critical infrastructure threat or vulnerability.

This legislation will enable the private sector, including ISOs, to move forward without fear from government, so that government and industry may enjoy a mutually cooperative partnership. This will also allow us to get a timely and accurate assessment of the vulnerabilities of each sector to physical and cyber attacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded federal mandates on the private sector.

Also, H.R. 5710 includes language that I developed to allow for reaching out to new technology companies that may not being doing business with the government. We all know that the Federal, State and local governments

will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn't simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unevaluated, perhaps denying the government breakthrough technology.

In February, I held a hearing in my Subcommittee on Technology and Procurement Policy on homeland security challenges facing the government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process within the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today. Section 313 of this bill will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Section 313 of the Homeland Security Act establishes within the Department a program to meet the current challenge faced by the Federal government, as well as by state and local entities, in leveraging private sector innovation in the fight against terror. The section would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to terror-fighting technologies for dissemination to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions.

Establishing a technical assistance team to assist in screening proposals for terror-fighting technology to assess their feasibility, scientific and technical merit and cost.

Providing for the new Department to offer guidance, recommendations and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 313 in this landmark legislation will give the new Department the framework it needs to examine and act on the best innovations the private sector has to offer.

I am pleased to also have authored section 834 at the request of the Select Committee to allow federal agencies government-wide to accept unsolicited proposals. The language directs the FAR Council to amend FAR Part 15 to ensure that a proposal has not been submitted in relation to a previously published proposal. This ensures that contracting officials are not improperly avoiding a full and open competition. Existing ambiguity in the FAR language made government contracting officials hesitant to review and accept unsolicited proposals. The change recognizes the longstanding procurement reform goal of allowing contracting officials to include ''best value'' factors when reviewing such a proposal, and adds ''technical merit'' as a new criteria, which allows officials to review a proposal for potential future benefit. This language is critical as federal agencies attempt to update their information technology systems to better integrate information and serve the taxpayer. This is another step forward in moving the Federal government to a more commercial acquisition environment. This change in the FAR will allow federal agencies to rapidly acquire new products and services to assist them in winning the war on terrorism.

In ordinary times, primarily because of recent acquisition reforms, the current acquisition system will enable the new Department of Homeland Security to buy what it needs with reasonable efficiency. While we all hope that it will never be needed, we also know that in an emergency the new Department may have to quickly and efficiently acquire the high tech and sophisticated products and services needed for its critical mission. The provisions in H.R. 5710 would permit the Department to quickly acquire the emergency goods and services it needs while maintaining safeguards against wasteful spending. This authority is easily accessed by Department of Homeland Security officials through a written determination.

The acquisition provisions build on contracting authorities currently place; in fact, the procedures appear in Part 13 of the Federal Acquisition Regulation and provide for an extension of these authorities only upon a determination of the Secretary of Homeland Security or one of his Senatorially confirmed officials that the terror fighting mission of the new Department would be seriously impaired without their use. The new authorities would sunset at the end of fiscal year 2007. The GAO would be required to report to the Committee on Government Reform assessing the extent to which the authorities contributed to the mission of the Department, the extent to which the prices paid reflect best value, and the effectiveness of the safeguards put in place to monitor the use of the new authorities. The current government-wide procurement laws will govern the Department's ''normal'' purchases.

Specifically, the provisions would raise the current micro-purchase threshold from $2,500 to $7,500. It would raise the current $100,000 threshold for simplified acquisition procedures to $200,000 for use within the United States and $300,000 for overseas missions, and permit the application of the current streamlined commercial acquisition procedures and statutory waivers to noncommercial goods and services and increase the current $5,000,000 ceiling on the use of streamlined commercial procedures to $7,500,000 for these goods and services.

How could these new authorities be used?

Well, for example, the increase in the micro-purchase threshold could be used in the event of a terror attack, to permit a Department of Homeland Security official at the scene to rent several floors of a nearby hotel to house rescue workers by simply presenting his Government credit card.

The increase in the simplified acquisition threshold would permit a Department official to quickly enter into a $200,000 contract for specialized medical services for rescue workers responding to a terror attack.

The application of streamlined commercial acquisition procedures would permit the Department to conduct a limited competition among high technology firms for a specialized advisory and assistance services contract valued at $7,500,000 to fight a cyber-attack.

Moreover, I am pleased that the House accepted the Senate Federal Emergency Procurement Flexibility Act. This basically extends the same emergency procedures given to the new Department to all Federal agencies to use to prepare for, or in response to a nuclear, biological, chemical, or radiological attack or an act of terrorism for the next fiscal year. This is based on legislation that I had introduced with my colleague and Chairman, DAN BURTON and with Senators JOHN WARNER and FRED THOMPSON at the request of Governor Tom Ridge. While this authority is not as accessible as it is for the Department of Homeland Security, it will certainly go a long way to giving all federal agencies additional help in winning the war on terrorism.

H.R. 5710 gives the Administration the necessary management flexibilities it will need to set up the new Department while maintaining longstanding statutory protections for the American taxpayer and for federal employees. In the civil service area, we struck the proper balance between needed flexibility and important employee protections. Dedicated federal employees, by virtue of the bill's new 30-day mediation period, have received the assurances they asked for, while the American people will have the benefit of a flexible, modern-day workforce that can respond to ever-evolving threats.

I worked hard to make sure aspects of Senator VOINOVICH'S human capital management legislation were included in the legislation; for example, having Human Capital Officers within each agency ensures that the Department's employees will be given the tools they need to prosper and develop professionally. And the demonstration project authority, which includes a pay-for-performance component, is a critical step that will help give the new department the ability to attract and retain the very best employees.

Finally, Mr. Speaker, I would again like to thank Majority Leader ARMEY for his outstanding leadership on this vital piece of legislation. Today, we are giving President Bush legislation that he has deemed critical to winning the war on terrorism. Majority Leader ARMEY and his talented staff worked tirelessly to ensure that we would get this legislation done this year. I am proud to have worked with my House colleagues and the Select Committee on H.R. 5710.

Mr. STENHOLM. Mr. Speaker, the protection of our national security from terrorist threats is a serious and sober matter. Since the events of September 11, 2001, we have all labored under a heightened awareness of the weight of that responsibility. This legislation represents an attempt to balance a wide array of far-flung government duties against one most-significant federal duty, the protection of the life and the liberty of each U.S. citizen. It is my hope that this legislation will help our government to more effectively execute that supreme trust, while not compromising lesser responsibilities that are, non-the-less, critical to our nation's welfare.

With that hope in mind, the House Committee on Agriculture acted earlier this year to mark up provisions of the Homeland Security

legislation that impacted the duties of the U.S. Department of Agriculture. Two areas of concern were the transfer of the Plum Island Animal Disease Laboratory to the new Department of Homeland Security, and the transfer of certain USDA border inspection functions to that same new agency. Our intent as included in House Report 107–609 accompanying H.R. 5005 is as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee is aware of the unique nature and the specialized training necessary for effective and efficient border inspection activities carried out by the Agricultural Quarantine and Inspection Program. The Committee expects that the training of personnel and detector dogs for this highly specialized function will continue to be supervised by the Department of Agriculture.

While a large proportion of the personnel employed by the Agricultural Quarantine and Inspection Program are permanently stationed at one of 186 points of entry into the United States, the Committee is aware that the Secretary of Agriculture commonly redeploys up to 20% of the border inspection force in order to manage agricultural pests and diseases throughout the United States. In completing the transfer of Agricultural Quarantine and Inspection Program border inspectors to the Department of Homeland Security, the Committee expects that the Secretary of Agriculture and the Secretary of Homeland Security will enter into an agreement whereby inspection resources, where possible, would continue to be made available to the Secretary of Agriculture in response to domestic agricultural needs.

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

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

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

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

Mr. COMBEST. Mr. Speaker, I rise in support of H.R. 5710, the Homeland Security Act of 2002. I appreciate the cooperation of the Select Committee on Homeland Security as the Agriculture Committee developed it's recommendations relating to agricultural import and entry inspection activities and the Plum Island Animal Disease Center.

The inspection programs administered by the Animal and Plant Health Inspection Service are designed to prevent both the intentional and inadvertent introduction of harmful plant and animal pests and diseases into the U.S. ecosystem—pests and diseases that could threaten the abundance and variety of the U.S. food supply and cost American taxpayers hundreds of millions of dollars to eradicate.

On average, more than 250,000 people travel to the United States each day. In addition, there are millions and millions of pieces of international mail and countless commercial import and export shipments. As part of the USDA program, Plant Protection and Quarantine officers, with help from detector dogs in the USDA's Beagle Brigade which sniff luggage for hidden fruits and vegetables, inspect passenger baggage, mail, and cargo at all U.S. ports of entry.

USDA officers make about 2 million interceptions of illegal agricultural products every year. Included in that total are more than 295,000 lots of unauthorized meat and animal byproducts that have the potential to carry diseases to American livestock and poultry. Inspectors also find nearly more than a 100,000 plant pests and diseases that could have been dangerous to our agricultural industry.

The Administration's original proposal to move APHIS in its entirety was made in good faith. However, many of our constituents raised concerns about the scope of the proposal. While most organizations testified that the border inspection function of the USDA could theoretically be transferred, they did so with many concerns regarding the delivery of inspection services critical to the mission of safeguarding against the introduction of plant and animal pests and diseases.

After a hearing in the Agriculture Committee on June 26th, and numerous meetings with the Officer of Homeland Security, the Administration agreed to accept modifications of their original proposal. Instead of taking the entire Animal Plant & Health Inspection Service to the Department of Homeland Security, the Administration has accepted our proposal transferring just those agency personnel actually conducting import and entry inspections. The Plum Island Animal Disease Center would be transferred to the new Department, but access would be provided for USDA to continue research, diagnostic and other necessary activities.

Under our recommendation, the rest of APHIS would remain at the Department of Agriculture and would continue to operate largely as it does today. Additionally, USDA will set the policy for the border inspections to be conducted by the Department of Homeland Security and will supervise the training of those inspectors. All of the remaining functions, such as protecting animal and plant health, facilitating imports and exports, administering the Animal Welfare Act, operating Wildlife Services and providing technical support for trade negotiations, will remain at USDA.

Mr. Speaker, further clarification of the intent of the House Committee on Agriculture was included in House Report 107–609 which accompanied the original legislation—H.R. 5005. The description of the Committee's action and a statement of Congressional intent with regards to the provisions affecting agricultural programs is as follows:

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

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

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

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Mr. NEAL of Massachusetts. Mr. Speaker, I rise today in support of our mission to protect and secure the homeland, but also to oppose the efforts of those who excuse corporate expatriation.

Since September 11th, this nation has pulled together to fight the war on terrorism. And now, with more military action looming, we must face the fact that fighting a war and combating terrorism costs money. To fully fund the needs of our military and homeland security, every American taxpayer, individual and corporation alike, must be prepared to pay their fair share.

If corporate expatriates are not paying their tax bills (and evidence shows they avoid paying $4 billion worth), the American people know that someone will have to pick up the slack. We should use everything in our arsenal to stop corporate expatriation. No more government contracts for financial traitors. No more tax benefits for runaway corporations.

