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

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

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

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

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

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

NOTICE

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

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

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.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

MARK DAYTON, Chairman.

This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
The Homeland Security Act of 2002 includes provisions to improve the preparedness of emergency response providers. It is also designed to improve the Federal Government’s response to terrorist attacks and other major disasters.

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

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

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

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

BACKGROUND CHECKS FOR TRUCK DRIVERS

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

Mr. HOLLINGS. I want to associate myself with the provision in section 1012 of the USA Patriot Act, P.L. 107-56, which requires all commercial truck drivers who haul hazardous materials to undergo background checks before receiving or renewing their Commercial Driver’s License, CDL, endorsement to haul hazmat. Unfortunately, over a year has passed and regulations to promulgate this requirement have not been issued.

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

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

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

AGRICULTURAL PROVISIONS

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

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

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

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

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

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

Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture. Transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security and designates it as the Plum Island Animal Disease Center, Department of Agriculture. Amends the Homeland Security Act of 2002 to set forth the conditions under which the Department of Homeland Security may accept the Plum Island Animal Disease Center.

The Committee recognizes the critical importance of the Plum Island Animal Disease Center’s ability to carry out its tasks. The Committee expects that the transfer of this foreign animal disease facility to the new DHS will be completed in a manner which is not disruptive to the new DHS as well as those like the Food and Drug Administration and the newly created Animal and Plant Health Inspection Service, which will not, but have a homeland security function.

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

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The Committee is aware that the Agricultural Quarantine and Inspection Program of the Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) conducts numerous activities with respect to both domestic and international commerce in order to protect the health of agriculturally important plants and animals within and at points of entry into the United States. Within the new DHS will be created a mission area of Border and Transportation Security. In order that the new DHS be able to carry out its responsibilities efficiently, the Committee has transferred to the new DHS the responsibility for certain agricultural import and entry inspection activities of the USDA conducted at points of entry. This transfer will include the inspection of arriving passengers, luggage, cargo, and means of conveyance at the ports of entry into the United States, responsibility for inspections of passengers, luggage, and their means of conveyance, at ports of departure outside the United States, where agreements exist for such purposes, shall be the responsibility of the new DHS. The Committee provides authority for effective and efficient border inspection functions at one of 186 points of entry into the United States. The Committee expects that the Secretary of Homeland Security shall continue to be the responsibility of the Secretary of Homeland Security in carrying out activities funded by such fees.

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

The Committee makes conforming amendments to Title V of the Agriculture Risk Protection Act of 2000 related to the protection of inspection animals.
that will be retained within the Department of the Treasury as set forth in paragraph (2) of this section, but also excludes the functions of the Secretary of the Treasury that relate to these retained authorities, functions, persons, and assets.

Mr. BAUCUS. The Senator is correct.

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

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

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

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

PRESERVING COAST GUARD MISSION PERFORMANCE

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

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

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

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

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

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

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

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

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

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

Mrs. MURRAY. Madam President, does the Senator from Alaska agree that any significant changes to the authority or functions, or significant deficiencies that the IG found with the Coast Guard’s readiness in the area of Search and Rescue. We also mandated that the Inspector General monitor the Coast Guard’s compliance with this directive.

While the Inspector General’s office has not yet finalized its report, I am greatly concerned by preliminary indications that the Coast Guard did not, I repeat “not fulfill the requirement in the law. This is precisely the kind of component that makes it essential that we continue to monitor the Coast Guard’s compliance with Appropriations Committee directives as well as
with Section 888 of the Homeland Security Act. Again, I commend your leadership in this area and look forward to working with you and Admiral Collins, the Commandant, on these issues in the future.

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

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

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

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

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

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

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

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

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

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

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

As a Senator from a coastal State, and as the ranking member on the Oceans, Atmosphere, and Fisheries Subcommittee of the Senate Commerce Committee, I can attest that all these missions are critically important and that the American people rely on the Coast Guard to perform them each and every day. The language in Section 888, which I developed with Senators STEVENS and COLLINS, strikes the proper balance and ensures the Coast Guard’s non-homeland security missions will not be compromised or decreased in any substantial or significant way by the transfer to the new Department of Homeland Security.

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

This language in Section 888 maintains the primacy of the Coast Guard’s diverse missions by establishing the Secretary of Homeland Security as the Secretary of Homeland Security and mandates that the Coast Guard Commandant will report directly to the Secretary, rather than to or through a Deputy Secretary. Additionally, the language prevents the Secretary of this new Department from making substantial or significant changes to the Coast Guard’s non-homeland security missions or alter its capabilities to carry out these missions, except as specified in subsequent Acts. It also prohibits the new department from transferring any Coast Guard missions, functions, or assets to another agency in the new Department except for personnel details and assignments that do not reduce the Service’s capability to perform its non-homeland security missions.

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

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

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

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

H.R. 5005 is the result of over a year of deliberations begun in September 2001 with Senator SPECTER to create a Department of Homeland Security. That legislation was subsequently combined...
with legislation by Senator Graham (to create a White House Office for Combating Terrorism) and became S. 2452, which was reported out of the Committee on Governmental Affairs on May 22, 2002.

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

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

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

**INTELLIGENCE**

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

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

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

The GAC’s hearings focused specifically on the relationship between the Department of Homeland Security and the Intelligence Community. The hearings featured some of our country’s most noted experts in intelligence issues, including Senators Bob Graham and Richard Shelby, the chairman and ranking member of the Senate Intelligence Committee. Other witnesses included former National Security Agency; Chief William B. Hughes, former Director of the Defense Intelligence Agency; Jeffrey Smith, former General Counsel of the Central Intelligence Agency; LT. Gen. William Odom, former Director of the National Intelligence Agency; Lt. Gen. William Hughes, former director of the Defense Intelligence Agency; George Tenet and FBI Director Robert Mueller.

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

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

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

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

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

In addition, Section 201(d)(9) states that the responsibilities of the Under Secretary (for information analysis and infrastructure protection) shall include “(a) developing an 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, to identify and assess such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.” Again, it is important that the new information analysis division has the capacity to do everything within its power to deter, prevent and preempt, acts of terrorism, while also ensuring that our nation is adequately prepared to respond.

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

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

H.R. 5005 takes a somewhat different approach: like the President’s June 18th proposal, it establishes a single Under Secretary with overall responsibility for both information analysis and infrastructure protection. However, in Title II, Section 201, (b)(1) and (b)(2) it also creates two Assistant Secretaries to lead information analysis and infrastructure protection, respectively. Early, Title I, Section 109 of the legislation establishes several officers who shall be appointed by the President “with the advice and consent of the Senate,” including not more than 12 Assistant Secretaries (Sec. 103) and 12 Assistant Secretaries for information analysis and infrastructure protection will clearly occupy two of the most critical positions in our government: consequently, Congress’ expectation is they will be among the 12 Assistant Secretaries who will be appointed by the President with the advice and consent of the Senate.

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

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

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

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

Finally, like SA 4471, H.R. 5005 makes the Department responsible for working with the Director of Central Intelligence to protect sources and methods and with the Attorney General to protect sensitive law enforcement information (Section 201(d)(12)). Also, as the Committee recommended, the substitute formally includes the elements of the Department concerned with “intelligence community” (Section 201(h)) while also empowering the Secretary to consult with the Director of Intelligence.
Central Intelligence and other agencies on our nation’s intelligence gathering priorities (Section 201(d)(10)). These provisions will ensure that the Department becomes a full partner with the Central Intelligence Agency and other agencies in our national intelligence, defense, and technology, and that is has a crucial seat at the table in all proceedings where intelligence-gathering priorities are established.

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

**Science and Technology**

The Bill will have profound scientific and technological needs, and both the immediate and long-term success of its mission will require the implementation of a broadly-coordinated, tightly-focused, and sustained effort to invest in critical areas of research, accelerate technology development, and expedite the transition and deployment of such technologies into effective use. H.R. 5005 attempts to meet this objective by creating a strong, coherent, and well-funded Directorate of Science and Technology. The Directorate established in this legislation follows directly from the model embodied in the Senate Governmental Affairs Committee, SA 4471, and explicated in the Chairman’s Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162-S8163.

In order to enable HSARPA to achieve parallel success to DARPA, Section 307 of H.R. 5005 provides HSARPA with a $500 million Acceleration Fund to support key homeland security R&D both within and outside of the federal government, leverage collaboration from R&D entities external to the Department, and accelerate the development, prototyping, and deployment of homeland security technologies. The Secretary is likewise provided with DARPA’s flexible authority to hire and manage top-flight personnel. Although SA 4471 placed limits on this authority by setting a ceiling of 190 personnel who may be hired pursuant to this authority and instituting a 7-year sunset provision (SA 4471, Section 135(c)(3)(C)), those limits have been eliminated in H.R. 5005 to allow the Secretary greater discretion in exercising such authority commensurate with need [Section 307(b)(6)]. In a later section, Section 631, H.R. 5005 also confers the Secretary with another important authority currently available to the DOD—the ability to engage in “other transactions” for both research and development, and contracting authority for such projects has been integral to DARPA’s success, and HSARPA will therefore have the same authority. While the legislation vests this authority directly in the Secretary, it is clearly intended specifically to supercede those delineated under Section 307, and should not be in any way limiting on HSARPA. Regarding the university-based center or centers for homeland security described in Section 308(b)(2), the legislative intent regarding the need for flexible application of this provision is to avoid unfairly favoring one or more particular institutions over other institutions. As stated in the November floor statements of the Republican manager of the final bill, Senator PHIL GRAMM. It should therefore be emphasized that the criteria listed under Section 308(b)(2)(B) should not be considered absolute or dispositive in nature, but rather, as factors that should be considered in the context of national homeland security needs and the relative strengths of candidate institutions in meeting those needs. Concerning the headquarters laboratory described in Section 308(b)(2)(C) specifically provides the Secretary and the Under Secretary with full “discretion” in determining whether, how, and when to implement these provisions. Consideration of additional relevant criteria to supplement (and, within their discretion, to supercede) those delineated under Section 308(b)(2)(B) is specifically contemplated in Section 308(b)(2)(C). This subsection anticipates as the Secretary and Under Secretary exercise their discretion concerning what they see in a comprehensive, passionate, and competitive review of available institutions to determine the optimal selection for serving national interests. It is contemplated that consortia of universities capable of meeting particular areas of required expertise would be eligible to serve as a university center or centers; therefore, there is no restriction on such consortia being considered for Section 308(b)(2)(B). To assure full and complete disposition of the selection process, the Secretary is required to report to Congress under Section 308(b)(2)(C) on the full details of the selection and implementation of the university centers.

Regarding the headquarters laboratory described in Sections 308(c)(2)(c)(4), it deserves reiterating that the establishment of such a headquarters laboratory is not mandatory under the legislation. The Secretary and the Under Secretary should undertake in determining whether the designation of such a laboratory is necessary and would better assist the Directorate in fulfilling its functions. The primary driver of innovation within the Directorate will be a Homeland Security Advanced Research Projects Agency (HSARPA), which is conceived to be similar in purpose and organization to the highly successful Defense Advanced Research Projects Agency (DARPA) within the Department of Defense (DOD). Over the past five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the federal government, and is renowned for its ability to recruit outstanding scientific and technical talent, promote creativity and adaptability under a lean, flexible organizational structure, and entice collaboration from R&D entities by leveraging an independent source of funds. Because the HSARPA created in H.R. 5005 is purposefully patterned after the nearly identical Security Advanced Research Projects Agency (SARPA) contained in the Senate bill, the legislative intent concerning the missions, roles, Acceleration Fund, and structure of that organization (see Chairman’s Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162-S8163) are, of necessity, straightforwardly applicable to HSARPA.