I regret that the Republican leaders struck the very reasonable federal contract ban from this bill—a ban supported by 318 Members of this House—and inserted instead an ineffective provision that affects no one.

Corporate expatriates cheat the federal government out of needed tax revenues and then have the audacity to return for a federal handout. However, the sensible contract ban passed by the House and then championed in the Senate by the late Paul Wellstone, was watered down to the ineffective provision we are debating today. Regrettably, this provision only affects companies who leave after the date of enactment. It makes as much sense as closing the barn door after all the cows are out.

Let's take Tyco, formerly of New Hampshire, now of Bermuda, for example. Tyco, which will be unaffected by the ban in this bill, avoids paying $400 million a year in U.S. taxes by setting up a shell headquarters offshore, but was awarded $182 million in lucrative defense and homeland security related contracts in 2001 alone. If Tyco had just paid its tax bill, Congress could have easily paid for 400 explosive detection systems (EDS), which are badly needed to protect U.S. travelers at airports around the nation.

Or let's examine corporate expatriate Ingersoll-Rand, formerly of New Jersey, and now also in Bermuda. Ingersoll-Rand, also unaffected by this bill, earned as much last year in U.S. defense and homeland security federal contracts as it avoids in U.S. taxes annually merely by renting a mailbox in Bermuda and calling it 'home.' If Ingersoll-Rand paid its U.S. tax bill, Congress could easily fund the proposed Cyberspace Warning Intelligence Network estimated to cost $30 million, or could also buy 400,000 gas masks for American citizens.

Mr. Speaker, the leadership of this House has thwarted all efforts to have a legitimate debate and vote on HR 3884, The Corporate Patriot Enforcement Act, a bipartisan bill to deny the benefits to corporations who flee to tax havens. We must show the American people that this Congress will not coddle corporate abusers. These financial traitors are escaping income taxes, and then, profiting from the very government they have left behind.

I urge my colleagues to fight for tax fairness, any way we can get it.

Ms. PRYCE of Ohio. Mr. Speaker, it has been nearly five months since the President

called upon Congress to create a new Department of Homeland Security, and nearly four months since the House first took up that task. This legislation has been through a long journey, full of procedural and partisan roadblocks, weighed down by special interests, and slowed by a storm of misdirection.

I could not be more pleased that we are here today with this compromise legislation that will finally allow us to move the bill to the President's desk. This is a historic achievement.

In recent days, members of the House and Senate have been through a thoughtful, thorough, and cooperative process. Every effort was made to address each concern while maintaining a basic framework that creates an effective department.

This legislation will give the new Department of Homeland Security the tools it needs to succeed in its mission. And this, in my mind, is the key, because the new department's most basic and core mission will be to secure America from terrorist attack.

On September 11, 2001, the streets of New York and Northern Virginia were turned to ash, while a grassy field in Pennsylvania played quiet witness to the final act of a heroic group of Americans. Creation of the Department of Homeland Security is the bold and necessary next step we must a take to ensure that this dark day is never repeated.

We are not creating new government, we are creating better government. We are not legislating new bureaucracy, we are streamlining to face a new threat. We are making government smarter, more flexible, and ultimately, better able to secure America.

The perpetrators of terrorism are shadowy and agile, and they target us like predators without distinction between military target and ordinary citizen. They are a 21st Century enemy with an agelessly corrupt goal-destruction of life, elimination of liberty, and restriction of human freedom.

Our enemy has recognized that our greatest strength—the open society in which we live—also makes us vulnerable to their attacks. We fight this enemy not just on battlefields abroad, but in our very cities and towns. We must be able to respond at home in a strong, coordinated and agile way.

The new cabinet-level department is only one part of our national response, but it is an essential part. The new Department will consolidate the vital preparedness, intelligence analysis, law enforcement, and emergency response functions that are currently dangerously dispersed among numerous federal departments and agencies.

And in the process, the legislation balances the need to protect America with the need to preserve the American way of life that we are protecting.

Thus far, the government has shown immense resolve and dedication, going to extraordinary lengths to respond to the terrorist threat. We are safer than we were on September 10th one year ago. But as the government's efforts reach the limits of their bureaucracies, we must rethink our government structure so that our nation can be even stronger, smarter, and better prepared.

One of our revolutionary forefathers, George Mason, once said, ''Government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community.''

Make no mistake—our work today undertakes this very core function of government to secure the American people. I urge all of my colleagues to take measure of the task before us, and to support this fair rule and the underlying bill.

It has been a long journey, but this legislation, and the American people, are all the better for it.

Mrs. ROUKEMA. Mr. Speaker, I rise today in strong support of H.R. 5710, the Homeland Security Act of 2002.

At last, Members of both parties and the Administration have put their differences aside and agreed on a strong bill that will make America safer by creating a Cabinet-level Department of Homeland Security to unite essential agencies in our fight against terrorism here at home and abroad.

On the morning of September 11, 2001, a new enemy brought war to our shores. An enemy that considers any innocent man, woman, or child that cherishes freedom a target. An enemy that does not necessarily call any nation home. And an enemy that can hide for years in plain sight and in our own neighborhoods.

This new kind of war, that makes where we live and work a potential battleground, calls for a new response. The United States is a nation at risk of terrorist attacks and it will remain so for the foreseeable future. We need to strengthen our efforts to protect America, and the current governmental structure limits our ability to do so.

When President Bush established the Office of Homeland Security in October 2001, its fundamental mission would be to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recovery from attacks that do occur. Mr. Speaker, I believe this new bill will achieve this mission.

The new department will combine 170,000 workers from 22 agencies, including the ATF, Border Patrol, Coast Guard and Customs Service, into a Department of Homeland Security with a $37 billion budget. It balances concerns of federal workers with the need of the President to make personnel decisions in the interest of national security. It brings all immigration responsibilities under the Secretary of Homeland Security. Immigration services will be kept separate from enforcement functions within the Department. This will provide the INS the leadership, direction, and focus that I have been advocating for years.

Now all the necessary functions of government to keep our nation safe at home will fall under one department—where they should be. And that department will be part of the President's cabinet—and that is where it should be.

Let me add Mr. Speaker that leading a massive new federal department that is charged with protecting the homeland during such dangerous times is a Herculean task. There is no one in the nation more capable and prepared to provide that leadership than our former colleague Tom Ridge. Governor Ridge was called on by the President shortly after the tragic attacks on our nation and stepped into the breach to provide leadership on homeland security. This is not the first time he has answered his nation's call in time of war.

His leadership over the past year has prepared our nation and our government for the task ahead. Governor Ridge will succeed and I wish him well.

Finally Mr. Speaker, passage of this bill is the last of the profound accomplishments that this Congress has achieved since September 11, 2001. I am proud of the wise and prudent decisions we have made. Even though many on both sides have disagreed over details and those details have taken longer to work out than I would have liked, we have never disagreed on the goal of our actions. That goal is to protect and defend our nation in this new and awful era of war.

We may suffer another dastardly attack on our shores—given the diabolic treachery in which our enemy deals, it is probably certain they will attempt to attack us again. But we will endure, care for our own, and stand taller than before. As always, we did not ask for this war, especially one that attacks us at home. But we will fight it. And with the help of this legislation—we will win it.

Mr. Speaker, I urge all Members to support this legislation. God bless America.

Mr. DINGELL. Mr. Speaker, I rise today in strong support of strengthening our Nation's security, but in intense opposition to this bill before us. It will create an unwieldy and possibly unworkable department of 170,000 federal workers, and spend 4.5 billion dollars doing so.

Without a doubt, every Member of this body supports increasing America's security. However, I am troubled by the unseemly and unhelpful rush by the President and this body to hastily legislate on this matter in the closing days of this Congress. I would note that the bill we are debating is the result of a deal reached late yesterday. In fact, this bill was introduced early this morning. Why not let the public know what we are doing before we do it?

I served in Congress when we created both the Department of Transportation in 1966 and the Department of Energy in 1977. Congress held extensive hearings. There was testimony from experts in the fields. There were lengthy discussions before we created these Departments. However, even with extensive deliberation in Congress, folding diverse government agencies into one organization resulted in bureaucratic chaos that lasted for many years.

Likewise, the rush to create the Transportation Security Administration after September 11, 2001, has resulted in great confusion. TSA was created to take over security screening at our Nation's airports—a straightforward task that has not yet been accomplished. I think it would be in our Nation's best interest that the President ensures that the relatively small TSA is properly functioning before tackling a massive restructuring of the government.

I am also very concerned that this new Department will develop and operate in a culture of secrecy without adequate and proper public accountability or Congressional oversight. The changes made to the Freedom of Information Act are overly broad and restrictive. By including Section 214 as part of the backroom agreement, this body is ignoring the bipartisan compromise that was reached in the Senate and included in both the Senate Government Affairs Committee bill and the substitute offered by Senators GRAHAM and MILLER in favor of the flawed House provision.

Finally, I note that today we are talking about bureaucratic reorganization while the White House has opposed Democratic funding initiatives to enhance port security, equip local fire fighters and first responders with tools to

effectively respond to another terrorist attack, and to improve security at nuclear weapons facilities. In addition, in key critical infrastructure areas where millions of Americans may be at risk, the Bush Administration has dropped the ball. For example, at present, there are no federal standards in place to require chemical plants to assess their vulnerabilities and take steps to reduce them. The Attorney General of the United States has failed to conduct or even initiate an evaluation of the state of chemical facility security (including the security of transportation regulated substances) as required by federal law (P.L. 106–40). Bureaucratic reorganization, even on a grand scale like this bill, is no substitute for real action with respect to chemical plant security and adequate funding for critical security needs.

In sum, I have serious concerns about the management and effectiveness of this new Department. The lessons learned from past governmental reorganizations is that simply rearranging the bureaucratic boxes usually does not get the intended result—oftentimes it gets you more confusion, more expense, more people and less work. This reorganization may actually make the country more vulnerable during the lengthy transition period—not less—particularly if it becomes the substitute for needed action and funding.

Mr. ARMEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

The amendment contained in section 2 of H. Res. 600 is considered as adopted.

Pursuant to H. Res. 600, the bill is considered read for amendment and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. ROEMER

Mr. ROEMER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. ROEMER. I am, in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ROEMER moves to recommit the bill H.R. 5710 to the Select Committee on Homeland Security with instructions to report the same back to the House forthwith with the following amendment:

At the end, add the following new title:

TITLE XVIII—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 1801. 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. 1802. 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, in Somerset County, Pennsylvania, 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 (hereinafter in this title referred to as the ''Joint Inquiry'');

(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. 1803. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as a co-chairperson of the Commission;

(2) 1 member shall be appointed by the minority leader of the Senate, in consultation with the minority leader of the House of Representatives, who shall serve as a co-chairperson of the Commission;

(3) 2 members shall be appointed by the majority leader of the Senate;

(4) 2 members shall be appointed by the Speaker of the House of Representatives;

(5) 2 members shall be appointed by the minority leader of the Senate; and

(6) 2 members shall be appointed by the minority leader of the House of Representatives.

(b) 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, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs.

(4) INITIAL MEETING.—If 90 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, begin the operations of the Commission.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the co-chairpersons 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. 1804. FUNCTIONS OF THE COMMISSION.

(a) IN GENERAL.—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;

(vii) the role of congressional oversight and resource allocation; and

(viii) 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.

(b) RELATIONSHIP TO INTELLIGENCE COMMITTEES' INQUIRY.—When investigating facts and circumstances relating to the intelligence community, the Commission shall—

(1) first review the information compiled by, and the findings, conclusions, and recommendations of, the Joint Inquiry; and

(2) after that review pursue any appropriate area of inquiry if the Commission determines that—

(A) the Joint Inquiry had not investigated that area;

(B) the Joint Inquiry's investigation of that area had not been complete; or

(C) new information not reviewed by the Joint Inquiry had become available with respect to that area.

SEC. 1805. 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) subject to paragraph (2)(A), 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.—

(i) IN GENERAL.—A subpoena may be issued under this subsection only upon—

(I) the agreement of the co-chairpersons; or

(II) the affirmative vote of 5 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under paragraph (1)(B) may be issued under the signature of either co-chairperson or both co-chairpersons 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 co-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) 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.

(c) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—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 either co-chairperson, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive Orders.

(d) 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 may 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.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) 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. 1806. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

(a) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.—The Commission shall—

(1) hold public hearings and meetings to the greatest extent feasible; and

(2) release public versions of the reports required under section 1810 (a) and (b).

(c) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive Order.

SEC. 1807. STAFF OF THE COMMISSION.

(a) IN GENERAL.—

(1) APPOINTMENT AND COMPENSATION.—The co-chairpersons, 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. 1808. 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. 1809. 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. 1810. REPORTS OF THE COMMISSION; TERMINATION.

(a) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) FINAL REPORT.—Not later than 2 years after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress a final 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 final 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 final report.

SEC. 1811. 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.

Mr. ROEMER (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana is recognized for 5 minutes in support of his motion to recommit.

□ 1945

Mr. ROEMER. Mr. Speaker, before I explain what my motion is, I see on the other side of the aisle, on the Republican side, somebody that served on the Committee on Education and the Workforce with me, and someone who has decided to step down after serving the country so well through his years, and has managed one of his final bills here.

I would just like to recognize the contributions of the majority leader, the gentleman from Texas (Mr. ARMEY), and salute him for his service to the body.

Mr. Speaker, oftentimes motions to recommit are both partisan and procedural. This motion is neither one. It is not partisan in that it is a reflection actually of the substance of a bipartisan agreement arrived at by members of the intelligence committees in both Chambers, on both sides of the aisle. It is not only bipartisan, it is substantive in what it tries to achieve: to create an independent commission to respond to the national and the international tragedy of 2,900 and 4,800 people dead with the terrorist attack on September 11.

Why on this bill would we offer an independent committee, an independent blue ribbon commission to

look at answers as to why this tragic attack was perpetrated upon this country, and how to prevent future attacks? Why on homeland security?

Well, we passed the defense appropriations bill. In that bill we increased funding, and we have a plan for fighting terrorism in Afghanistan and around the world. When we are going to have a Homeland Security Department, as this bill lays out, we need to make sure that we understand how and why the September 11 tragedy took place, and to put all our resources together with the very best people that we can get to serve on this commission, Democrats and Republicans, to protect this country from future attacks and to make sure 2,900 people, 290 people, or 29 people do not die in another attack on this great Nation.

So this is not procedural, this is not partisan; this is an independent commission put forward by people such as Senator SHELBY, Senator MCCAIN, and Senator LIEBERMAN. It is reflective of a vote that took place in this body on the intelligence authorization bill, that passed this body, and one that passed the Senate with a 90 to 8 vote.

I think it is critically important that as we have reacted to attacks like Pearl Harbor on this great Nation, and it took us not 11 months to react to it but 11 days for President Roosevelt to say that we need to get to the facts and we need to find the answers, we do not need political witch-hunts or fingerpointing, we need to protect this country from any other kind of attack. That is what this independent blue ribbon commission would set forward. So it is bipartisan and it is substantive. It is on the right vehicle, the homeland security vehicle.

I may hear from somebody who opposes this that it would delay the creation of this Homeland Security Department, that the President wants and needs this bill to create this. It is a high priority of his.

I highly respect the President and his priorities, and respect the White House for their hard work on this bill. But I also say that this needs to be done and it needs to be done now. It needs to be done because we are at the end of the session, in the last few hours of this, the body's deliberative policymaking, and it needs to be done in a bipartisan way.

Mr. Speaker, when we read the headlines today in the papers and we read in the New York Times and the Post and the South Bend Tribune from my hometown that Osama bin Laden is going to attack, and he is applauding the attacks in Bali and Tunisia and Yemen and the killing of American soldiers, and he is prodding them to attack again, we need to act now. We need to pass with bipartisan votes this recommittal motion.

It is a forthwith recommittal. It would not send the motion back to the committee, it would come right back to the floor and stay on the floor. It will not delay one second this homeland security bill.

Mr. ARMEY. Mr. Speaker, I rise in opposition to the motion.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Texas (Mr. ARMEY) is recognized for 5 minutes.

Mr. ARMEY. Mr. Speaker, let me thank the gentleman from Indiana (Mr. ROEMER) for raising this subject. The gentleman is correct, this motion to recommit is not procedure, it is not partisan; it is substantive, and it is important. I want to appreciate the gentleman for his interest and his commitment to this subject.

Why, then, Mr. Speaker, would I ask that we oppose the gentleman's motion? In all due respect to the gentleman's work, his commitment, and his fervor for the subject, all of which I applaud, I think we need to recognize that we had such language in the bill and we took it out. Why would we do that? Because we felt that it was not comprehensive enough to do exactly the job the gentleman from Indiana says is important, and we believed it could be properly structured. That work will be done.

The gentleman says it must be done now. More importantly, I would say that it must be done correctly. The negotiations between very important and well-informed members of the Permanent Select Committee on Intelligence, whose work is to be applauded here, and the White House and others will go on; so it will be done. Let me encourage the gentleman to know that.

We have done our job here. We will do this kind of a review. It will all be done right and it will be done thoroughly and it will be done soon. But doing it soon is better than doing it now.

I want to thank again the gentleman from Indiana (Mr. ROEMER). He is so correct in encouraging us to get this job done, get it done as quickly as possible, and get it done right. We must understand and we must care and we must, for the sake of all of our Nation, prevent any atrocities like that in the future.

So if I may, Mr. Speaker, close, again with my most sincere appreciation for the gentleman from Indiana, with respect for what he proposes and assurance that the gentleman's objectives will be fulfilled, and fulfilled soon, and ask that the body at this time, for this moment, reject this motion to recommit and move this other larger work forward.

Mr. HOLT. Mr. Speaker, we need to pass an Intelligence Authorization bill before the year is over. If we don't, our nation's intelligence community will not be able to take advantage of the much-needed increases in funding that we in Congress have appropriated for them. At this time in our Nation's history, when we face so many threats, we simply can't allow that.

But we need to pass an intelligence authorization bill that addresses all of the challenges we face. That means including the provision so many of us support for an independent commission to investigate the 911 terrorist attacks.

Many of my constituents lost their loved ones in the World Trade Center attacks. I am here on the floor today because widows like Lori Van Auken, Mindy Kleinberg, and Patty Casazza from central New Jersey do not want other Americans to share the fate of their husbands. They want our government to ensure that it is doing absolutely everything it can to prevent future terrorist attacks from claiming American lives.

The Administration keeps telling the public that another terrorist attack is inevitable. They say it is not whether another attack will happen, but when it will happen. Another attack is only inevitable if we do not fully examine what went wrong prior to 911. It is only inevitable if we do not learn from our mistakes.

All of us want to improve coordination and communication between the government agencies that are responsible for our security. We want to streamline and integrate their functions. We want to reform how they provide for our security and we want to do it in a systematic and scientific fashion. But we cannot begin fixing things until we know exactly what is broken.

When a reasonable person gets sick, he goes to the doctor to get a diagnosis. He does not try to treat himself. When a patient tries to heal himself sometimes all he does is makes things even worse. That's why Congressional oversight committees are not enough to fix our security apparatus.

Both Republicans and Democrats support an independent commission because we do not believe that agencies like the FBI and CIA are capable of healing themselves. We believe that they need an independent commission of experts who will dispassionately and honestly diagnose their problems and prescribe the proper treatment.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROEMER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage. This will be a 15-minute vote on the motion to recommit followed by a 5-minute vote on passage.

The vote was taken by electronic device, and there were—yeas 203, nays 215, not voting 13, as follows:

[Roll No. 476]

YEAS—203

Abercrombie	Berry	Carson (OK)
Ackerman	Bishop	Clay
Allen	Blumenauer	Clayton
Andrews	Bonior	Clement
Baca	Boswell	Clyburn
Baird	Boucher	Conyers
Baldacci	Boyd	Costello
Baldwin	Brady (PA)	Coyne
Barcia	Brown (FL)	Cramer
Barrett	Brown (OH)	Crowley
Becerra	Capps	Cummings
Bentsen	Capuano	Davis (CA)
Berkley	Cardin	Davis (FL)
Berman	Carson (IN)	Davis (IL)

DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Fossella
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (TX)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—215

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (TX)
Souder
Stearns
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Blagojevich
Borski
Condit
Frank
Hooley
Houghton
John
McKinney
Morella
Rangel
Roukema
Shadegg
Stump

□ 2018

Mr. SAXTON changed his vote from ''yea'' to ''nay.''

Messrs. MASCARA, HILLIARD, and DOGGETT changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 299, nays 121, not voting 11, as follows:

[Roll No. 477]

YEAS—299

Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cantor
Capito
Cardin
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clement
Clyburn
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dooley
Doolittle
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Everett
Ferguson
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Horn
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Maloney (NY)
Manzullo
Mascara
Matheson
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Osborne
Ose
Otter
Oxley
Pascrell
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Sawyer
Saxton
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Turner
Udall (CO)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NAYS—121

Abercrombie
Ackerman
Baldwin
Becerra
Berman
Blumenauer
Bonior
Brady (PA)
Brown (FL)
Brown (OH)
Cannon
Capps
Capuano
Carson (IN)
Clayton
Conyers
Costello
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doggett
Doyle
Duncan
Evans
Farr
Fattah
Filner
Flake
Gephardt
Gonzalez
Green (TX)
Gutierrez
Hastings (FL)
Hilliard
Hinchey
Holt
Honda
Hostettler
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kaptur
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern

McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Miller, George
Mollohan
Moran (KS)
Moran (VA)
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Paul
Payne
Rahall
Rivers
Rodriguez
Roemer
Roybal-Allard
Sabo
Sanchez
Sanders
Schakowsky
Scott
Serrano
Sherman
Slaughter
Snyder
Solis
Stark
Thompson (CA)
Tierney
Towns
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wynn

NOT VOTING—11

Blagojevich
Borski
Condit
Frank
Hooley
Houghton
Morella
Rangel
Roukema
Rush
Stump

□ 2030

Messrs. ROTHMAN, ROYCE, and BACA changed their vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION TO SUBMIT PROCEEDINGS OF SELECT COMMITTEE ON HOMELAND SECURITY FOR PRINTING

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that, notwithstanding section 7 of House Resolution 449, the gentleman from Texas (Mr. ARMEY) be permitted through the end of the 107th Congress to submit the proceedings of the Select Committee on Homeland Security for printing pursuant to clause 1(c) of rule XI of the rules of the House of Representatives for the 107th Congress.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Ohio?