With respect to its RDDT&E responsibilities, the Under Secretary will act through an array of mechanisms and authorities established in H.R. 5005. The primary driver of innovation within the Directorate will be a Homeland Security Advanced Research Projects Agency (HSARPA), which is conceived to be similar in purpose and organization to the highly successful Defense Advanced Research Projects Agency (DARPA) within the Department of Defense (DOD). Over the past five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the federal government, and is renowned for its ability to recruit outstanding scientific and technical talent, promote creativity and adaptability under a lean, flexible organizational structure, and entice collaboration from R&D entities by leveraging an independent source of funds. Because the HSARPA created in H.R. 5005 is purposefully patterned after the nearly identical Security Advanced Research Projects Agency (SARPA) contained in the Senate bill, the legislative intent concerning the missions, roles, Acceleration Fund, and structure of that organization (see Chairman’s Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162-S8163) are, of necessity, straightforwardly applicable to HSARPA.

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

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

INTERAGENCY COORDINATION AND THE NATIONAL POLICY AND STRATEGIC PLAN

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

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

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

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

SCIENTIFIC AND TECHNICAL SUPPORT, RISK ANALYSIS, AND THE HOMELAND SECURITY INTELLIGENCE COMMUNITY

Another major set of responsibilities assigned to the Under Secretary relates to providing specialized advise, expertise, and support to other actors within the homeland security organization structure. Section 302(2) calls for the establishment of a coordinated threat identification within the national policy and strategic plan, and Section 302(3) specifically calls for the assessment and testing of "homeland security vulnerabilities and threats." Although primary responsibility for coordinating and integrating risk analysis and risk management resides with the Secretary and the Under Secretary for Information Analysis and Infrastructure Protection, the highly complex and technical issues inherent to homeland security warrant substantial scientific and technical expertise. Section 302(3) mandates that the Under Secretary for S&T support...
the Under Secretary for Information Analysis and Infrastructure Protection in this regard. Therefore, Section 305 addresses the problem of obtaining the necessary S&T expertise by giving the Secretary broad authority to establish or contract with Federally Funded Research and Development Centers (FFRDCs), which could perform functions not only related to R&D, but extending to risk, threat, and vulnerability analysis. While this authority is discretionary, H.R. 5005 anticipates that it will be exercised actively in accordance with need. In fact, so compelling was the NAS’s recommendation in its June 2002 report to create an independent, non-profit institution for critical analysis and decision support, that H.R. 5005 includes another provision to trigger immediate exercise of the broad FFRDC authority. Specifically, Section 312 mandates the creation of a Homeland Security Institute (“Institute”) focusing expressly on capabilities related to risk analysis, scenario-based threat assessments, red teaming, and other functions relevant to homeland security. The Institute is initially authorized for three years, which is the time period needed to permit the Secretary to meaningfully assess the Institute’s efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Institute has provided useful support and functionality to the Department, it is anticipated that the Secretary will, pursuant to his authority under Section 305, renew, reconstitute, or re-establish the Institute with appropriately expanded or modified functions to service the Department’s ongoing and expanding risk assessment mission.

TECHNOLOGY TRANSITION

The Under Secretary is responsible for ensuring that technologies capable of supporting homeland security are quickly tested, evaluated, transitioned, and deployed to appropriate users within or outside the Department. Section 302(6) explicitly requires the Under Secretary to establish a system for transferring such technologies. This system should include processes and mechanisms for identifying homeland security actors and entities with unmet technological needs; matching such entities and needs with available technologies; providing any necessary technical assistance; and assisting in the development, testing, evaluation, and deployment of new technologies to meet identified needs; ensuring viable technology transition paths for products of homeland security research; and coordinating with, or utilizing, federal, state, and local entities from undertaking such activities. The Under Secretary is also explicitly charged with respect to technology being considered for internal use Department-wide or within one or more of its constituent entities, intelligent and well-coordinated testing, evaluation, procurement, and deployment will be required so that the Department will have extensive technological needs, requirements, and dependencies. Too often, government agencies are hampered and distracted from their fundamental missions as a result of inordinately unspecified approaches to technology acquisition and deployment that generate interoperability problems downstream. In order to effectively carry out the requirement for the Under Secretary to comprehensively conduct, direct, integrate, and coordinate the demonstrating, testing, and evaluation activities of the Department as articulated in Sections 302(4), 302(5), and 302(12), the Secretary and the Under Secretary should implement procedures to ensure that new technologies being considered for acquisition will be compatible and interoperable with other existing or anticipated technologies. New technologies should not be permitted to move to acquisition without the Under Secretary’s sign off on the prior stages in the innovation process, particularly the demonstration, testing, and evaluation stages. The Under Secretary is understood to occupy the role of the Department’s chief technology officer and it is anticipated that he will be provided with responsibilities and authorities befitting that role. Accordingly, the Secretary shall act through the Under Secretary to operationally test and evaluate all major systems targeted for potential acquisition by any entity within the Department, and grant the Under Secretary authority to approve or reject such systems in his discretion. Nothing in this provision is to be construed as proscribing other Departmental personnel from providing testing and evaluation activities so long as they do so in coordination with, and subject to the final approval of, the Under Secretary. The Under Secretary should also coordinate with the Department’s Chief Information Officer, the Under Secretary for Management, and other federal agencies in promoting government-wide compatibility and interoperability of homeland security technologies.

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

RESEARCH ON COUNTERMEASURES FOR BIOLOGICAL AND CHEMICAL THREATS

True preparation for future biological, chemical, radiological, and nuclear attacks will depend upon the development of vaccines and medicines to combat the most likely threats. At present, our nation is woefully unprepared for this type of attack. In his June 26, 2002 testimony before the Senate Governmental Affairs Committee, Dr. J. Leighton Read discussed the barriers to the development of a national medical arsenal to combat terrorism. The federal government has a long and, unfortunately, frayed history of investing in basic biomedical research. The National Institutes of Health within the Department of Health and Human Services (HHS) have served as an international model for funding and conducting human health-related research. However, in facing biological and chemical terrorism, we face a new challenge. In addition to encouraging basic research and training the next generation of scientists, the federal government will have to deliver actual pharmaceutical products and will have to deliver them quickly. Unlike the traditional pharmaceutical market, companies that choose to develop drugs to fight bioterrorist attacks that may never occur will not be able to rely on an existing market. Yet producing actual products to meet biological and chemical threats will depend upon private sector involvement. As a result, the Under Secretary should have a goal of engaging the private sector into developing countermeasures into every level of his strategy, and adopt plans and policies to enable such private sector participation to occur.

H.R. 5005 provides tools to accomplish this task. While Section 302(4) states generally that the Under Secretary’s responsibilities do not extend
to human health-related research and development activities, this provision should be construed consistent with other specific provisions in H.R. 5005 ascribing the Under Secretary a major role in addressing biological and chemical threats to terrorism, bioterrorism, and other terrorist threats, which will require the Under Secretary to conduct specific types of human health-related research and development activities. Section 302, therefore, does not circumscribe the Under Secretary’s authority to conduct research necessary to implement the major bio-threat-related functions delineated in Sections 302(2) (requiring the Under Secretary to develop a national policy and plan that addresses, among other things, chemical and biological terrorist threats, and further requiring the Under Secretary to coordinate the Federal Government’s civilian efforts to identify and develop countermeasures to chemical, biological, radiological, and other terrorist threats), 302(5) (requiring the Under Secretary to direct, fund, and conduct national research and development for detecting, preventing, protecting against, and responding to terrorist threats, which will include a technology roadmap, must necessarily include a strategy for translating basic science results into product development within the private sector, and other specific provisions in H.R. 5005). Section 302(2) reflect what is most needed and what pharmaceutical products can be timely developed against the most likely and dangerous threats to the public. Since this will require participation from the private sector, the policy and plan, which will include a technology roadmap, must necessarily include a strategy for translating basic science results into product development within the private sector.

**INTEROPERABILITY**

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

**STANDARDS**

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

**PUBLIC HEALTH AND AGRICULTURAL EMERGENCIES**

The Secretaries of Health and Human Services and the Department of Agriculture shall retain the authority to oversee the federal response to public health and agricultural emergencies, respectively. This authority includes the authority to declare such emergencies. However, these agencies shall fully collaborate with the new Department which shall support these agencies in their response, especially with regards to chemical, biological, radiological, and nuclear weapons. The Department should serve as an active and involved resource during bioterrorist and terrorist attacks. As outlined in Section 807 of H.R. 5005, the Department shall work in conjunction with the Department of Health and Human Services, the Federal Bureau of Investigation, and other engaged federal agencies to optimize information sharing between agencies commencing forthwith, as well as before and after the declaration of a public health emergency. This provision was intended to ensure that all involved agencies have all available information necessary to effectively perform their role in the federal response. See also, Section 892.

**TRAINING**

In order to help ensure the effectiveness of emergency response efforts as required in Section 502(1) of H.R. 5005, the Directorate shall lead federal efforts to train first responders in disaster response. The term, first responder, shall include law enforcement,
fire fighting, emergency medical, health care, and volunteer personnel. To be effective, training shall encompass exercises, on-line computer simulations, drills, courses, and other interactive learning environments. Personnel should be trained in every aspect of emergency response, including prevention/准备, mitigation, active response, and recovery efforts. Training should include utilization of the Noble Training Center, transferred to the Department as part of the Office of Emergency Preparedness (Section 503(5)) and other training sites and campuses within the Federal Emergency Management System, as well as full coordination with the National Guard. Finally, the Directorate shall improve, and train first responders in use of, governmental on-line resources to ensure they have the latest information available during a response.

STRICT NATIONAL STOCKPILE

Authority to oversee the Strategic National Stockpile shall be transferred to the new Department. In H.R. 5005, this transfer of authority is described in Sections 502(3)(B), 503(6), and 1705. This language clarifies that the existing structure of the Stockpile program, as described in Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188), shall remain intact.

This transfer of authority should be a multi-agency effort, with significant roles for the Department of Veterans Affairs and the Department of Health and Human Services. In particular, the Department should continue to incorporate the recommendations of the Centers for Disease Control and Preventive Medicine (CDC) and the Office of the Assistant Secretary for Public Health Emergency Preparedness (OPHEP), within the Department of Health and Human Services. It involves determining the composition of the stockpile and the parameters for its use. The Department shall consult the CDC and OPHEP in deciding which medications, vaccines, and medical supplies are most appropriate for the Stockpile (Section 1705(a)(1)(C)). The Department shall also coordinate with the Assistant Secretary for Health and Human Services in determining the need to deploy the stockpile, on an incident-by-incident basis. The Under Secretary should continue to use the resources of Department of Veterans Affairs in procuring and storing the contents of the Stockpile (Section 1705(a)(1)(B)). And the Under Secretary shall call upon the Department of Defense and the National Guard to help transport and secure the contents of the stockpile as appropriate.

THE OFFICE OF EMERGENCY PREPAREDNESS

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

THE NATIONAL DISASTER MEDICAL SYSTEM

For example, the National Disaster Medical System (NDMS) is an inter-agency program. It involves personnel, facilities, and equipment from the Department of Health and Human Services, the Department of Veterans Affairs, the Department of Defense, and other federal agencies. The personnel and assets from these departments that are deployed by NDMS during an emergency response, but whose primary day to day roles are central to the missions of agencies outside of the Department, shall remain part of their home agencies. This includes members of the Disaster Medical Assistance Teams (DMATs), the Disaster Mortuary Assistance Teams (DMATs), and the Veterinary Medical Assistance Teams (VMATs). The transfer of the NDMS shall not be restricted to the management, organizational, and coordinating personnel, functions, and assets.