There was no objection.

HOUR OF MEETING ON TOMORROW

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 1 p.m. tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

MAKING IN ORDER CALL OF PRIVATE CALENDAR ON TOMORROW

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that the call of the Private Calendar be in order on Thursday, November 14.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o'clock and 31 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 2200

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. DREIER) at 10 p.m.

CONFERENCE REPORT ON H.R. 3210, TERRORISM RISK PROTECTION ACT

Mr. SHAYS submitted the following conference report and statement on the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

CONFERENCE REPORT (H. REPT. 107–779)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3210), to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Terrorism Risk Insurance Act of 2002''.

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

Sec. 1. Short title; table of contents.

TITLE I—TERRORISM INSURANCE PROGRAM

Sec. 101. Congressional findings and purpose.
Sec. 102. Definitions.
Sec. 103. Terrorism Insurance Program.
Sec. 104. General authority and administration of claims.
Sec. 105. Preemption and nullification of preexisting terrorism exclusions.
Sec. 106. Preservation provisions.
Sec. 107. Litigation management.
Sec. 108. Termination of Program.

TITLE II—TREATMENT OF TERRORIST ASSETS

Sec. 201. Satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and State sponsors of terrorism.

TITLE III—FEDERAL RESERVE BOARD PROVISIONS

Sec. 301. Certain authority of the Board of Governors of the Federal Reserve System.

TITLE I—TERRORISM INSURANCE PROGRAM

SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

SEC. 102. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ACT OF TERRORISM.—

(A) CERTIFICATION.—The term ''act of terrorism'' means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

(I) an air carrier or vessel described in paragraph (5)(B); or

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the

conduct of the United States Government by coercion.

(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

(2) AFFILIATE.—The term ''affiliate'' means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

(3) CONTROL.—An entity has ''control'' over another entity, if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(4) DIRECT EARNED PREMIUM.—The term ''direct earned premium'' means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

(5) INSURED LOSS.—The term ''insured loss'' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

(A) occurs within the United States; or

(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

(6) INSURER.—The term ''insurer'' means any entity, including any affiliate thereof—

(A) that is—

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a State residual market insurance entity or State workers' compensation fund; or

(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) INSURER DEDUCTIBLE.—The term ''insurer deductible'' means—

(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent; and

(E) notwithstanding subparagraphs (A) through (D), for the Transition Period, Program Year 1, Program Year 2, or Program Year 3, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

(8) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners.

(9) PERSON.—The term ''person'' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(10) PROGRAM.—The term ''Program'' means the Terrorism Insurance Program established by this title.

(11) PROGRAM YEARS.—

(A) TRANSITION PERIOD.—The term ''Transition Period'' means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

(B) PROGRAM YEAR 1.—The term ''Program Year 1'' means the period beginning on January 1, 2003 and ending on December 31, 2003.

(C) PROGRAM YEAR 2.—The term ''Program Year 2'' means the period beginning on January 1, 2004 and ending on December 31, 2004.

(D) PROGRAM YEAR 3.—The term ''Program Year 3'' means the period beginning on January 1, 2005 and ending on December 31, 2005.

(12) PROPERTY AND CASUALTY INSURANCE.—The term ''property and casualty insurance''—

(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance; and

(B) does not include—

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) insurance for medical malpractice;

(v) health or life insurance, including group life insurance;

(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.); or

(vii) reinsurance or retrocessional reinsurance.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(14) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(15) UNITED STATES.—The term ''United States'' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

(16) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

(A) to begin at 12:01 a.m. on that date; and

(B) to end at midnight on that date.

SEC. 103. TERRORISM INSURANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) MANDATORY AVAILABILITY.—

(1) INITIAL PROGRAM PERIODS.—During the period beginning on the first day of the Transition Period and ending on the last day of Program Year 2, each entity that meets the definition of an insurer under section 102—

(A) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(2) PROGRAM YEAR 3.—Not later than September 1, 2004, the Secretary shall, based on the factors referred to in section 108(d)(1), determine whether the provisions of subparagraphs (A) and (B) of paragraph (1) should be extended through Program Year 3.

(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

(e) INSURED LOSS SHARED COMPENSATION.—

(1) FEDERAL SHARE.—

(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year shall be equal to 90 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

(B) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

(2) CAP ON ANNUAL LIABILITY.—

(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3 (until such time as the Congress may act otherwise with respect to such losses)—

(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds $100,000,000,000.

(B) INSURER SHARE.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3, and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

(i) $10,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such period;

(B) for Program Year 2, the lesser of—

(i) $12,500,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

(C) for Program Year 3, the lesser of—

(i) $15,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

(7) RECOUPMENT OF FEDERAL SHARE.—

(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A), (B), and (C) of paragraph (6) shall be the difference between—

(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

(I) are within the insurer deductible for the insurer subject to the losses; or

(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

(B) NO MANDATORY RECOUPMENT IF UNCOMPENSATED LOSSES EXCEED INSURANCE MARKETPLACE RETENTION.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in subparagraph (A), (B), or (C) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be $0.

(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in subparagraph (A), (B), or (C) of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to any mandatory recoupment amount for such period.

(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE.—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

(i) the ultimate costs to taxpayers of no additional recoupment;

(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

(iv) such other factors as the Secretary considers appropriate.

(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium (including any additional amount included in such premium on a discretionary basis pursuant to paragraph (7)(D)) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

(D) ADJUSTMENT FOR URBAN AND SMALLER COMMERCIAL AND RURAL AREAS AND DIFFERENT LINES OF INSURANCE.—

(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(III) the various exposures to terrorism risk for different lines of insurance.

(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

(g) REINSURANCE TO COVER EXPOSURE.—

(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

(h) GROUP LIFE INSURANCE STUDY.—

(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

(i) STUDY AND REPORT.—

(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

(2) REPORT.—Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

(1) insurers may file and certify claims under the Program;

(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) CIVIL PENALTIES.—

(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

(C) submits to the Secretary fraudulent claims under the Program for insured losses;

(D) has failed to provide the disclosures required under subsection (f); or

(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

(f) SUBMISSION OF PREMIUM INFORMATION.—

(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

(g) FUNDING.—

(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act shall be void to the extent that it excludes losses that would otherwise be insured losses.

(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only—

(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) if—

(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

(i) the increased premium for such terrorism coverage; and

(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

SEC. 106. PRESERVATION PROVISIONS.

(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

(1) except as specifically provided in this title; and

(2) except that—

(A) the definition of the term ''act of terrorism'' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.

SEC. 107. LITIGATION MANAGEMENT.

(a) PROCEDURES AND DAMAGES.—

(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

(1) any party's contractual right to arbitrate a dispute; or

(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

SEC. 108. TERMINATION OF PROGRAM.

(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2005.

(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

(d) STUDY AND REPORT ON THE PROGRAM.—

(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

TITLE II—TREATMENT OF TERRORIST ASSETS

SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS OF TERRORISM.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(b) PRESIDENTIAL WAIVER.—

(1) IN GENERAL.—Subject to paragraph (2), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive the requirements of subsection (a) in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(2) EXCEPTION.—A waiver under this subsection shall not apply to—

(A) property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations that has been used by the United States for any nondiplomatic purpose (including use as rental property), or the proceeds of such use; or

(B) the proceeds of any sale or transfer for value to a third party of any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

(c) SPECIAL RULE FOR CASES AGAINST IRAN.—Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386; 114 Stat. 1542), as amended by section 686 of Public Law 107–228, is further amended—

(1) in subsection (a)(2)(A)(ii), by striking ''July 27, 2000, or January 16, 2002'' and inserting ''July 27, 2000, any other date before October 28, 2000, or January 16, 2002'';

(2) in subsection (b)(2)(B), by inserting after ''the date of enactment of this Act'' the following: ''(less amounts therein as to which the United States has an interest in subrogation pursuant to subsection (c) arising prior to the date of entry of the judgment or judgments to be satisfied in whole or in part hereunder)'';

(3) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(4) by inserting after subsection (c) the following new subsection (d):

''(d) DISTRIBUTION OF ACCOUNT BALANCES AND PROCEEDS INADEQUATE TO SATISFY FULL AMOUNT OF COMPENSATORY AWARDS AGAINST IRAN.—

''(1) PRIOR JUDGMENTS.—

''(A) IN GENERAL.—In the event that the Secretary determines that 90 percent of the amounts available to be paid under subsection (b)(2) are inadequate to pay the total amount of compensatory damages awarded in judgments issued as of the date of the enactment of this subsection in cases identified in subsection (a)(2)(A) with respect to Iran, the Secretary shall, not later than 60 days after such date, make payment from such amounts available to be paid under subsection (b)(2) to each party to which such a judgment has been issued in an amount equal to a share, calculated under subparagraph (B), of 90 percent of the amounts available to be paid under subsection (b)(2) that have not been subrogated to the United States under this Act as of the date of enactment of this subsection.

''(B) CALCULATION OF PAYMENTS.—The share that is payable to a person under subparagraph (A), including any person issued a final judgment as of the date of enactment of this subsection in a suit filed on a date added by the amendment made by section 686 of Public Law 107–228, shall be equal to the proportion that the amount of unpaid compensatory damages awarded in a final judgment issued to that person bears to the total amount of all unpaid compensatory damages awarded to all persons to whom such judgments have been issued as of the date of enactment of this subsection in cases identified in subsection (a)(2)(A) with respect to Iran.

''(2) SUBSEQUENT JUDGMENT.—

''(A) IN GENERAL.—The Secretary shall pay to any person awarded a final judgment after the date of enactment of this subsection, in the case filed on January 16, 2002, and identified in subsection (a)(2)(A) with respect to Iran, an amount equal to a share, calculated under subparagraph (B), of the balance of the amounts available to be paid under subsection (b)(2) that remain following the disbursement of all payments as provided by paragraph (1). The Secretary shall make such payment not later than 30 days after such judgment is awarded.

''(B) CALCULATION OF PAYMENTS.—To the extent that funds are available, the amount paid under subparagraph (A) to such person shall be the amount the person would have been paid under paragraph (1) if the person had been awarded the judgment prior to the date of enactment of this subsection.

''(3) ADDITIONAL PAYMENTS.—

''(A) IN GENERAL.—Not later than 30 days after the disbursement of all payments under paragraphs (1) and (2), the Secretary shall make an additional payment to each person who received a payment under paragraph (1) or (2) in an amount equal to a share, calculated under subparagraph (B), of the balance of the amounts available to be paid under subsection (b)(2) that remain following the disbursement of all payments as provided by paragraphs (1) and (2).

''(B) CALCULATION OF PAYMENTS.—The share payable under subparagraph (A) to each such person shall be equal to the proportion that the amount of compensatory damages awarded that person bears to the total amount of all compensatory damages awarded to all persons who received a payment under paragraph (1) or (2).

''(4) STATUTORY CONSTRUCTION.—Nothing in this subsection shall bar, or require delay in, enforcement of any judgment to which this subsection applies under any procedure or against assets otherwise available under this section or under any other provision of law.

''(5) CERTAIN RIGHTS AND CLAIMS NOT RELINQUISHED.—Any person receiving less than the full amount of compensatory damages awarded to that party in a judgment to which this subsection applies shall not be required to make the election set forth in subsection (a)(2)(B) or, with respect to subsection (a)(2)(D), the election relating to relinquishment of any right to execute or attach property that is subject to section 1610(f)(1)(A) of title 28, United States Code, except that such person shall be required to relinquish rights set forth—

''(A) in subsection (a)(2)(C); and

''(B) in subsection (a)(2)(D) with respect to enforcement against property that is at issue in claims against the United States before an international tribunal or that is the subject of awards by such tribunal.

''(6) GUIDELINES FOR ESTABLISHING CLAIMS OF A RIGHT TO PAYMENT.—The Secretary may promulgate reasonable guidelines through which any person claiming a right to payment under this section may inform the Secretary of the basis for such claim, including by submitting a certified copy of the final judgment under which such right is claimed and by providing commercially reasonable payment instructions. The Secretary shall take all reasonable steps necessary to ensure, to the maximum extent practicable, that such guidelines shall not operate to delay or interfere with payment under this section.''.

(d) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ACT OF TERRORISM.—The term ''act of terrorism'' means—

(A) any act or event certified under section 102(1); or

(B) to the extent not covered by subparagraph (A), any terrorist activity (as defined in section 212(a)(3)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iii))).

(2) BLOCKED ASSET.—The term ''blocked asset'' means—

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under

sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

(B) does not include property that—

(i) is subject to a license issued by the United States Government for final payment, transfer, or disposition by or to a person subject to the jurisdiction of the United States in connection with a transaction for which the issuance of such license has been specifically required by statute other than the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) or the United Nations Participation Act of 1945 (22 U.S.C. 287 et seq.); or

(ii) in the case of property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, or that enjoys equivalent privileges and immunities under the law of the United States, is being used exclusively for diplomatic or consular purposes.

(3) CERTAIN PROPERTY.—The term ''property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' and the term ''asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations'' mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

(4) TERRORIST PARTY.—The term ''terrorist party'' means a terrorist, a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))), or a foreign state designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

TITLE III—FEDERAL RESERVE BOARD PROVISIONS

SEC. 301. CERTAIN AUTHORITY OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following new subsection:

''(r)(1) Any action that this Act provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

''(2)(A) Any action that the Board is otherwise authorized to take under section 13(3) may be taken upon the unanimous vote of all available members then in office, if—

''(i) at least 2 members are available and all available members participate in the action;

''(ii) the available members unanimously determine that—

''(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

''(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

''(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic means), the other members of the Board have not been able to be contacted on the matter; and

''(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means); and

''(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board.

''(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.''.

And the Senate agree to the same.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendment thereto, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ROBERT W. NEY,
SUE W. KELLY,
CHRISTOPHER SHAYS,
VITO FOSSELLA,
MICHAEL FERGUSON,
JOHN J. LAFALCE,
PAUL E. KANJORSKI
KEN BENTSEN,
JAMES H. MALONEY,
DARLENE HOOLEY,

From the Committee on the Judiciary, for consideration of sec. 15 the House bill and sec. 10 and 11 of the Senate amendment thereto, and modifications committed to conference:

JOHN CONYERS, Jr.,
Managers on the Part of the House.

PAUL SARBANES,
CHRISTOPHER J. DODD,
JACK REED,
CHARLES SCHUMER,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment.

The Conference Report includes the following provisions:

Section 1. Short title; table of contents

The short title of this legislation is ''Terrorism Risk Insurance Act of 2002.''

TITLE I—TERRORISM INSURANCE PROGRAM

Section 101. Congressional findings and purpose

Following the widespread financial market uncertainties due to the terrorist attacks of September 11, 2001, Congress determined that there was a need for a temporary Federal program to establish a system of shared public/private compensation for insured losses resulting from acts of terrorism to protect consumers and create a transitional period for the private insurance markets to stabilize.

Section 102. Definitions

Section 102 defines terms necessary for implementation of this legislation. The Federal backstop is triggered when the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General, certifies that an event meets the definition of an act of terrorism. The legislation only applies to U.S. risks, including domestic air carriers and flag vessels, U.S. territorial seas and continental shelf, and U.S. missions. The legislation applies only to acts that are committed by an individual or individuals acting on behalf of a foreign person or foreign interest.

The terms ''affiliate'' and ''control'' are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums. The term ''insured loss'' includes losses resulting from an act of terrorism (and from an act of war in the case of workers compensation). Each insurer will be responsible for paying out a prescribed amount of insured losses, the ''insurer deductible,'' before Federal assistance becomes available. This deductible is based on a percentage of direct earned premiums from the previous calendar year. Insurers' deductibles are 1% during a transition period for the remainder of 2002, 7% in 2003, 10% in 2004, and 15% in 2005. Except as otherwise specifically provided, the Conferees intend the legislation to apply only to primary and excess commercial property and casualty insurance (including cyber-terrorism and business interruption coverage).

Section 103. Terrorism Insurance Program

The Terrorism Insurance Program is established in the Department of the Treasury under which the Federal government will share the risk of loss from future terrorist attacks with the commercial property and causality insurance marketplace, for a temporary period of time. The Secretary of the Treasury (hereafter ''Secretary'') shall administer the Program and pay the Federal share of compensation for insured losses. The Federal government pays 90% of insured losses in excess of an insurer's deductible while the insurer pays 10%. Insurers may reinsure their insurer deductibles and 10% coshares. Losses covered by the Program will be capped at $100 billion per year; above this amount, Congress is to determine the procedures for and the source of any payments.

Before receiving Federal assistance under this Act, an insurer must certify its claim for payment of insured losses, that a policyholder (or person acting on the policyholder's behalf) has filed a claim for such loss, and the insurer's compliance with the Act. The Secretary may not reimburse an insurer for such losses unless the insurer has provided clear and conspicuous disclosure to the policyholder of the premium charged for terrorism coverage and the Federal share of compensation. This disclosure to the policyholder must occur at the time of offer, purchase, and renewal of the policy for policies issued after the date of enactment, and must be made on a separate line item in the policy with respect to policies issued more than 90 days after enactment. For policies issued before the date of enactment, the disclosure must be made within 90 days of such date. The Conferees intend this disclosure to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with the insurers, thereby reducing the insurers's exposure. Insurers must submit premium and claims information to the Secretary who may investigate and audit all claims under the Program.

Each entity meeting the definition of insurer under this legislation is required to participate in the Program. During the first two years of the Program each such insurer must make available in all of its property and casualty insurance polices coverage for insured losses, and shall make such coverage

available on terms that do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. The Secretary has discretion to extend this requirement to the third year of the Program, to preserve this important option for policyholders.

Section 103 provides for insurance marketplace retentions of $10 billion in Program year 1 (including any remainder of 2002), $12.5 billion in Program year 2, and $15 billion in Program year 3. Federal assistance within the retention above in insurer deductibles and 10% co-shares must be recouped while additional amounts of Federal assistance may be recouped based on economic factors in the judgment of the Secretary. Mandatory recoupment within the insurance marketplace retention is through terrorism loss risk-spreading premiums (surcharges) paid by all commercial property and casualty policyholders based on premium rates with any year's surcharge (mandatory and discretionary combined) capped at 3% of the premium charged for property and casculty insurance coverage under the policy in each such year. The Secretary has discretion over the timing of recoupment, and to adjust amounts for urban, smaller commercial, and rural areas, as well as for different lines of insurance, so long as the mandatory amounts are ultimately recouped. The Secretary may assess civil penalties on insurers for submission of false or misleading information or failure to repay the Secretary for any amount required to be repaid, or for other failure to comply with the provisions of this title.

This section directs the Secretary to apply the provisions of the legislation to State residual market insurance entities and State workers compensation funds. The Secretary is directed to either treat State residual market insurance entities as separate insurers, or to calculate the premiums, losses, and Federal backstop based on each insurer's share of the entity, imputing such amounts as part of their total business. This calculation would apply to all insurers that participate in such entities, regardless of whether they otherwise provide commercial property and casualty insurance as set forth in the legislation. This section further gives the Secretary discretion to apply the legislation to various classes of captives and self-insurance programs (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools).

The Secretary is also directed to conduct an expedited study to determine whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to group life insurers and whether the threat of terrorism is reducing the availability of group life insurance for consumers. Should the Secretary determine that terrorism coverage is not or will not be reasonably available to insurers and consumers, the Secretary would be required to include group life insurance in the Terrorism Insurance Program. In so doing, the Secretary would have discretion to determine the most appropriate way to include group life insurance in the Program.

The Secretary, after consultation with the NAIC, is to conduct a study of the potential effects of acts of terrorism on the availability of life insurance generally and other lines of insurance coverage, including personal lines, to be submitted to Congress not later than 9 months from the date of enactment.

Section 104. General authority and administration of claims

The Secretary shall have the powers and authorities necessary to carry out the Program. The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year. To the extent that such information is not otherwise available, the Secretary may require insurers to submit their terrorism risk insurance premium rates to the NAIC, which shall make such information available to the Secretary.

Section 105. Preemption and nullification of pre-existing terrorism exclusions

This section voids any commercial property and casualty terrorism insurance exclusion that is in force on the date of the enactment of this Act to the extent that it excludes that in force on the date of the enactment of this Act to the extent that it excludes losses that would otherwise be insured losses. Any Sate approval of any commercial property and casualty terrorism insurance exclusion in force on the date of enactment is also void to the extent that it excludes losses that would otherwise be insured losses.

This provision is intended to create immediate terrorism coverage for commercial property and casualty policyholders upon enactment for a short window of time, while allowing insurers to immediately send notices of the increased premium for such coverage and giving policyholders the option within 30 days of such notice to pay such increased premium or allow reinstatement of any pre-existing terrorism exclusion.

Section 106. Preservation provisions

This section preserves State regulatory authority except as specifically provided in this legislation. A uniform definition of a terrorist act is established in this legislation. Until the end of 2003, States would be required to allow rate and form changes to take effect immediately but would retain authority to disapprove any rates as excessive, inadequate, or unfairly discriminatory and where a State has prior approval authority for forms, subsequent review of such forms is permitted. During the period in which the Secretary's authority to carry out the Program is in effect, the Secretary would have access to any books and records of insurers that are relevant to the Program.

Section 107. Litigation management

The Conferees agreed to a provision on litigation management.