THE METROPOLITAN MEDICAL RESPONSE SYSTEM

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

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

CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES

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

Section 505 stipulates that the Department of Health and Human Services shall retain primary authority over efforts to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats. In their testimony, the witnesses concurred that in order to be familiar with emergency preparedness networks and programs, their testimony pointed out that dual-use was particularly important during a response to a biological attack. In this case, the terrorist attack may not be immediately apparent and detection may depend upon the ability of normal health care systems to detect unusual patterns of illness. H.R. 5005 also stressed this important theme through Section 505 and language in Section 887, which calls for interaction between the agencies before and after the declaration of a public health emergency.

In this regard, the Secretary of Health and Human Services shall have authority to set priorities and preparedness goals. However, the Secretary for Health and Human Services, working through the Assistant Secretary for Public Health Emergency Preparedness, must develop a coordinated strategy for these activities in collaboration with the Secretary (Section 505(a)). In this regard, the Secretary of Health and Human Services will also collaborate with the Secretary in establishing benchmarks and outcome measures for success. Nothing in Section 505 should be interpreted as disrupting ongoing preparedness efforts within the Department of Health and Human Services. All ongoing emergency preparedness grants should continue. Selection criteria and the evaluation of grant application shall continue to be determined by the Department of Health and Human Services, consistent with Section 505 provisions.

HUMAN RESOURCES MANAGEMENT

H.R. 5005 contains two key provisions relating to employees at the new Department—section 841, which governs
the establishment of a human resources management system, and section 842, which deals with labor-management relations at the Department. These provisions have been among the most contentious in debate on this legislation.

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

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

When it comes to the creation of a HRMS, the President has the authority to hire employees in the new Department will be hired, promoted, disciplined, and fired in conformity with all merit system principles and in violation of no prohibitions and restrictions. It also stipulates that when existing civil service rights and protections come up for consideration in the development of a HRMS, the Administration may waive, modify, or otherwise affect such rights and protections only to the extent it can clearly demonstrate that they clearly conflict with the homeland security mission, and that they are not being waived merely in the interest of administrative convenience. Fair and independent procedures must be maintained for employees with grievances, such as those who allege abuse or corruption within the Department. Changes to the system must be carefully crafted through negotiation and collective bargaining with federal employees, such as those who represent collective bargaining rights from federal employees, whose union rights are very limited in comparison with the private sector, and who have a long history of helping to protect the homeland and continue to do the same protective work in the new Department. But if and when this President or a future President does move to eliminate collective bargaining within a unit of the Department, the President can take such action only if it is truly essential to national security and homeland security and not merely a convenience to management. This requires that the Department’s leadership must first make good-faith efforts to work cooperatively with the Federal Labor Relations Authority, the President can then determine that union representation is incompatible with national security or homeland security.

The written explanation that the President is required to provide to Congress must be thorough and specific. The requirement reflects a bipartisan concern that this Administration and future Administrations must
make the case for stripping workers of their right to bargain collectively before issuing an Executive Order. The President must provide Congress a comprehensive and specific explanation on the threshold issue of how and why the right to bargain was in a particular agency or subdivision to collectively bargain would have a substantial adverse impact on homeland security.

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

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

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

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

For the Majority, I want to recognize the contributions of Chairman LIEBERMAN's staff, especially his staff director, Joyce Rechtschaffen, and Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper.

Also, let me acknowledge the contributions of the staff to other members of the Governmental Affairs Committee and of Sarah Walter of Senator Breaux's staff, David Culver of Senator Ben NELSON's staff, and Alex Albert of Senator MILLER's staff.

On the Republican side, I must single out the work of Rohit Kumar of Senator LOTT's Leadership staff. He has been with us, through thick and thin, from everything got done. We would have no bill without his persistence, diligence, and intellect. Mike Solon of Senator GRAMM's staff also placed a crucial role in developing the Gramm-Miller amendments which made the final legislation is based. David Morgenstern of Senator CHAFEE's staff was also helpful.

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

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

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

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

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

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

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

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

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

Finally, the Republican bill will seriously undermine the role of immigration judges. Every day, immigration courts make life-altering decisions.
The interests at stake are significant, especially for persons facing persecution. We need an immigration court system that provides individuals with a fair hearing before an impartial and independent tribunal, and meaningful appeal. The Republican bill undermines the role and independence of the courts and the integrity of the judicial process.

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

Today, many Americans are concerned about the preservation of basic liberties under threat by the Constitution. Clearly, as we work together to bring terrorists to justice and enhance our security, we must also act to preserve and protect our Constitution. Unfortunately, the Republican bill undermines the open government laws and gives the President the authority to change or eliminate those collective bargaining rights.

He only needs to claim that continued union rights would interfere with homeland security. Federal workers will also have no opportunity to meaningfully participate in creating the personnel system for the new Department. Moreover, this bill does not include any Davis-Bacon protections, despite longstanding Federal policy that workers should be paid prevailing wages. Federal construction projects are exempt from that law. This bill also nullifies important provisions for the Federal workers who serve with dedication every day to keep our Nation Safe.

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

The Republican bill’s fundamental flaws were compounded by the last-minute addition of numerous special-interest provisions. These provisions include the creation of new procedural barriers for the issuance of emergency security rules deemed essential to protect travelers by the Transportation Security Agency; an earmark for a new homeland security research center program at Texas A&M; and an exemption from the open-meetings requirement of the Federal Advisory Committee Act. This amendment would prevent the Department of Defense from indemnifying contracts issued by the Department of Defense and other national security agencies.

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

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

While my earlier proposal on indemnification, which is another approach to addressing liability risk, is not included in the current bill, I believe that the compromise language will go a long way to addressing the problem. If it appears that additional authorities are necessary to complement the language in this bill, I pledge to work in
the coming Congress to provide any necessary authority that the Present needs to ensure that innovative homeland defense technologies and solutions are available to the Federal State and local governments, as well as to the private sector.

I would also like to remark on the importance of Section 882 in the homeland security legislation to create an Office for National Capital Region Coordination within the new Department. This office would coordinate the hundreds of thousands of Federal workers and law-makers, it has been and may continue to be a prime location for potential future terrorist attacks.

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

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

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

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

On behalf of the region’s 5 million residents, I commend the House and Senate for recognizing the unique needs of our nation’s capital in presenting many amendments by supporting creation of the Office for National Capital Region Coordination.

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

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

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

As they come to understand some of the imprudent extraneous additions to this bill, many Americans will feel that their trust and goodwill have been abused, and I share their disappointment about several elements of this version of the bill that has been placed, without due consideration, before the Senate. This deal, negotiated behind closed doors by a few Republican leaders in the House and Senate and the White House, has been presented to us as a done deal. It includes several blatant flaws that should at the very least be debated. That is why I could not vote for cloture to end debate on a bill almost 500-pages long that was presented to us for the first time only five days ago, on November 6th.

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

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

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

This is something that I support. The bill also encourages information sharing. Our best defense against terrorism is improved communication and coordination among local, State, and Federal authorities and the U.S. and its allies. Through these efforts, led by the Federal government and with the active assistance of many
The Administration planned a pilot program that alone would have enlisted 1 million Americans. We also never received a full understanding of how the Administration planned to train Operation TIPS volunteers. The average citizen has little or no experience of law enforcement methods, or of the sort of information that is useful to those working to prevent terrorism. Such a setup could have allowed unscrupulous participants to abuse their new status to place innocent neighbors under undue scrutiny. The number of people who have abused this opportunity is undoubtedly small, but the damage these relatively few could do would be very real and potentially devastating. In addition, it was crucial that citizen volunteers receive training about the permissible use of race and ethnicity in their evaluation of whether a particular individual’s behavior is suspicious, but the Justice Department seemed not to have considered the issue.

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

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

Opposition to Operation TIPS has been widespread. Representative ARMED, the House Majority Leader, has led the fight against it in the House. The Postal Service refused to participate. The Boston Globe called it a house plan Joseph Stalin would have loved. In an editorial, The New York Times said: “If TIPS is ever put into effect, the first people who should be turned in as a threat to our way of life are the thousands of Florida officials who thought up this most un-American of programs.” The Las Vegas Sun said that “Operation TIPS has the potential
of becoming a monster.” The Washington Post said that the Administration “owes a fuller explanation before launch day.”

In evaluating TIPS, we need to remember our past experience with enlistments plants and organize raids on German-language newspapers. Members wore badges and carried ID cards that showed their connection to the Justice Department and were even used to make arrests. Members of the League used such methods as tar and feathers, beatings, and forcing those who were suspected of disloyalty to kiss the flag. The New York Bar Association issued a report after the war stating of the APL: “No other one cause contributed so much to the oppression of innocent men as the systematic and indiscriminate agitation against what was claimed to be an all-pervasive system of German espionage.” No one wants to relive those dark episodes or anything close to it.

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

I am also pleased that the bill, in section 1514, states clearly that nothing in the 9/11 Act will be construed to authorize the development of a national identification system or card. Given the other provisions in the bill that pose a risk to our privacy, this at least is a line in the sand which I fully support.

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

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

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

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

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

The administration was slow to accept the idea for a cabinet-level department to coordinate homeland security, but experience in the months after the September 11 attacks helped in the evolution of the Administration’s thinking on this position. Soon after the President invited Governor Ridge to serve as the Director of an Office of Homeland Security within the White House, I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about his role as the head of the Office of law enforcement and intelligence efforts and about his views on the role of the National Guard in carrying out the homeland security mission, but he declined our invitation at that time. The President then appointed Governor Ridge to testify before Congress.

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

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security, but we did not do so at the request of the White House. Indeed, from September, 2001, until June, 2002, the administration was steadfastly opposed to the creation of a cabinet-level department to protect homeland security. Governor Ridge said in an interview published in the Hill newspaper in May, 2001, that if Congress put a bill on the President’s desk to make his position statutory, he would, “probably
recommend that he veto it.” That same month, White House spokesman Ari Fleischer also objected to a new department, commenting that, “You still will have agencies within the Federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn’t solve anything.”

In one respect, the White House was correct. Simply moving agencies around among departments does not address the problems inside agencies like the FBI or the INS—problems like outdated computers, hostility to employees who report problems, lapses in intelligence sharing, and lack of translation and analytical capabilities, along with what many have termed “cultural problems.” The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. We have worked hard to be bipartisan and even nonpartisan in this regard. To that end, the Committee unanimously reported the Leahy-Grassley FBI Reform Act, S. 794, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, the bill has been blocked in the Senate floor since it was reported by the Judiciary Committee in April, 2002, by an anonymous Republican hold.

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

Two weeks later, on June 18, 2002, Governor Ridge transmitted a legislative proposal to create a new homeland security department. It should be apparent that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the administration’s early proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply to the conflicts protection and accountability rules for agency advisors. The new department head would have the power to suspend the Whistleblower Protection Act and the normal procurement rules and to intervene in Inspector General investigations. In these respects, the administration asked us to put this new department above the law and outside the checks and balances these laws are there to ensure.

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

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

This bill has its problems. As I will discuss in more detail in the balance of my remarks, this legislation has five significant problems. It would: (1) undermine Federal and State sunshine laws permitting the American people to know what their government is doing, (2) threaten privacy rights, (3) provide sweeping liability protections for companies at the expense of consumers, (4) weaken rather than fix our immigration enforcement problems, and (5) under the guise of “management flexibility,” it would authorize political cronyism rather than professionalism within the new department.

These problems are unfortunate and entirely unnecessary to the overall objective of establishing a new department of homeland security. Republican leaders and the White House have forced on the Senate a process under which these problem areas cannot be substantively and meaningfully addressed, and that is highly regrettable and a needless blot on this charter. Though I will support passage of this legislation under the advice of my remarks, this legislation has significant problems. It would: (1) undermine Federal and State sunshine laws permitting the American people to know what their government is doing, (2) threaten privacy rights, (3) provide sweeping liability protections for companies at the expense of consumers, (4) weaken rather than fix our immigration enforcement problems, and (5) under the guise of “management flexibility,” it would authorize political cronyism rather than professionalism within the new department.

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

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

The Judiciary Committee had an opportunity to query Governor Ridge about the administration’s proposal on June 26, 2002, when the administration revised vulnerabilities, and allowed him to testify in his capacity as the Director of the Transition Planning Office.

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

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

Current law already exempts from disclosure any financial or commercial information that it is of a kind that would be a source of competitive disadvantage to the government, if it is of a kind that the provider would not customarily make available to the public. Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Such information enjoys even stronger nondisclosure protections than does material that the government requests. Applying this exception, Federal regulatory
agencies are today safeguarding the confidentiality of all kinds of critical infrastructure information, like nuclear power plant safety reports (Critical Mass, 975 F.2d at 874), information about product manufacturing processes, and financial information on companies providing national security functions (Bovsun v. Food & Drug Admin., 925 F.2d 1225 (9th Cir. 1991), design drawings of airplane parts (United Technologies Corp. v. Pratt & Whitney v. F.A.A., 102 F.3d 687 (2d Cir. 1996)), and technology and computer forensics software (Gilmore v. Dept. of Energy, 4 F. Supp.2d 912 (N.D. Cal. 1998)).

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

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

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

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

Governor Ridge seemed to appreciate these risks, and said he was “anxious to work with the Chairman and other members of the committee to assure that the concerns that (had been) raised are properly addressed.” Id. at p. 24. He assured us that “[t]his Administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well.” Id. at p. 25. This turned out to be an empty promise.

Almost before the ink was dry on the administration’s earlier June proposal, on July 10, 2002, the administration proposed to substitute a much broader FOIA exemption from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent (2) protected civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted information to the new department over whether the regulator action was prompted by a concern that a FOIA disclosure was made amply clear by its (p. 33) comment that the Administration’s proposed new FOIA exemption for information protected under the provider as confidential and not customarily made available to the public. Notably, the compromise FOIA exemption made clear that the exemption only covered “information” from the private sector “information” incorporated. Moreover, the compromise FOIA exemption clearly defined what records may be considered “information” which did not cover records used “to satisfy any legal requirement or obligation to obtain, benefit (such as agency forbearances, loans, or reduction or modifications of agency penalties or rulings), or other

about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing the information about spills or other violations without the written consent of the company that caused the pollution.

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

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

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

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

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

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

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

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

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

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

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

Similarly, if the new Department of Homeland Security receives information about a bio-medical laboratory about its security vulnerabilities, and anthrax is released from the lab three weeks later, the Department will not be able to warn the public promptly about how to protect itself without consulting with and trying to get consent of the laboratory to avoid the risk of job loss or criminal prosecution for a non-consensual disclosure. Moreover, if the laboratory is violating any State, local or Federal regulation in its handling of the anthrax, the Department will not be able to turn over such information to the State’s AG nor turn over the information to the EPA or the Department of Health and Human Services, or to any State or local health officials, information or documents relating to the laboratory’s mishandling of the anthrax for use in forming an action against the laboratory, or in any wrongful death action, should the laboratory’s mishandling of the anthrax result in the death of any person. The bill specifically states that such CII-marked information “shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action under Federal, State, or local law if such information is submitted in good faith.” [H.R. 5710, section 214(a)(1)(C)]

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

The scope of the information that would be covered by the new Republican FOIA exemption is overly broad and would undermine the openness in government that FOIA was intended to guarantee. Under this legislation, information about virtually every important sector of our economy that today the public has a right to see can shut off from public view simply by labeling
it “critical infrastructure information.” Today, for example, under current FOIA standards, courts have required Federal agencies to disclose (1) pricing information in contract bids so citizens can make sure the government is wisely spending their taxpayer dollars; (2) compliance reports that allow constituents to insist that government contractors comply with federal equal opportunity mandates; and (3) banks’ financial data so the public can ensure that their agencies properly approve bank mergers. Without access to this kind of information, it will be harder for the public to hold its Government accountable. Under this bill, all of this information may be marked CII information and kept out of public view.

The Republican FOIA exemption goes so far in exempting such large amounts of material from FOIA’s disclosure requirements that it undermines Government openness without making any real gains in safety for families in Vermont and across America. We do not keep America safer by chilling Federal officials from warning the public about their health and safety. We do not ensure our nation’s security by refusing to tell the American people whether or not their Federal agencies are doing their jobs or their Government is spending their hard earned tax dollars wisely. We do not encourage real two-way cooperation by giving companies protection from civil liability when they break the law. We do not respect the spirit of our democracy when we cloak in secrecy what our Government is spending their Government is spending their government in the workings of our Government and our democracy when we cloak in secrecy the privacy risks if the government is not properly focused on the information necessary to collect, the people appropriate to target for surveillance, and the privacy controls to ensure that dissemination is confined to those with a need to know.

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

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

Other provisions added in haste to the Republican House-passed bill raise serious concerns about privacy protections for the sensitive electronic communications of law-abiding Americans. In particular, the so-called “emergency disclosure” amendment in section 225(d) would greatly expand the ability of Internet service providers to reveal private communications to Government agencies without any judicial authority or any evidence of wrongdoing. As Americans move their lives online, their privacy is at stake. E-mails, instant messages, and web traffic is of growing concern. Current law protects the privacy of electronic communications by prohibiting service providers from revealing the contents of those communications to anyone without proper lawful orders. Emergency disclosure provisions exist in the current law based on the reasonable premise that ISPs who encounter an imminent threat of death or serious injury should be able to reveal communications to the Government on an emergency basis, even without judicial oversight. We just recently expanded that emergency exception a year ago in the USA PATRIOT Act to provide even more flexibility for service providers.

In practice, however, the emergency disclosure authority is being used in a different way. Reports in the press and from the field indicate that universities and libraries are approached by Government agents and asked to disclose communications “voluntarily” for ongoing investigations. Providers are then faced with a terrible choice—turn over the private electronic communications of their customers without any court order, or say “no” to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such “voluntary disclosure” provisions risk becoming a gaping hole in the law.

Section 225(d) takes this exception even further and turns it into a loophole big enough to drive a truck through. It would allow literally thousands of local, State and Federal employees to seek court orders for any reason and go through the process of judicial review for ongoing investigations. Providers from the field indicate that ISP providers will have to turn over the private communications of law-abiding Americans and monitored by Congress, in its oversight role, and by court review to curb abuses.

Second, section 225(d) would remove even the low hurdle that there be some reasonable belief— even if totally unreasonable—that there be some risk of future attack. Under this new language, there will always be a “reasonable belief” in danger for ongoing investigations. Providers may then be faced with a terrible choice— turn over the private electronic communications of their customers without any court order, or say “no” to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such “voluntary disclosure” provisions risk becoming a gaping hole in the law.

Section 225(d) makes three important changes to the already very generous authorities for these extraordinary disclosures, which Congress gave to law enforcement in the USA PATRIOT Act just one year ago. First, it would remove the requirement that there be “imminent” danger of injury or death. Instead, it would allow these extraordinary disclosures when there is some danger, which might be conjectural in the future and far more hypothetical. As the Attorney General and the President have warned us consistently over the last year, the entire country faces some risk of future attack. Under this new language, there will always be a “reasonable belief” in danger for ongoing investigations. Providers may then be faced with a terrible choice— turn over the private electronic communications of their customers without any court order, or say “no” to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such “voluntary disclosure” provisions risk becoming a gaping hole in the law.

Second, section 225(d) would remove even the low hurdle that there be a “reasonable belief” in danger on the part of the ISP. Instead, this new provision would allow these sensitive disclosures if there is any good faith belief—even if totally unreasonable—of danger. Vague, incoherent, or even obviously fictitious threats of future danger could all form the basis for disclosure without any judicial authority or any evidence of wrongdoing.

Finally, section 225(d) would allow disclosure of sensitive communications to any local, State or Federal Government entity, not just law enforcement agents. That could include literally hundreds of thousands of Government employees. The potential for abuse is
enormous. More importantly, in cases of real threats of death or serious injury, it is law enforcement agencies—the first contact point for concerned citizens—trained to deal with such situations and cognizant of legal strictures—who should be the first contact point for disclosure of such situations.

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

The public’s most sensitive e-mails, web transactions, and instant messages sent to loved ones, business associates, doctors and lawyers, and friends deserve the highest level of privacy we can provide. These provisions of the Homeland Security Act of 2002 make a mockery of our privacy laws, and the carefully crafted exceptions we have created in them, by allowing disclosure of our most private communications to thousands of Government officials based on the flimsiest of excuses. These provisions were never approved by any committee in the Senate, are not in the interests of the American people, and should not now be finding their way into the law of the land.

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

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

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

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

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

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

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

I also find it particularly galling, that just because “the White House wants it,” this bill includes a provision that balantly puts the interests of a few corporate pharmaceutical manufacturers above those of thousands of consumers, parents, and children. Sections 714 through 716 give a “get out of court free card” to Eli Lilly and other manufacturers of thimerosal.

Let’s be clear, this provision has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. Thimerosal is a mercury-based vaccine preservative that was used until recently in children’s vaccines for everything from hepatitis B to diphtheria. By making changes to the Vaccine Injury Compensation Program sought by the pharmaceutical industry, this provision cuts the legs out from under thousands of parents currently in court seeking compensation for the alleged harm caused by thimerosal.

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

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

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

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

I will continue to work to ensure that the reorganization of our immigration service proceeds in an orderly and appropriate fashion as possible. I have spoken often about the valuable service provided by employees of the Immigration and Naturalization Service in Vermont, and the need to retain their expertise in any reshuffling of the agency’s functions. We will not make...
our nation safer by alienating, under-utilizing, or discarding knowledgeable employees, and I will do what I can to prevent that outcome.

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

The administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the Nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely. I respect all of those employees, and have firsthand knowledge of their dedication to our nation and their jobs. Contrary to the administration’s pre-election rhetoric, where disputes over employment conditions have had potentially negative public safety implications, they have been resolved quickly. I am disappointed that the bill we consider today contains so few protections for these vital employees, and that the White House chose to use these valuable public servants in an election year tactic.

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

OFFICE OF DOMESTIC PREPAREDNESS

Mr. GREGG. Madam President, one of the Senate’s highest priorities, and one of my own personal priorities, has been ensuring that State and local first responders are prepared to handle a terrorist attack, especially one involving weapons of mass destruction. One of the principal ways I have tried to do this is through the Office of Domestic Preparedness. FEMA has traditionally been responsible for consequence management, or disaster response. The Homeland Security legislation, as originally written, would have lumped these components together. However, the people who are directly affected by the immediate aftermath of an attack cannot also be responsible for carrying out sustained training, equipment, and exercise programs. These are programmatic initiatives that must be executed day in and day out. FEMA is a response agency. It will not be able to give terrorism preparedness the time and attention it deserves because it must constantly respond to disasters around the country.