Section 108. Termination of program

This section provides a three-year program (with a transition period for the balance of 2002) that terminates on December 31, 2005. The Secretary shall conduct a study and report to Congress no later than June 30, 2005 on the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

TITLE II—TREATMENT OF TERRORIST ASSETS

Section 201. Satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and state sponsors to terrorism

The purpose of Section 201 is to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties. It is the intent of the Conferees that Section 201 establish that such judgments are to be enforced. Section 201 builds upon and extends the principles in section 1610(f)(1) of the Foreign Sovereign Immunities Act (28 U.S.C. §1610(f)(1)), authorizes the enforcement of judgment against terrorist organizations and eliminates the effect of any Presidential waiver issued prior to the date of enactment purporting to bar or restrict enforcement of such judgments, thereby making clear that all such judgments are enforceable against any assets or property under any authorities referenced in Section 1610(f)(1).

Section 201(c) establishes a special rule for cases against Iran. In Section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (2000 Act), Congress directed that specified claimants against Iran under Section 1605(a)(7) of the Foreign Sovereign Immunities Act receive payment in satisfaction of judgments. Unfortunately, several victims and families of victims who brought suit against Iran, were left out of the 2000 Act. The Conferees has sought to correct this injustice.

In order to accommodate additional dates within the equitable formula for payment of remaining amounts in the accounts and rental proceeds, the Conferees added to Section (c) an adjustment to the proportional formula for payment to qualifying claimants.

In Section 201(d), the Conferees broadened the definition of ''act of terrorism'' for purposes of that section; defined the term ''blocked assets''; and clarified the term ''terrorist organization'' to mean any entity included in the definition provided in Section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, (8 U.S.C. §1182(a)(3)(B)(vi)). This provision is intended to reach terrorist organizations.

TITLE III—FEDERAL RESERVE BOARD PROVISIONS

Section 301. Certain authority of the Board of Governors of the Federal Reserve System

The Conferees agreed to certain changes to Section 11 of the Federal Reserve Act.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendment thereto, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ROBERT W. NEY,
SUE W. KELLY,
CHRISTOPHER SHAYS,
VITO FOSSELLA,
MICHAEL FERGUSON,
JOHN J. LAFALCE,
PAUL E. KANJORSKI,
KEN BENTSEN,
JAMES H. MALONEY,
DARLENE HOOLEY,

From the Committee on Judiciary, for consideration of sec. 15 the House bill and sec. 10 and 11 of the Senate amendment thereto, and modifications committed to conference:

JOHN CONYERS, Jr.,
Managers on the Part of the House.

PAUL SARBANES,
CHRISTOPHER J. DODD,
JACK REED,
CHARLES SCHUMER,
Managers on the Part of the Senate.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 1 minute p.m.), the House stood in recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro

tempore (Mr. SESSIONS) at 11 o'clock and 6 minutes p.m.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION ANTITERRORISM ACT OF 2002

Mr. DIAZ-BALART, from the Committee on Rules, submitted a privileged report (Rept. No. 107–780) on the resolution (H. Res. 605) waiving points of order against the conference report to accompany the Senate bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

Mr. DIAZ-BALART, from the Committee on Rules, submitted a privileged report (Rept. No. 107–781) on the resolution (H. Res. 606) waiving points of order against the conference report to accompany the bill (H.R. 333) to amend Title XI, United States Code, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3210, TERRORISM RISK PROTECTION ACT

Mr. DIAZ-BALART, from the Committee on Rules, submitted a privileged report (Rept. No. 107–782) on the resolution (H. Res. 607) waiving points of order against the conference report to accompany the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. DIAZ-BALART, from the Committee on Rules, submitted a privileged report (Rept. No. 107–783) on the resolution (H. Res. 608) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 5063, ARMED FORCES TAX FAIRNESS ACT OF 2002

Mr. DIAZ-BALART, from the Committee on Rules, submitted a privileged report (Rept. No. 107–784) on the resolution (H. Res. 609) providing for consideration of the Senate amendments to the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, which was referred to the House Calendar and ordered to be printed.

ADJOURNMENT

Mr. DIAZ-BALART. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 8 minutes p.m.), under its previous order, the House adjourned until tomorrow, Thursday, November 14, 2002, at 1 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

9926. A letter from the Acting Principal DeputyAssociate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Diflubenzuron; Pesticide Tolerances Correction [OPP-2002-0224; FRL-7277-9] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9927. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Thiamethoxam; Pesticide Tolerance [OPP-2002-02 98; FRL-7279-6] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9928. A letter from the Under Secretary, Acquisition and Technology, Department of Defense, transmitting a copy of the Selected Acquisition Reports (SARs) for the quarter ending September 30, 2002; to the Committee on Armed Services.

9929. A letter from the Deputy Chief of Naval Operations, Department of Defense, transmitting notification of the decision to convert to contractor performance; to the Committee on Armed Services.

9930. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance [Docket No. FR-4754-F-01] (RIN: 2577-AC35) received November 1, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

9931. A letter from the Director, Office of Management and Budget, transmitting a report on the Cost Estimate For Pay-As-You-Go Calculations; to the Committee on the Budget.

9932. A letter from the Deputy Secretary, Department of Health and Human Services, transmitting the annual report on the Community Services Block Grant (CSBG) National Information Service and the annual report on the Community Services Block Grant Implementation Assessments; to the Committee on Education and the Workforce.

9933. A letter from the Administrator, Environmental Protection Agency, transmitting the Agency's report for Fiscal Years 1999-2001 entitled ''Superfund Five Year Review''; to the Committee on Energy and Commerce.

9934. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; State of Iowa [IA 159-1159a; FRL-7403-7] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9935. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; State of Kansas [MO 165-1165a; FRL-7401-4] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9936. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Yakima Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes [Docket # WA-01-006; FRL-7267-8] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9937. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, Alabama, Marginal Ozone Nonattainment Area [AL-200302; FRL-7403-5] received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9938. A letter from the Secretary, American Battle Monuments Commission, transmitting the FY 2002 annual report, pursuant to 31 U.S.C. 3512(c)(3) and Public Law 100—504; to the Committee on Government Reform.

9939. A letter from the Chairman and Chief Executive Officer, Chemical Safety and Hazard Investigation Board, transmitting the consolidated report on audit and investigative coverage required by the Inspector General Act of 1978 as amended, and the Federal Managers' Financial Integrity Act, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform.

9940. A letter from the Vice Chairman, Defense Nuclear Facilities Safety Board, transmitting the consolidated report for the year ending September 30, 2002, on the Federal Managers' Financial Integrity Act and the status of our internal audit and investigative activities, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform.

9941. A letter from the Under Secretary, Department of Defense, transmitting the Department's annual implementation report required by the Federal Financial Assistance Management Improvement Act of 1999, pursuant to Public Law 106—107, section 5 (113 Stat. 1488); to the Committee on Government Reform.

9942. A letter from the Librarian, Library of Congress, transmitting the report of the activities of the Library of Congress, including the Copyright Office, for the fiscal year

ending September 30, 2001, pursuant to 2 U.S.C. 139; to the Committee on House Administration.

9943. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Sikorsky Aircraft Corporation Model S-76A, S-76B and S-76C Helicopters; [Docket No. 2001-SW-59-AD; Amendment 39-12913; AD 2002-21-07] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9944. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pilatus Aircraft Ltd. Model PC-6 Airplanes [Docket No. 2002-CE-08-AD; Amendment 39-12914; AD 2002-21-08] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9945. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes [Docket No. 2002-CE-25-AD; Amendment 39-12905; AD 2002-20-08] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9946. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B Airplanes [Docket No. 93-CE-37-AD; Amendment 39-12919; AD 94-20-04 R1] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9947. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters [Docket No. 2002-SW-06-AD; Amendment 39-12918; AD 2002-21-12] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9948. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier-Rotax GmbH Type 912 F, 912 S and 914 F Series Reciprocating Engines [Docket No. 2002-NE-33-AD; Amendment 39-12923; AD 2002-21-16] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9949. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Britax Sell GmbH & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers [Docket No. 2000-NE-58-AD; Amendment 39-12907; AD 2002-21-01] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9950. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and MD-88 Airplanes [Docket No. 2002-NM-216-AD; Amendment 39-12912; AD 2002-21-06] (RIN: 2120-AA64) Recieved October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9951. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes [Docket No. 2000-NM-57-AD; Amendment 39-12915; AD 2002-21-09] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9952. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Raytheon Aircraft Company Beech Models 35, 35R, A35, and B35 Airplanes [Docket No. 2000-CE-44-AD; Amendment 39-12920; AD 2002-21-13] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9953. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 757-200, -200CB, and -300 Series Airplanes [Docket No. 2000-NM-392-AD; Amendment 39-12921; AD 2002-21-14] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9954. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines [Docket No. 2000-NE-47-AD; Amendment 39-12916; AD 2002-21-10] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9955. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pratt & Whitney JT8D-200 Series Turbofan Engines [Docket No. 2002-NE-11-AD; Amendment 39-12924; AD 2002-21-17] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9956. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; EXTRA Flugzeugbau GmbH Model EA-300S Airplanes [Docket No. 99-CE-85-AD; Amendment 39-12917; AD 2002-21-11] (RIN: 2120-AA64) received October 31, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9957. A letter from the Administrative Specialist, Federal Railroad Administration, Department of Transportation, transmitting the Department's final rule — Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control [FRA Docket No. 1999-4985, Notice No. 5] (RIN: 2130-AB24) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9958. A letter from the Attorney, Research and Special Programs Administration, Department of Transportation, transmitting the Department's final rule — Hazardous Materials: Retention of Shipping Papers [Docket No. RSPA-01-10568 (HM-207B)] (RIN: 2137-AC64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9959. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30338; Amdt. No. 3030] (RIN: 2120-AA65) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9960. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes [Docket No. 2002-NM-214-AD; Amendment 39-12929; AD 2002-22-05] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9961. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E5 Airspace; Franklin, NC Correction [Airspace Docket No. 02-ASO-10] received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9962. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Stemme GmbH & Co. KG Model S10-VT Sailplanes [Docket No. 2002-CE-29-AD; Amendment 39-12928; AD 2002-22-04] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9963. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pilatus Britten-Norman Limited BN-2, BN-2A, BN-2B, BN-2T, and BN2A MK. III Series Airplanes [Docket No. 2002-CE-21-AD; Amendment 39-12926; AD 2002-22-02] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9964. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; PILATUS Aircraft Ltd. Model PC-7 Airplanes [Docket No. 2002-CE-28-AD; Amendment 39-12927; AD 2002-22-03] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9965. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; MORAVAN a.s. Models Z-143L and Z-242L Airplanes [Docket No. 99-CE-71-AD; Amendment 39-12925; AD 2002-22-01] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9966. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Hartzell Propeller Inc., Model HD-E6C-3() Propellers [Docket No. 2001-NE-43-AD; Amendment 39-12933; AD 2002-22-08] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9967. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Honeywell International, Inc., (formerly AlliedSignal, Inc. and Texton Lycoming) LF507 and ALF502R Series Turbofan Engines [Docket No. 2002-NE-21-AD; Amendment 39-12931; AD 2002-22-06] (RIN: 2120-AA64) received November 4, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9968. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; REVO, Incorporated Models Lake LA-4, Lake LA-4A, Lake LA-4P, Lake LA-4-200, and Lake Model 250 Airplanes [Docket No. 2002-CE-40-AD; Amendment 39-

12911; AD 2002-21-05] (RIN: 2120-AA64) received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9969. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Gulfstream Model G-V Series Airplanes [Docket No. 2002-NM-255-AD; Amendment 39-12909; AD 2002-21-03] (RIN: 2120-AA64) received October 29, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

9970. A letter from the Acting Chairman, National Transportation Safety Board, transmitting the Board's 2000 and 2001 annual report, pursuant to 49 U.S.C. 1117; to the Committee on Transportation and Infrastructure.