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

The responsibilities of the new Office for Domestic Preparedness will be similar to what they are now under the Department of Justice: coordinating terrorism preparedness at the Federal level, assisting State and local jurisdictions, while avoiding duplication of efforts; conducting strategic and operational planning; coordinating communications at all levels of government; managing the preparedness grants to State and local jurisdictions; and assisting them in the implementation of the President’s National Strategy. This is, in fact, one of the key reasons why I have pushed for the creation of the Office for Domestic Preparedness within the new Department. It ensures the continuity of preparedness assistance for State and local jurisdictions. The office they have looked to for the last five years for equipment, training, and exercise assistance will continue to exist, but under the leadership of the new Office for Domestic Preparedness.
especially in light of the fact that there is an average of 34 major disaster declarations per year in the U.S. I know that my coastal State colleagues were very concerned that FEMA’s natural disaster responsibilities, in particular, its mission to respond to hurricanes, would be eclipsed by its new homeland security responsibilities. I am certain that this concern is shared by Senators from States that face the threat of earthquakes, floods, and wildfires. This provision is clear that FEMA is out of the preparedness business.

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

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

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

Just after September 11, the President duly acknowledged how critical first responders are to our National security. We cannot shortchange them now. We are at war and the Federal Government must fully support our State and local first responders. ODP has provided training to approximately 114,000 first responders and exercise support to more than 100,000 first responders nationwide. It has given out nearly $600 million in equipment to local jurisdictions since its creation in 1998. It also executed the largest terrorism exercise in U.S. history, TOPOFF. I have heard reports that those who participated in the multi-venue TOPOFF were the only ones truly prepared to handle the challenges presented on September 11. The amendment acknowledges that we do have an effective system in place and it preserves what has been accomplished.

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

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

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

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

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

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

America is in the midst of a war against terrorism. We have a long way to go. Yet instead of focusing on the war effort, we’re waging war on Federal employees. The administration must use this new flexibility responsibly and judiciously. It is not a blank check. If anyone takes undue advantage of any of these corporations from being able to contract with the new Department of Homeland Security. Why does the House of Representatives insist on helping those companies who make their money in the U.S. but then turn their backs on the U.S.? What about their responsibility to the U.S.?

This legislation also provides immunity from liability for manufacturers of products or technologies that harm Americans. Why do the House of Representatives want to immunize companies that are grossly negligent, and how does this improve the security of Americans?

Another special interest provision would provide liability protection for pharmaceutical companies that are being sued for using vaccine preservatives that some people believe have
caused autism. This should be decided by scientists and the courts: not by Members of the House of Representatives trying to sneak unrelated provisions into a bill on homeland security. The list of special interest paybacks goes on and on.

I strongly oppose the provisions of this bill that limit the rights of Federal employees, as well as the administration’s plan to privatize much of the Federal workforce. I will continue to fight these proposals. I am also disappointed that the House Republicans have used the need for homeland security to sneak so many special interest provisions that were included in this 484-page bill by the House.

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

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

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

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

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

As chairman of the Commerce Committee, I have advanced legislation to reform products liability litigation, and overseen the enactment of a law to limit litigation and damages that might have arisen from the Y2K bug. Despite its potential to kill the bill because of opposition from trial lawyers, I voted to cap attorneys’ fees on the comprehensive tobacco legislation that I sponsored. I am appalled that the demise of that bill opened the door for a provision that may benefit only the lawyers have supported.

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

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

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

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

While I am told that the House advocates of the SAFETY Act did not intend to provide protections for products whose specifications are not
issued by the government, or which do not meet these specifications, the bill language indicates otherwise. It says “Should a product liability or other lawsuit be filed for claims . . . and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption during the course of the Secretary’s consideration of such technology under this subsection.”

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

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

Prohibition on Contracts with Corporate Expatriates: the Homeland Security bill prohibits the Secretary from contracting with any “inverted domestic corporation”, which is an American corporation that has reincorporated overseas. More and more U.S. companies are using this highly profitable accounting scheme that allows a company to move its legal residence to offshore tax havens such as Bermuda, where there is no corporate income tax, and shield its profits from taxes. I applaud efforts to discourage this practice. Already, at least 25 major corporations have reincorporated or established themselves in Bermuda or the Cayman Islands in the past decade. Although I understand that American tax policy has encouraged them to do so, corporations that have moved their legal headquarters offshore to avoid taxes give the appearance of ingratitude to the country whose sons and daughters are risking their lives today to defend them.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Daschle-Lieberman amendment is simply unacceptable. For example, just last week, I chaired a subcommittee hearing on a new report from released by Senators Hart and Rudman.
Their report is chilling—and its conclusion distributing: It reads:

A year after September 11th, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on a regional scale. The next attack will result in even greater casualties and widespread disruption to American lives and the economy.

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

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

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

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

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

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

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

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

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

I am very pleased that this legislation does not neglect State and local law enforcement, emergency medical technicians, National Guardsmen, and other people in the local community. The need proper information, organization, training, and equipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a daunting mission as it is, and must never lose that focus.
regulatory and oversight authority over issuances and denials. It also prohibits third-party visa processing, referred to as "Visa Express," to ensure closer scrutiny of visa applications and to preserve the integrity of the visa issuance process. These reforms are essential.

Overall, while this legislation’s shortcomings cause me serious concern, I believe that they pale in comparison to the dangers facing America, both immediately and in the long-term, at home and abroad. The terrorist threat to the United States is far too real, and in our freedom-loving country we must now do everything we can to protect our people.

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

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

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

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

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

This was precisely the type of thinking demonstrated by President Bush in the speech in the summer of 2001, when he instructed the Department of Homeland Security, now headed by Governor Ridge, to coordinate counter-terrorism activities at the border are the same personnel who perform inspections for security and other enforcement purposes. In addition, the information Customs officers gather from trade compliance examinations and manifests is the same information used to assess security risks for shipments. This information is the cornerstone of many of Custom’s counter-terrorism efforts.

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

The same is true for the Coast Guard. Since the terrorist attacks of September 11, the Coast Guard has conducted its largest port security operation since World War II to protect and defend our ports and waterways. But this significant amount of effort is simply not enough.
The Coast Guard needs to be positioned with the other transportation and border security agencies if we are going to improve interagency coordination, maximize the effectiveness of our resources, and ensure the Coast Guard receives the full support it deserves. I strongly believe the Coast Guard is an outstanding role model for Homeland Security and will serve as a cornerstone upon which this new Department will be built.

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

The legislative solution I developed with Senators Stevens and Collins, that is included in the bill, strikes the proper balance. It will assure the Coast Guard Commandant will report to the new Secretary of Homeland Security, rather than to a deputy secretary; assures no Coast Guard personnel or assets will be transferred to another agency; and provides a mechanism to annually audit the Coast Guard’s performance of its non-Homeland security missions.

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

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

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

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

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

In working on terrorism and embassy security issues on the House Foreign Affairs International Operations Subcommittee, what we discovered was startling. We found that the Sheikh had entered and exited the country five times without ever being detected after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, New Jersey about a year before.

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

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

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

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

On this same note, I am also pleased that another provision of mine to stop “visa shopping,” the practice of a foreign government having us issue two different U.S. Embassies in order to find one that will grant a visa, has also been included in this bill.

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

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

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

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

Finally, one of the most challenging hurdles to overcome in passing this legislation was a provision of law that has been in statute for almost a quarter-century. This provision referred to as the President’s “national security waiver authority” allows the President to exclude agencies, or smaller subdivisions within agencies, from collective bargaining agreements. This authority has been in statute for almost a quarter-century. This provision referred to as the President’s “national security waiver authority” allows the President to exclude agencies, or smaller subdivisions within agencies, from collective bargaining agreements, and make recommendations as to the role foreign national should have with regard to visas.

During this debate, attempts to rescind the President’s authority which
we must move the process forward, and send the all-important message to the people we represent that we are serious about protecting them that we are serious about having better cooperation, coordination, and preparation in the fight against terrorism.

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

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

What in the world does such a provision have to do with homeland security? I believe this provision will create a dangerous precedent by sending a message to thousands and thousands of families that their children’s health takes a distant second place to the interests of large corporations. This bill should be about homeland security.

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

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

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

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

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

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

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

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

I was glad to have an opportunity to work with the sponsors of the bill to secure adequate whistleblower rights for Department employees. Because rights are worthless unless you have a process by which those rights can be addressed, I worked with the sponsors to ensure that whistleblowers have procedural remedies. The bill’s whistleblower protection language grants the Department’s same Whistleblower Protection Act rights that are currently enjoyed by almost all other Federal employees.
Another big part of the homeland security bill includes provision to restructure the Immigration and Naturalization Service. The new Department will be instrumental in securing our border, but we will have to steadily implement the changes to improve the agency’s service and enforcement functions. Improvements to this agency are long overdue and cannot be ignored after this bill passes. Just because we have streamlined their management, the INS’s performance will be scrutinized in the years to come. The INS will be accountable to the American people, and I look forward to seeing some changes in the way they do their business.

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

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

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

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

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

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

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

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

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

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

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

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

Mrs. MURRAY. Madam President, the Senate today took an important step to combat domestic terrorism and improving it at home. The Department of Homeland Security will help protect our communities by coordinating prevention and response efforts throughout the country.
The legislation also maintains the integrity of the Coast Guard, so that the important function of search and rescue, drug interdiction, and environmental protection will not be degraded.

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

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

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

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

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

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

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

The events of September 11 were orchestrated by a group of foreign individuals who used false information to receive legitimate U.S. identification documents like visas, passports, driver’s licenses, and illegally entered this country. Identity fraud is now a tool employed by terrorists to infiltrate America and harm our citizens. Terrorists have been able to take advantage of our ineffective and antiquated systems and assume false identities.

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

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

The President has said, “This nation, in world war and in Cold War, has never permitted the brutal and lawless to set history’s course. Now, as before, we will secure our nation, protect our freedoms, and guarantee the freedom of their own.” Let me be clear. There are people who deserve to enter this country and there are people who don’t deserve to enter any country. We must have the ability to verify an individual’s identity the first time they apply for a visa. As we move forward, we must establish an identity authentication system that targets the 28 nations designated by the State Department as state sponsors of terrorism.

Mr. REED. Madam President, I rise to discuss the legislation before the Senate to create a Department of Homeland Security. I have said throughout the debate on this legislation, I support the creation of an effective homeland security department, and despite my strong reservations about many of the specific provisions in the bill, I intend to support final passage today. The Senate has expressed its willingness to work towards the amendment process and while I have been disappointed with the outcome of many of the votes, the bill before us has the potential to improve our government’s ability to combat terrorism against our people. I believe that no federal employee who currently has the right to join a union would lose that right under the homeland security reorganization. Agencies where employees currently do not have collective bargaining rights, such as the Transportation Security Administration and the Secret Service, would not be affected.

To maintain the existing rights of union members transferred into the new Department, the Governmental Affairs Committee bill included a bipartisan provision that would update this formula. Under that bill, management could deprive transferred employees of their collective bargaining rights if
their work is “materially changed” after the transfer; their “primary job duty” is “intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism”; and their rights would “clearly have a substantial adverse effect on national security.” This provision was carefully crafted on a bipartisan basis to give the new Secretary of Homeland Security the flexibility he or she needs while preserving the rights of tens of thousands of employees who have devoted their professional lives to these rights for decades and will be performing exactly the same work under a different letterhead.