9971. A letter from the Director, Office of Personnel Management, transmitting the Office's Fiscal Year 2001 annual report on Veteran's Employment in the Federal Government, pursuant to 38 U.S.C. 4214(e)(1); to the Committee on Veterans' Affairs.

9972. A letter from the Attorney General, Department of Justice, transmitting a report required by Section 310 of the Intelligence Authorization Act for FY 2002, pursuant to Public Law 107—108; to the Committee on Intelligence (Permanent Select).

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DIAZ-BALART: Committee on Rules. House Resolution 600. Resolution providing for consideration of the bill (H.R. 5710) to establish the Department of Homeland Security, and for other purposes (Rept. 107–773). Referred to the House Calendar.

Mr. DIAZ-BALART: Committee on Rules. House Resolution 601. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–774). Referred to the House Calendar.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 602. Resolution providing for consideration of the joint resolution (H.J. Res. 124) making further continuing appropriations for the fiscal year 2003, and for other purposes, and for consideration of the bill (H.R. 5708) to reduce preexisting PAYGO balances, and for other purposes (Rept. 107–775). Referred to the House Calendar.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 603. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–776). Referred to the House Calendar.

Mr. YOUNG of Alaska: Committee of Conference. Conference report on S. 1214. An act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes (Rept. 107–777). Ordered to be printed.

Mr. BURTON: Committee on Government Reform. H.R. 5215. A bill to protect the confidentiality of information acquired from the public for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only; with an amendment (Rept. 107–778). Referred to the Committee of the Whole House on the State of the Union.

Mr. OXLEY: Committee of Conference. Conference report on H.R. 3210. A bill to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism (Rept. 107–779). Ordered to be printed.

Mr. DIAZ-BALART: Committee on Rules. House Resolution 605. Resolution waiving points of order against the conference report to accompany the bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes (Rept. 107–780). Referred to the House Calendar.

Mr. SESSIONS: Committee on Rules. House Resolution 606. Resolution waiving points of order against the conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes (Rept. 107–781). Referred to the House Calendar.

Mr. SESSIONS: Committee on Rules. House Resolution 607. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism (Rept. 107–782). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 608. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–783). Referred to the House Calendar.

Mr. LINDER: Committee on Rules. House Resolution 609. Resolution providing for consideration of the Senate amendment to the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services (Rept. 107–784). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BORSKI:

H.R. 5712. A bill to amend title 23, United States Code, to improve roadway safety for motor vehicles, bicycles, and pedestrians and workers in proximity to vehicle traffic; to the Committee on Transportation and Infrastructure.

By Mr. THOMAS (for himself and Mr. RANGEL):

H.R. 5713. A bill to amend the Internal Revenue Code of 1986 to make technical corrections, and for other purposes; to the Committee on Ways and Means.

By Mr. SMITH of Michigan (for himself, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. BOEHLERT, Mr. HALL of Texas, Mr. SMITH of Texas, Mrs. MORELLA, Mr. HONDA, Mr. EHLERS, Mr. BAIRD, Mr. ETHERIDGE, Mrs. BIGGERT, Mr. BARCIA, Mr. GILCHREST, Mr. BACA, Mr. CALVERT, Mr. UDALL of Colorado, and Ms. LOFGREN):

H.R. 5714. A bill to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes; to the Committee on Science.

By Mr. BURTON of Indiana (for himself, Mrs. MALONEY of New York, and Mr. OSE):

H.R. 5715. A bill to amend the Immigration and Nationality Act to render inadmissible to the United States the extended family of international child abductors, and for other purposes; To the Committee on the Judiciary.

By Mr. BOEHNER (for himself, Mr. GEORGE MILLER of California, Mr. TAUZIN, and Mr. DINGELL):

H.R. 5716. A bill to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year; referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CROWLEY (for himself, Mr. GRUCCI, Mr. ISRAEL, Mr. KING, Mrs. MCCARTHY of New York, Mr. ACKERMAN, Mr. MEEKS of New York, Mr. NADLER, Mr. WEINER, Mr. TOWNS, Mr. OWENS, Ms. VELAZQUEZ, Mr. FOSSELLA, Mrs. MALONEY of New York, Mr. RANGEL, Mr. SERRANO, Mr. ENGEL, Mrs. LOWEY, Mr. GILMAN, Mr. MCNULTY, Mr. SWEENEY, Mr. BOEHLERT, Mr. MCHUGH, Mr. WALSH, Mr. HINCHEY, Mr. REYNOLDS, Ms. SLAUGHTER, Mr. LAFALCE, Mr. QUINN, Mr. HOUGHTON, and Mrs. KELLY):

H.R. 5717. A bill to name the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, as the ''Thomas P. Noonan, Jr., Department of Veterans Affairs Outpatient Clinic''; to the Committee on Veterans' Affairs.

By Mr. GRAVES:

H.R. 5718. A bill to amend the Higher Education Act of 1965 to expand and improve the program of loan forgiveness for teachers, and to amend the Elementary and Secondary Education Act of 1965 to focus the expenditure of certain recruitment and professional development funds on high-need local educational agencies; to the Committee on Education and the Workforce.

By Mr. GREENWOOD (for himself and Mr. WAXMAN):

H.R. 5719. A bill to amend part B of title XVIII of the Social Security Act to provide coverage of certain self-administered intramuscular and subcutaneous drugs under the Medicare Program; referred to the Committee on Energy and Commerce, and in Addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LIPINSKI (for himself, Mr. MORAN of Kansas, and Mr. SULLIVAN):

H.R. 5720. A bill to amend title 49, United States Code, relating to foreign air transportation; to the Committee on Transportation and Infrastructure.

By Mr. McINNIS:

H.R. 5721. A bill to facilitate a land exchange to provide for the acquisition of a private inholding in the San Isabel National Forest in the State of Colorado, and for other purposes; to the Committee on Resources.

By Mr. McINNIS:

H.R. 5722. A bill to designate certain lands in Colorado as wilderness; to the Committee on Resources.

By Mr. McINNIS:

H.R. 5723. A bill to amend the Internal Revenue Code of 1986 to exempt certain student loan financing businesses from treatment as personal holding companies; to the Committee on Ways and Means.

By Mr. MEEHAN (for himself and Mr. HANSEN):

H.R. 5724. A bill To prevent the sale of tobacco products to minors, and the circumvention of State tobacco taxes, by means of electronic sales, and for other purposes; to the Committee on Energy and Commerce.

By Mr. NADLER:

H.R. 5725. A bill to authorize a national memorial at, or proximate to, the World Trade Center site to commemorate the tragic events of September 11, 2001, to establish the World Trade Center Memorial Advisory Board, and for other purposes; to the Committee on Resources.

By Mr. PALLONE:

H.R. 5726. A bill to provide health benefits for workers and their families; referred to the Committee on Education and the Workforce, and in addition to the Committees on Energy and Commerce, Ways and Means, Government Reform, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RAMSTAD (for himself and Mr. CARDIN):

H.R. 5727. A bill to amend title XVIII of the Social Security Act to improve access to Medicare+Choice plans for special needs Medicare beneficiaries by allowing plans to target enrollment to special needs beneficiaries; referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BURTON of Indiana (for himself, Mrs. MALONEY of New York, and Mr. OSE):

H. Con. Res. 516. A concurrent resolution expressing the sense of Congress that United States diplomatic and consular missions should provide the full and complete protection of the United States to certain citizens of the United States living abroad; to the Committee on International Relations.

By Mr. HASTINGS of Florida:

H. Con. Res. 517. A concurrent resolution condemning the Democratic People's Republic of Korea for its failure to comply with the Treaty on the Non-Proliferation of Nuclear Weapons and the U.S.-North Korea Agreed Framework of 1994; to the Committee on International Relations.

By Mr. FARR of California (for himself, Mr. BALLENGER, Mr. GILMAN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MCGOVERN, Ms. LEE, Mr. GEORGE MILLER of California, Ms. KILPATRICK, Mr. BROWN of Ohio, and Mr. DELAHUNT):

H. Res. 604. A resolution expressing the sense of the House of Representatives that the United States should adopt a global strategy to respond to the current coffee crisis, and for other purposes; to the Committee on International Relations.

By Mr. DIAZ-BALART:

H. Res. 605. Resolution waiving points of order against the conference report to accompany the bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

By Mr. SESSIONS:

H. Res. 606. Resolution waiving points of order against the conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes.

By Mr. SESSIONS:

H. Res. 607. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

By Mr. GOSS:

H. Res. 608. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules.

By Mr. LINDER:

H. Res. 609. Resolution providing for consideration of the Senate amendments to the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services.

By Mr. HASTINGS of Florida:

H. Res. 610. A resolution honoring Chief Charles Moose of the Montgomery County, Maryland, Police Department, and the local and Federal law enforcement officers who worked tirelessly to bring an end to the sniper shootings; to the Committee on Government Reform.

By Ms. LEE:

H. Res. 611. A resolution reaffirming the Universal Declaration of Human Rights and expressing support for ''Universal Declaration of Human Rights Day''; to the Committee on International Relations.

By Ms. LOFGREN (for herself, Mr. HONDA, Ms. ESHOO, Ms. SANCHEZ, Ms. ROYBAL-ALLARD, Mr. STARK, Ms. LEE, Ms. SOLIS, Mr. BACA, Mrs. NAPOLITANO, Mr. RODRIGUEZ, Mr. ORTIZ, Mr. SERRANO, Mr. PASTOR, Mr. BECERRA, Mr. MENENDEZ, Mr. REYES, Ms. VELAZQUEZ, Mr. HINOJOSA, Mr. GUTIERREZ, Mr. GONZALEZ, Mr. ACEVEDO-VILA, Mr. UNDERWOOD, and Mr. FARR of California):

H. Res. 612. A resolution honoring the life of Dr. Roberto Cruz; to the Committee on Education and the Workforce.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

411. The SPEAKER presented a memorial of the Legislature of the State of Utah, relative to House Concurrent Resolution No. 8 memorializing the United States Congress that the Legislature of the state of Utah, the Governor concurring therein, recognizes the members of the American Gold Star Mothers, Incorporated, and Blue Star Mothers of America, Incorporated, for their sacrifices and for their dedicated and patriotic support of the United States; to the Committee on Armed Services.