Unfortunately, the House drafted bill before us today does away with these protections. Under this bill, the President may waive existing union rights if he determines they would have a substantial adverse impact on the Department’s ability to protect homeland security. He must send a written explanation to Congress and engage in a 30-day mediation administered by the Federal Mediation and Conciliation Service, if mediation is not successful the President could waive civil service provisions notwithstanding union objections and act with presidential approval. I am also concerned about the provisions related to the Vaccine Injury Compensation Program, VICP. The VICP is a no-fault alternative to the tort system for resolving claims resulting from naturally occurring adverse reactions to mandated childhood vaccines.

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

However, the provisions contained in this homeland security bill consist of one page of a 26-page bill introduced by Senator Frist earlier this year, S. 2653, the Improved Vaccine Affordability and Availability Act. While it has been argued that these provisions are needed to protect vaccine manufacturers, the fact is that manufacturers are already protected under VICP.

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

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

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

The Directorate for Information Analysis and Infrastructure Protection will enable the Department to “connect the dots” by organizing analyzing, and integrating data it collects at ports and points of entry with intelligence data from other parts of the government. The bill also provides the Department with an intelligence mandate to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats.

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

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

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

Mr. BUNNING. Madam President, I am pleased that the Senate is able to pass legislation to establish the Department of Homeland Security before Congress adjourns the 107th Congress sine die. The terrorist attacks on September 11, 2001 it has been the mission of President Bush and many in Congress to create this new Department, and it
Ms. CANTWELL. Madam President, I come to the floor and speak about the need for President Bush and future presidents to be able to have the authority and flexibility to hire and transfer employees, and even be able to terminate some employees, within the new Department of Homeland Security to ensure its mission can be undertaken. For weeks we had a real disagreement on this issue. Some wanted to ensure that protected personnel were preserved in their employment regardless of their performance or real need.

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

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

As well, this bill helps to ensure that our communities and first responders are not personally or professionally threatened. This bill does this by moving FEMA and the Secret Service under the new Department of Homeland Security. By moving FEMA, we are clarifying who’s in charge, and response teams will be able to communicate clearly and work with one another. We will also benefit by the Department of Homeland Security being able to depend on the Secret Service’s protective functions and security expertise.

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

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

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

But it is imperative we pass this legislation now. We have worked hard on this bill, and yet just 1 day before the 107th Congress, we need to get it to President Bush’s desk before we adjourn sine die. The sooner we get it to him, the better it is for the protection of the homeland and Americans.

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

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

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

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

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

The timely sharing of investigative information between various enforcement and intelligence agencies can provide necessary improvements in our nation’s security. Unfortunately, the version that is contained in this legislation provides absolutely no limitations on how this information can be used or disseminated. This is particularly troubling because we have already expanded the type and amount of personal information available in federal databases. To greatly expand access to personal information without providing any protections on its use is a dangerous erosion of our valued right to privacy and has the potential to erode the protections that the American people, particularly Americans against unfettered government intrusion into privacy. I support greater access to information, and I believe that
it is primarily through appropriate use of information technology that we are likely to make real improvements in our domestic security, but greater access to personal information cannot come without offsetting protections against its misuse.

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

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

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

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

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

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

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

The people of Nevada look to the Federal Government to make sure that our State and our Nation are secure. We all agree that our Federal Government can, and should, do much better at preventing attacks, defending against attacks, and mitigating the consequences of attacks.

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

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

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

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

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

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

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

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

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

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

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

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

This bill, on the other hand, will drive many talented individuals to look for employment elsewhere, in positions that afford at least a minimal level of job security and due process. I fear that over time we will see a deterioration in the caliber of employees that join this department, and I expect to revisit the labor provisions before many years have passed.
I am also deeply troubled by the efforts to allow this department to operate in secrecy. We have seen the unfortunate impacts of secrecy in the development of a national energy policy by the administration. This bill would continue this trend of secrecy and take it out of the democratic process, and it is unacceptable. I oppose this bill and the administration."
to do with structural reorganization and very little to do with enacting real steps that will protect our Nation against terrorist attacks. There are many things in this bill that should not be; and there are many things that should be in this bill that are not.

I am concerned that the American people will think that simply because we have passed this bill that our Nation is safer. They need to know that this measure does not increase patrols along our northern borders. It does not give our firefighters, police officers, and emergency personnel the resources, training, and equipment they need to protect our frontlines at home. It does not increase security measures at our ports, along our railroads, and public transportation systems. It does not increase our capabilities of detecting biological, chemical, and nuclear weapons. What this bill does is it falls short on many counts, especially when it comes to real measures that would improve our security. We had the opportunity to do this right. We had the opportunity to do more than create a department, but we missed it. The Senate’s original bill included critical measures that would make our country safer today than it was yesterday. But in the end, this Congress failed to put safety first and special interests last.

There is a lot in this bill that secures our country. It is imperative that we act to better secure our Homeland defense, and to shortchange them in these difficult times is incredibly shortsighted.

We must also act to better secure our Nation’s nuclear power infrastructure. We must also better protect our jobs. Our firefighters, police officers, and emergency response workers who did not think twice about rushing to Ground Zero to save lives say about the lack of progress that’s been made?

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

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

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

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

As I described on the Senate floor and in a press conference last week, this bill includes unrelated vaccine liability provisions that help manufacturers, while ignoring families concerns for compensation, and children’s needs for a strong vaccine supply not only fail to protect homeland security, they fail to adequately protect children from preventable disease. All the vaccine companies want this bill to make it easier for manufacturers to get away with indefensible actions.

However, enacting only provisions that help manufacturers, while ignoring families concerns for compensation, and children’s needs for a strong vaccine supply not only fail to protect homeland security, they fail to adequately protect children from preventable disease. All the vaccine companies want this bill to make it easier for manufacturers to get away with indefensible actions.

There is a provision in this bill that would change tort liability laws. This measure looks like it was done to protect manufacturers at the expense of our children’s health. And, while the bill may still allow companies to decide for themselves what information should be afforded certain liability protections, it does not adequately address the very real threat of terrorists’ capabilities and desire to destroy our nuclear power plants. Our efforts to protect our infrastructure is moving much too slow.

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

When it comes to our Homeland Security, we need to listen to the experts—our mayors, police commissioners, fire chiefs, and our public health workers. They continue to ask for direct funding, and I proposed legislation that would provide direct funding to local communities, the Homeland Security Block Grant Act.

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

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

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

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

This measure looks like it was done to give manufacturers immunity from liability for the products they make that our first responders will use. How will this help America build a stronger homeland defense? It doesn’t—just makes it easier for manufacturers to get away with indefensible actions.

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

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

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

I am also troubled by the so-called compromise over the civil service and
The bill gives the President the authority to waive civil service protections in six key areas including rules for labor-management relations and appeals to the Merit Systems Protection Board. I am concerned that this will hinder the ability of the new department to recruit and retain civil service employees who have expertise in the agencies that will be shifted to the new Department. The bill shortchanges the workers and shortchanges all Americans who believe we should have the most qualified individuals working in this new department.

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

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

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

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

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

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

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

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

But at the end of the day, we must move forward with this bill. Hopefully, it will spur us to focus once again with the same commitment and vigilance we had in those weeks and months after the solemn day of September 11. The threats continue to come in. Attacks occurred in Bali, Yemen, and in Kuwait. A new tape reveals that Osama Bin Laden is most likely alive. And Al Qaida is plotting all the while.

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

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

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

The proposed department excludes the very entities that failed on September 11 failures. What does any of that have to do with homeland security?

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

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

The President should be able to get well-analyzed reports of domestic threats on a timely basis. But how can he do this if his own National Security Council does not even include the Attorney General or the Director of the FBI? If Congress wants to re-organize, we should re-organize the Council to
include law enforcement and to make certain intelligence is shared with Customs, INS, the Coast Guard, and the others who need to know. Equally important, intelligence should be shared with and received from state and local officials at the front lines in this fight.

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

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

Is there more this Senator wants this Congress to do for those on the front lines of homeland security? Absolutely. We should provide for the security of Amtrak’s 23 million passengers. We should improve security on buses and freight rail. We should finish the job at our airports and at our seaports. We should allow our dedicated workers in this new Department of Homeland Security to adapt and respond to an act of bioterrorism.

But how can we when we are going to throw billions to shuffle bureaucrats from one side of Washington to the other? When will our new Department of Homeland Security be able to improve security at our nation’s airports, where we are voting on today will authorize the federal government to maintain extensive files on each and every American without limitations.

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

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

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

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

After careful review, I must conclude that this bill is not well thought out. The American people would benefit from the Congress paying closer attention to the new provisions that are in the current version of the bill. This proposal threatens to erode the fundamental civil liberties and privacy of all Americans. It does not ensure that the new Department will be able to effectively communicate and share information with agencies like the FBI. It is weighed down with special interest provisions that have nothing to do with the creation of the new department. It does not give our first responders all of the tools and information necessary to protect our homeland.

We need not unnecessarily sacrifice cherished civil liberties and privacy in the fight against terrorism. The Department of Homeland Security must ensure that Federal, State and local law enforcement agencies, fire fighters, and other first responders are able to work together to adapt and respond to the evolving challenges of terrorism.

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

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

Finally, I believe that while this bill includes some civil right oversight, it offers weaker protections than are found in other federal agencies. Steps should have been taken to strengthen
the Civil Rights Office in the new department by requiring that the head of that office be subject to confirmation by the Senate and therefore accountable to the Congress and the American people. The bill should designate an official in the office of the Inspector General who is able to investigate and report on civil rights violations. This bill also should have included stronger protections for the Americans who will be working in this new Department and protecting our Nation. Congress owes these Americans the same protections that other public servants enjoy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the spring, President Bush changed his mind and put forth his own proposal for a new Department. We in the Governmental Affairs Committee then worked on a compromise committee amendment, merging most of what the President wanted with the committee-passed bill. We had hearings on the proposal and the first committee markup, and at that time, President Bush opposed the creation of a new Department. As a result, the vote to report the bill we reported from the Governmental Affairs was along party lines, with all of the Democrats, including myself, voting for it and the Republicans voting against it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Third, are designated and certified by the Department that the information is not customarily made available to the public.

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

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

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

I will also be voting against this bill because of the civil service provisions
that President Bush is calling "flexibility" but that I consider an unnecessary blank check. There are really two issues here, one concerns collective bargaining, and the other concerns the civil service in general.

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

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

The Thompson amendment would allow the President to waive collective bargaining rights, whether or not there is an emergency, if the President gives 30 days notice and sends a written explanation to Congress. This provision does not provide a standard under which the President's authority is to be exercised. So in the most extreme example, under this provision, the President could remove the collective bargaining rights of every single employee who was transferred into the new Department. That is unacceptable. What we tried to do in the Governmental Affairs Committee bill was to allow workers with collective bargaining rights to be transferred into the new Department to maintain those rights if their job descriptions did not change. Given the President's authority to act in an emergency under current law, I believe that protected our national security without unnecessarily trampling on rights of employees.

The Thompson amendment also allows the Secretary of the new Department to alter civil service rules. If the Secretary thought then the only one in charge—no one is in charge. By making one Cabinet level agency in charge of Homeland Security we will have only one person in charge. The bureaucracy underneath the Secretary will have only one unifying priority. The advantages of that change cannot be overestimated.

However difficult the crafting of the homeland security legislation has been, it was the easy part. Now we face the difficult and monumental task of actually putting the parts together into a whole greater than its sum. The offices that make up the Department of Homeland Security cannot forget the other important missions they perform. Organizations like the Coast Guard and Animal and Plant Health Inspection Service have valuable missions outside of their homeland security function that cannot be overlooked.
The Congress's work on homeland security should not stop here. As the transfer of offices begins, there will no doubt be changes necessary. Congressional oversight is more important now than ever. With this bill Congress has decided to take on many long-held needs to take homeland security more seriously. But Congress needs to take it seriously, too. That means giving up our short-term political games in order to work together—Republican and Democrat—so that we can build a bipartisan, functioning agency that will deliver all Americans the security they deserve.

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

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

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

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

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

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

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

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

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

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

While I support much of what this legislation does and while I believe we should quickly move forward to create a Department that addresses the concerns with particular provisions of the bill. First, I am extremely disappointed that this legislation provides the administration with the authority to rewrite civil service laws without guaranteeing that Federal workers will receive fair treatment without regard to political affiliation, equal pay for equal work, and protection for whistle-blowers. The hallmark of civil service is protection from political influence through laws designed to ensure the hiring and firing of employees based exclusively on merit. And by allowing the administration to rewrite the civil service laws...
without guaranteeing these protections and without meaningful labor union participation, we are putting these important protections at risk.

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

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

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

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

I am extremely concerned that this legislation includes liability protections for manufacturers of anti-terrorism technology and childhood vaccines. The new provisions allow the Secretary to designate equipment and technology used by the Department as official “anti-terrorism technology.” In the event that a terrorist attack on critical infrastructure will prevent injured parties from seeking compensation against manufacturers of such technology, even if a manufacturer exercised gross negligence in marketing its product. I am concerned that this provision will prevent victims from seeking remedy for injuries they sustain as a result of negligence stemming from the inclusion of a “component or ingredient” in any vaccine listed under the Vaccine Injury Table. This provision is absolutely unconscionable. We should not give manufacturers an incentive to experiment with questionable formulas or risky ingredients for vaccines which are intended to immunize children from potentially dangerous diseases and should not give manufacturers of anti-terrorism technologies any incentive to sell a product they know to be below par.

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

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

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

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

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

Mr. GRAHAM. Recognizing the need for better decision support, the leaders of Miami-Dade County established last year a team comprised of representatives from the departments of police, fire, emergency management, general services, computer and communications services, seaport, aviation, and administration. They were tasked to work in concert with a consultant and a national laboratory to develop a model for identifying and evaluating physical and cyberterrorism threats and vulnerabilities; developing a consistent basis for making meaningful comparisons among risks to county assets so that the most important risks can be addressed first; using the structure of the process to develop strategies and associated tactics for mitigating threats and vulnerabilities; and
prioritizing mitigation activities so that the biggest gains for the resources spent are implemented first, resulting in the fastest possible reduction in risk for the limited resources available, including not only dollar resources, but the key resources of people and time. The Miami-Dade County pilot project, has been successfully completed, and it has generated considerable interest both in Florida and in Washington.

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

Mr. GRAHAM. Yes.

Mr. DURBIN. Argonne National Laboratory, The DecisionWorks, Inc., Idaho National Engineering and Environmental Laboratory, and Miami-Dade County would like to build upon the results of the pilot project to fully develop and to implement a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources necessary to combat terrorism and to provide for homeland security. It would improve the quality and relevance of information available to managers at all levels of the organization.

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

Mr. DURBIN. Yes.

Mr. CRAPO. The original amendment that Senator LIEBERMAN submitted to the underlying bill, H.R. 5005, to establish the Department of Homeland Security, contained a section that would have established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology. Recognizing the tremendous contribution that this Miami-Dade County pilot project and the tremendous contribution that a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources necessary to combat terrorism and to provide for homeland security, and provided the cutting edge technologies that will support our nation’s defense efforts. The bill helps the private sector help our nation by crafting some reasonable protections from frivolous tort litigation, and such a measure will ultimately save lives.

This legislation incorporates my proposal to stiffen the criminal penalties for cyberterrorism and to provide law enforcement agencies with new tools to use in emergency situations involving immediate threats to our national security interests. The cyberterrorism section of the bill also provides statutory authorization for the Office of Science and Technology located within the National Institute of Justice of the Department of Justice. The bill strikes language, contained in earlier versions, that would have provided OST to be “independent of the National Institute of Justice.” Accordingly, I understand subtitle D to place operational authorizations for OST—as it currently exists in the bill—in the Office of Science and Technology located within the National Institute of Justice of the Department of Justice. The bill strikes language, contained in earlier versions, that would have provided OST to be “independent of the National Institute of Justice.”

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

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

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

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

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

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

I also am pleased to note that the bill maximizes the new Department’s ability to take advantage of the tremendous resources and expertise of America’s private sector. It is perfectly clear that America’s businesses will play a vital role in enhancing our nation’s security. Private businesses, after all, own and operate most of our infrastructure. The government, therefore, will have an important role in helping decision-makers in both the public and private sectors to assess the likelihood of a successful terrorist attack on critical infrastructure and to develop and deliver a process for deciding how to allocate resources, people, time, and money, across all sectors. The decision on where local resources to the War on Terrorism, Senator DURBIN and I offered an amendment that would have enhanced and strengthened this risk assessment function. This amendment would have required the Department of Homeland Security to establish a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security. It would have authorized $5 million in appropriations for Fiscal Year 2003, and such sums as necessary in subsequent years, for the development of the risk-based prioritization process. Unfortunately, the current version of the Homeland Security Act before the Senate does not contain our amendment.
the importance of both functions, allows for coordination, and confers appropriate funding and management to both enforcement and services. This top-to-bottom reorganization of INS is something that numerous members of the Appropriations Committee have been working tirelessly with me to do and to do right. The Homeland Security Bill also includes a valuable provision that will significantly reduce the availability of explosives to certain prohibited persons, including terrorists and felons. Senator KOHL and I have worked hard on this provision, which will improve law enforcement’s ability to track explosives purchases and help prevent the criminal use and accidental misuse of explosives materials.

I want to conclude by taking a moment to discuss the ban on the TIPS program that was inserted in the final version of the Homeland Security Bill. Let me make clear that none of us want an amendment version of Brother watching over us at all times. I made my own concerns on this issue very clear to Attorney General Ashcroft during an oversight hearing a few months ago, as did other members of the Judiciary Committee. I was concerned that the Attorney General assured the Committee that this would not occur. Since then, I have been gratified to learn that the administration has taken our concerns to heart, implementing fundamental changes to the program that are designed to protect our privacy in a balanced manner. In fact, the Justice Department now has committed to not include within the TIPS program any workers, such as postal or utility workers, whose work puts them in contact with homes and private property. I think all of us can agree that some type of voluntary reporting program that permits government and law enforcement officials to contact citizens to report information is appropriate. This is, of course, exactly what drives the highly successful results obtained by the popular TV program, “America’s Most Wanted.” In fact, John Walsh, the host of that program, has publicly endorsed the concept of a TIPS program. Moreover, I fully support the Amber Alert Program, which was created in 1996 after a 9-year-old girl, Amber Hagerman, was kidnapped and murdered in Texas. This program is a voluntary partnership between law-enforcement and broadcasters to create a voluntary reporting program in child-abduction cases. The Amber Alert system recently led to the rescue of two teenage girls who were abducted in California and found safe. This program is a voluntary partnership between law-enforcement and broadcasters to create a voluntary reporting program in child-abduction cases.

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

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

Mr. GRASSLEY. Madam President, I rise for the purpose of bringing your attention to an amendment that we have been talking about for the past several months. This was taken from the work that the Department of Justice now has committed to doing. Let me be clear. The Government contracting ban in the homeland security bill is merely a down payment on this issue, and it isn’t good enough for me. The Homeland Security ban isn’t half a loaf—it’s barely two slices of bread. So to everyone who is contemplating one of these inversion deals, you proceed at your own peril. We will continue to pursue corporate expatriation abuse, and the abusers who seek fat Government contracts while skirting their U.S. tax obligations, I will continue this issue in the 108th Congress and beyond. I look forward to enlisting the support of my colleagues with the Committee on Government Affairs as we march forward to shut down this abuse in all its forms.

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

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

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

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

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

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

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

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

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

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

Mr. Daschle, Madam President, we are finally about to vote on a bill to create a new Homeland Security Department. Many Senators worked long and hard to get us to this point. But one man was indispensable. He is the chairman of the Senate Government Affairs Committee, Joe Lieberman. Under his leadership, the Government Affairs Committee held its first hearing on homeland security 10 days after September 11th. During that hearing, former Senators Warren Rudman and Gary Hart, the co-chairs of a bipartisan blue ribbon commission, shared their recommendation that the Government should create a permanent, cabinet-level Department to protect the American people from terrorism. Three weeks later, on the one-month anniversary of September 11, Senator Lieberman announced his plan to create such a department. He had the vision to see what needed to be done and the patience to work through disagreements and come up with workable, bipartisan alternatives.

He also had the courage to stand his ground for months while the President threatened to veto any Homeland Security bill. I also want to thank Democrats on the Governmental Affairs Committee for standing with Chairman Lieberman.

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

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

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

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

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

Our public health system is still dangerously under-prepared for the possibility of future biological or chemical attacks. Our borders are still not secure as they need to be. Neither are our seaports; we still search only 2 percent of the roughly 6 million containers that are unloaded every year at America’s ports. The U.S. has 150,000 miles of rail tracks, bridges, tunnels, and switches that are all still vulnerable to terrorist attacks. This bill does not provide the resources to...
secure them. Our food supply—domes-
tic and imported—remains highly vul-
nerable to biological attacks. This bill
does not change that fact.

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

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

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

This bill now guts a critical part of
the aviation security bill the Senate
passed last year by a vote of 100 to
nothing. It does so by providing special
immunity for private companies that
perform passenger and baggage screen-
ing at airports. It is likely to slow en-
actment of other new emergency trans-
portation security rules that the Transpor-
tation Security Administration has
said are vital to protect air and rail passen-
gers, as well.

In the name of protecting Americans,
this bill actually eliminates some legal
protections for ordinary Americans. It
grants legal immunity to countless pri-

date companies. All the Federal Gov-
ernment has to do is designate a com-
pany’s product an “anti-terrorism
technology” and the company can’t be
sued—even if it acts in ways that are
grossly negligent. This bill also pro-
vides special legal protections to the
maker of a mercury-based, vaccine ad-

ditive that has been alleged to harm
children. For parents who are involved
in class-action lawsuits against the
makers of that additive, this bill slams
the door shut on their rights.

This bill abandons the bipartisan ef-
fort to make workplace rules in the
new Department more flexible without
trampling worker protections and
making workers more vulnerable to
unfair political pressure. History has
depicted too many office buildings
already shown that no one—no one—
sacrificed more on September 11th than
did public workers. I believe history
will also show that using September 11
to justify taking away public employ-
ees’ basic rights makes the country
degradely that it is part of this bill.