412. Also, a memorial of the Legislature of the State of Utah, relative to House Concurrent Resolution No. 5 memorializing the United States Congress that the Legislature of the state of Utah, the Governor concurring therein, recognize the military units and personnel stationed in Utah and throughout the nation, and express deep gratitude for their willingness to protect and preserve the freedoms enjoyed in the United States of America; to the Committee on Armed Services.

413. Also, a memorial of the Legislature of the State of Utah, relative to House Joint Resolution No. 25 memorializing the United States Congress that the Legislature of the state of Utah authorizes the Utah Athletic Foundation to adopt an investment policy relating to all funds it may receive for the operation and maintenance of the Olympic venues it manages; to the Committee on Financial Services.

414. Also, a memorial of the Legislature of the State of Alaska, relative to Legislative Resolve No. 66 memorializing the United States Congress to grant a two-year moratorium on state maintenance of effort requirements for federally funded programs so that states may have more flexibility to address priorities and to react to the fiscal situation; to the Committee on Government Reform.

415. Also, a memorial of the Legislature of the State of Utah, relative to House Concurrent Resolution No. 4 memorializing the United States Congress that the Legislature of the state of Utah, the Governor concurring therein, recognize the outstanding service Congressman James V. Hansen has rendered to the citizens of Utah; to the Committee on House Administration.

416. Also, a memorial of the Legislature of the State of Alaska, relative to Legislative Resolve No. 59 memorializing the United States Congress to pass House Joint Resolution 36 or Senate Joint Resolution 7, or comparable legislation, and present to the legislatures of the several states an amendment to the Constitution of the United States that would provide the Congress power to prohibit the physical desecration of the Flag of the United States; to the Committee on the Judiciary.

417. Also, a memorial of the Legislature of the State of Utah, relative to House Joint Resolution No. 30 memorializing the United States Congress that the Legislature proposes to amend the Utah Constitution to add a property tax exemption for property not owned but under the control of the state or a political subdivision; to the Committee on the Judiciary.

418. Also, a memorial of the Legislature of the State of Alaska, relative to Legislative Resolve No. 67 memorializing the United States Congress to respectfully urge the Canadian government to honor their agreement and provide the additional funds necessary through direct federal appropriations, independent of the federal funds apportioned to Alaska by the FHA, to complete the remaining portions of the Shakwak project; to the Committee on Transportation and Infrastructure.

419. Also, a memorial of the Legislature of the State of Utah, relative to Senate Joint Resolution No. 1 memorializing the United States Congress that the Legislature of the state of Utah urges the United States Department of Energy to encourage Congress to provide monies for research and development grants to promote advances in clean coal technology; to the Committee on Science.

420. Also, a memorial of the Legislature of the State of Utah, relative to; to the Committee on Ways and Means.

421. Also, a memorial of the Legislature of the State of Utah, relative to Senate Joint Resolution No. 11 memorializing the United States Congress that the Legislature of the state of Utah expresses support for the Steel Revitalization Act of 2001 and the emergency measures that need to be taken to save the American steel industry; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 336: Mr. LARSEN of Washington.
H.R. 342: Mr. MEEHAN.
H.R. 408: Ms. LEE.
H.R. 418: Mr. ALLEN.
H.R. 488: Mr. HOYER.
H.R. 551: Mr. PASTOR.
H.R. 600: Mr. BRADY of Pennsylvania.
H.R. 690: Mr. SCHIFF and Mr. WYNN.
H.R. 792: Mr. DELAHUNT.
H.R. 968: Mr. DEFAZIO.
H.R. 1202: Mrs. KELLY and Mrs. BIGGERT.
H.R. 1256: Mr. MEEHAN.
H.R. 1322: Mr. NEAL of Massachusetts.
H.R. 1466: Mr. SIMMONS.
H.R. 1723: Mr. TIERNEY.
H.R. 1724: Mr. ANDREWS, Mr. MARKEY, and Mr. FOSSELLA.
H.R. 1903: Ms. LEE.
H.R. 1918: Ms. WOOLSEY.
H.R. 2117: Mr. RAHALL and Mr. ROTHMAN.

H.R. 2173: Mr. ABERCROMBIE.
H.R. 2442: Ms. HARMON.
H.R. 2484: Mr. TIERNEY.
H.R. 2573: Ms. JACKSON-LEE of Texas and Mr. HOLT.
H.R. 2629: Mr. SIMMONS and Ms. BERKLEY.
H.R. 2638: Ms. JACKSON-LEE of Texas and Mr. DIAZ-BALART.
H.R. 2649: Mr. SHUSTER and Mr. LUCAS of Oklahoma.
H.R. 2674: Mr. GUTIERREZ.
H.R. 2735: Mr. DEMINT and Mr. GEKAS.
H.R. 2799: Ms. BAIRD.
H.R. 3132: Ms. BERMAN, Mrs. CHRISTENSEN, Mr. FORD, Mr. HOLDEN, Mr. WATT of North Carolina, and Mr. SMITH of New Jersey.
H.R. 3145: Ms. WATSON.
H.R. 3363: Ms. SANCHEZ.
H.R. 3412: Mr. PAUL, Mr. PRICE of North Carolina, Mr. WILSON of South Carolina, Mr. CUMMINGS, and Mr. JEFF MILLER of Florida.
H.R. 3431: Mr. SIMMONS and Mr. SIMPSON.
H.R. 3464: Mr. NADLER and Mr. ENGEL.
H.R. 3612: Mr. PETERSON of Minnesota.
H.R. 3695: Mr. FRANK.
H.R. 3710: Mr. GREEN of Wisconsin.
H.R. 3775: Mr. SAM JOHNSON of Texas, Mr. SESSIONS, Mr. BARTON of Texas, Mr. CULBERSON, Mr. BRADY of Texas, Mr. EDWARDS Mr. THORNBERRY, Mr. PAUL, Mr. BONILLA, Mr. ARMEY, Ms. GRANGER, Mr. COMBEST, and Mr. SMITH of Texas.
H.R. 3794: Mr. MEEHAN.
H.R. 3834: Mr. SIMMONS, Mr. MARKEY, and Mr. TIERNEY.
H.R. 3887: Ms. BERKLEY.
H.R. 3974: Mr. BERRY.
H.R. 4060: Ms. NORTON.
H.R. 4078: Mr. MORAN of Virginia.
H.R. 4089: Mr. GUTIERREZ, Mr. BENTSEN, Mr. MORAN of Virginia, and Ms. SLAUGHTER.
H.R. 4091: Mr. BENTSEN and Mr. CARSON of Oklahoma.
H.R. 4483: Mrs. JONES of Ohio.
H.R. 4524: Mr. SANDERS and Ms. NORTON.
H.R. 4644: Ms. MILLENDER-MCDONALD.
H.R. 4683: Mrs. CAPPS, Mr. MALONEY of Connecticut, Mr. FILNER, Mr. ANDREWS, and Ms. NORTON.
H.R. 4704: Mr. ROTHMAN.
H.R. 4728: Mr. FILNER.
H.R. 4763: Mrs. TAUSCHER, Mr. DEFAZIO, Ms. HARMAN, Mr. CRAMER, Mrs. NAPOLITANO, and Ms. SCHAKOWSKY.
H.R. 4957: Mr. BAIRD.
H.R. 5031: Mr. WILSON of South Carolina, Mr. RUSH, Mr. QUINN, Mr. DEFAZIO, Mr. UPTON, Mr. BOEHLERT, Mr. BENTSEN, Mr. RODRIGUEZ, Mr. GEORGE MILLER of California, and Mr. NADLER.
H.R. 5077: Mr. SANDERS.
H.R. 5078: Mr. SANDERS and Mr. LANGEVIN.
H.R. 5089: Mr. MARKEY.
H.R. 5187: Mr. GUTIERREZ.
H.R. 5235: Mr. WILSON of South Carolina and Mr. WHITFIELD.
H.R. 5241: Mr. UPTON, Mr. CRAMER, Mr. OLVER, and Mr. SIMMONS.
H.R. 5250: Mr. WALDEN of Oregon.
H.R. 5281: Mr. SCHAFFER.
H.R. 5326: Mr. MEEHAN.
H.R. 5334: Mr. ACEVEDO-VILA, Mr. BLUMENAUER, Mr. DEUTSCH, Mr. FILNER, Mr. GRAHAM, Mr. JEFFERSON, Mr. KUCINICH, Mrs. MYRICK, Mr. SCHAFFER, Mr. SPRATT, and Mr. KIND.
H.R. 5350: Mr. SANDERS.
H.R. 5352: Mr. SANDERS.
H.R. 5395: Mr. QUINN, Mr. DINGELL, Mr. SAXTON, Mr. GEORGE MILLER of California, Ms. LEE, Mr. MCGOVERN, Mr. WALSH, Mr. WYNN, and Mr. MARKEY.
H.R. 5398: Mr. CRANE and Mr. PRICE of North Carolina.
H.R. 5412: Mr. PAYNE.
H.R. 5414: Mr. CARSON of Oklahoma and Mr. THOMPSON of California.
H.R. 5441: Mr. FRANK.
H.R. 5484: Mr. REYNOLDS.
H.R. 5497: Mr. KUCINICH.
H.R. 5509: Mr. HORN.
H.R. 5518: Mr. STUPAK and Mr. GRUCCI.
H.R. 5556: Mr. WAMP.
H.R. 5571: Mr. SCHROCK.
H.R. 5612: Mr. COBLE.
H.R. 5619: Mr. BALLENGER.
H.R. 5648: Mr. FROST and Mr. GRUCCI.
H.R. 5657: Mr. SENSENBRENNER and Mr. LANTOS.
H.R. 5674: Ms. NORTON, Mrs. CHRISTENSEN, Mr. OWENS, Mr. MCDERMOTT, and Ms. BERKLEY.
H.R. 5690: Mr. SCHIFF and Mr. BERMAN.
H.R. 5699: Mr. COX.
H.R. 5704: Mrs. LOWEY.
H.R. 5710: Mr. OSBORNE.
H.J. Res. 31: Mr. ACEVEDO-VILA, Mr. KUCINICH, Ms. CARSON of Indiana, and Mr. TOWNS.
H. Con. Res. 351: Mr. DELAHUNT, Mr. ROTHMAN, Mr. CRAMER, Ms. ROYBAL-ALLARD, Mr. ROHRABACHER, Mr. STRICKLAND, Mr. FERGUSON, and Mr. WEINER.
H. Con. Res. 382: Mr. BROWN of Ohio.
H. Con. Res. 402: Mrs. MORELLA and Ms. RIVERS.
H. Con. Res. 447: Ms. HOOLEY of Oregon, Mr. DEUTSCH, Mr. BOSWELL, Mr. LUCAS of Kentucky, Mr. SAXTON, Mr. PRICE of North Carolina, Mr. OWENS, Ms. NORTON, and Mr. CALVERT.
H. Con. Res. 477: Mr. FRANK, Mr. TIERNEY, Mr. OLVER, Mr. CARSON of Oklahoma, Mr. WYNN, and Mr. LOBIONDO.