This bill also undermines the Federal
Freedom of Information Act and com-

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

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

We shouldn’t have to be here, work-

ing on this bill, on November 19. It has
been nearly 14 months since Senator
LIEBERMAN first proposed creating a
Department of Homeland Security. The
Senate could have passed a strong
Homeland Security bill, and President
Bush could have signed it into law,
long before the election. Democrats
tried five times to break the Repub-

cilian filibuster on homeland security.
The reason we couldn’t break the fili-
buster is because Republican leaders
were using homeland security as an
election issue. They wanted us to be able
to blame Democrats for the impasse
they created, and question the patriot-
ism of good and decent people. As I
said, for the sake of the American peo-
ple and their security, I hope we have
seen the last of that tactic.

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

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

The PRESIDING OFFICER. The Sena-
tor from Connecticut.

Mr. LIEBERMAN. I thank the Chair.

Madam President, it is a happy twist of
tide that the Senator from Pennsyl-
vania is on the floor as I rise to support
final passage of this legislation, which
would create the unified and account-
able Department of Homeland Security
that the American people urgently
needs to protect their homeland.

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

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

Giving credit where it is due, the
journey actually began before October
11 and September 11, more than 18
months ago, when the visionary Com-
mission on National Security in the
November 19, 2002

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

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

Hopefully, though, through compromise, steadiness, and hard work, the American people will get what they need. And that, I think, is what is happening with the adoption of this bill, which will occur in just a few hours. We must remember also—to say what is clear—that this bill will be written in the law books. It is not written in stone. If we need to make changes down the road, we can and we will.

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

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

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

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

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

I want to speak to some of the conditions that will govern our work. One is the process of reform. FEMA has focused more resources on countering terrorism. Smallpox vaccines are stockpiled around the country. We have begun efforts to link Federal law enforcement authorities to State and local police and to give community first responders some of the guidance, if not yet the resources, they so critically need. But the fact is we remain fundamentally and unacceptably disorganized, and that is why we need to restructure in exactly the way this legislation will require.

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

A year ago, we came to understand tragically that the status quo was untenable. We knew we had these gaps in preparedness, but in the aftermath of September 11, there was no agreement on how to move forward.

Our Governmental Affairs Committee held 18 hearings, and over time we grew more convinced our weaknesses were so profound they cried out for fundamental reorganization.

We saw border patrol agencies that seemed unable to communicate with each other, let alone to stop dangerous goods and people from entering the United States of America.

We saw intelligence agencies, despite strong signals about a potential terrorist attack on the United States, failed to put those pieces together.

We saw first responders around the country spread thinner than ever.

And we saw deviously creative terrorists acquiring technology to advance their own ends—but an American government that had not yet sought to marshal the most innovative people, our people, in the history of the world to meet this life-or-death challenge.

We did not like what we saw.

So we worked hard to better organize it, to make it more efficient, to make it more focused, to create a bill that would empower a Secretary with budget authority to get the agencies involved in homeland security to work together. That is what led to our introduction of the bill with Senator Specter and others, including Senator Cleland, and ultimately to report the bill out of the Governmental Affairs Committee in May.

I don’t think we can count the ups and downs since then. The finished product we are prepared to vote on today is, notwithstanding the concerns I have expressed, a great leap forward for the security of the American people. It is a great achievement to have reached agreement on a governmental reorganization of this magnitude.

This is, after all, a very turf-conscious town, one in which we often speak volumes about the need for change, but just as often, probably more often, fail to deliver change. This bill will deliver change.

Former Senators Hart and Rudman, who ably led that commission I referred to, this year were asked again to help determine a homeland security organization created by the Council on Foreign Relations. The final report of the task force, released October 24, 2002, was entitled titled “America Still Unprepared—America Still in Danger.” I read from that conclusion:

Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the 21st century, security and liberty are inseparable. The absence of adequate security mandates and the assumption of overreach in terms of imposing costly new security measures that may erode our freedoms. Accordingly, aggressively pursuing America’s homeland security imperatives immediately may well be the most important thing we can do to preserve our cherished freedoms for future generations.

That is exactly what we will do when we adopt this legislation in a few hours.
And pursuing America’s homeland security imperatives is not only critically important for future generations of Americans; let us also realize that, as we adopt and create this new Department, we set a powerful example for the nations of the world. Terrorists threaten innocent lives. When we demonstrate that we are willing and able to earn both security and more freedom, we will show free nations that they can preserve their way of life without living in fear of terror. And, in the process, we will demonstrate to those nations remaining in the world whose people are not free that they can embrace freedom and tolerance and democracy without compromising their safety.

There are few more important signals we can send by our example to the nations of the world.

In 1919, Henry Cabot Lodge said famously: ‘‘If the United States falls, the best hopes of mankind fail with it.’’ I am sure that today, when the United States succeeds, the best hopes of mankind succeed with it. When we succeed in protecting our homeland security and preserving our freedom, we will show the way to nations throughout the world.

This evening we say to the people of America: have confidence, your government is organizing itself to protect your security. We need not accept another September 11 type terrorist attack as inevitable. It is not.

We are the strongest nation in the world. If we marshal our strength as this new Department can, no future terrorist attack such as September 11 will ever occur again.

Finally, I give credit and thanks to the Members of the Senate Governmental Affairs Committee, and to the majority staff for their passion, precision, and persistence. They were tireless, working day and night, through recesses and holidays, and they have every right to be proud of this product of their labor: a new Department that will better protect the American people for generations. The names of the staff members, from both the Committee and from my personal staff are:

Holly Idelson, Mike Alexander, Larry Novey, Susan Propper, Kevin Landy, Josh Greenman, Bill Bonvillian, Michelle McMurry, Kiersten Todt Coon, Katherine Schacht, Laurie Rubenstein, Leslie Phillips, Fred Downey, Adrian Eckenbrack, Yul Kwon, Thomas Holloman, Donny Williams, Janet Burrell, Darla Cassell, Wendy Wang, Megan Finlayson, and Adam Sedgwick.

I thank them all for their commitment.

I would also like to thank the numerous staff for other members who have been so helpful throughout the process. On the Governmental Affairs Committee so many staff played an important role in this bill. On Senator DURBIN’s Staff, Marianne Upton and Sue Hardesty. On Senator Akaka’s staff, Rick Kessler, Nanci Langley, Sherrri Cleman and Jennifer Tyree. On Senator LEVIN’s staff, Laura Stuber. On Senator CLELAND’s staff, Donni Turner. On Senator CARNAHAN’s staff, Sandy Fried. On Senator CARPER’s staff, John Kilvington. On Senator DAYTON’s Staff, Bob Hall. Senator DASCHLE’s staff also has contributed greatly to the enactment of this legislation; I’d like to thank in particular Andrea LaRue.

From the Office of Legislative Counsel, I’d like to thank Tony Coe and Matthew McGhie for their assistance and guidance.

I thank Senator THOMPSON, who is leaving the Senate soon—tonight, presumably—for the pleasure of his company on this journey, and the contributions he made to the historical accomplishment this legislation represents. I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from West Virginia has 60 minutes.

Mr. BYRD. Mr. President, I understand the Senator from Kansas, Mr. BROWNBACK, wishes some time.

Mr. BROWNBACK. Mr. President, if the Senator would yield, yes, I would like, if it’s possible, to speak on the homeland security bill.

Mr. BYRD. The Senator gets his time from whom?

Mr. BROWNBACK. From Senator THOMPSON. I believe he has some time remaining.

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes remaining.

Mr. BROWNBACK. I seek 5 of those 7 minutes.

Mr. BYRD. I promised to yield 5 minutes of my time to Mr. JEFFORDS, after which I would yield for whatever time the Senator from Kansas desires, after which, then, I will speak.

The PRESIDING OFFICER. The Senator from Tennessee, Mr. JEFFORDS?

Mr. JEFFORDS. Mr. President, Mark Twain once said, ‘‘Always do right—this will gratify some people and astonish the rest.’’ I rise today to explain why I believe voting against this bill is the right thing to do.

Of the many reasons to vote against the bill, I will focus on three—the bill’s treatment of the Federal Emergency Management Agency, the bill’s treatment of the Freedom of Information Act, and the process used to create this new Department.

With the passage of this Homeland Security legislation, we will destroy the Federal Emergency Management Agency, losing years of progress toward a well-coordinated Federal response to disasters. As it now exists, FEMA is a lean, flexible agency receiving bipartisan praise as one of the most effective agencies in government. But it hasn’t always been that way. Through the 1980s, FEMA’s focus on Cold War civil defense preparedness led the Agency ill-prepared to respond to natural disasters.

The Congressional chorus of critics decried the Agency’s misguided focus and reached a crescendo after bungled responses to Hurricane Hugo in 1989 and Hurricane Andrew in 1992. One of FEMA’s leading Congressional critics, then-Representative Tom Ridge today, I believe, would testify that somewhere along the way, the Federal Emergency Management Agency had lost its sense of mission.

Over the last decade, refocusing the Agency’s mission and prioritizing natural disasters has left the Agency well-equipped to respond to all types of disasters. FEMA’s stellar response to September 11th provided this. I cannot understand why, after years of frustration and failure, we would jeopardize the Federal government’s effective response to natural disasters by dissolving FEMA into this monolithic Homeland Security Department.

I fear that FEMA will no longer be able to adequately respond to hurricanes, floods, and earthquakes, begging the question, who will?

Also of great concern to me are the new Freedom of Information Act exemptions contained in the latest substitute.

Unfortunately, the current Homeland Security proposal chokes the public’s access to information under the Freedom of Information Act. I ask, are we headed toward an Orwellian society with an all-knowing, secretive big brother, reigning over an unknowing public?

The bill defines information so broadly that almost anything disclosed by a company to the Department of Homeland Security could be considered secret and kept from the public. Although I believe the current law contains an adequate national security exemption, in the spirit of compromise I supported the carefully crafted bipartisan Senate language contained in both the Lieberman and the Gramm-Miller substitute. The current bill ignores this compromise.

The process by which we received this substitute seems eerily similar to the way the White House sprung its original proposal on Congress some time ago. Late last week we received a bill that had magically grown from 35 pages to an unwieldy 484 pages. There was no compromise in arriving at the current substitute, only a mandate to put together a substitute that was branded as weak on homeland security or, worse yet, unpatriotic.

Still more troubling, the current bill places little emphasis on correcting what went wrong on September 11th, or addressing future threats. Correcting intelligence failures should be our prime concern. Instead, this bill recklessly reshuffles the bureaucratic deck.

Furthermore, as my colleague Senator CORZINE stated earlier this week, this bill does not address other vital important issues such as security at facilities that store or use dangerous chemicals. Without provisions to address yet another gaping hole in our...
Nation's security, why are we now being more deliberate in our approach? In closing, I feel it is irresponsible to divert precious limited resources from our fight against terrorism to create a dysfunctional new bureaucracy that will only serve to give the American people a false sense of security. I will vote against this bill because it does nothing to address the massive intelligence failure that led up to the September 11 attacks. It dismantles the highly effectively Federal Emergency Management Agency. It violates dangerous new exemptions to the Freedom of Information Act that threaten the fundamental democratic principle of a well-informed citizenry.

I am sorry for having to take this position, but I believe so deeply in what I have said that it must be done. I am pleased to have been able to express myself, and I thank the Senator from West Virginia, my faithful friend.

Mr. REID. Will the Senator from West Virginia, Mr. BROWNBACK, please direct, a statement, through the Chair, to the Senator.

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

Mr. REID. I am sorry, the Senator from West Virginia.

Mr. BROWNBACK. I am happy to yield to the Senator from Nevada.

Mr. REID. I want to say, because the opportunity may not be right at a subsequent time, as much as I appreciate the days the Senator from West Virginia has spent on the floor on this issue. Because of my having responsibility to help move legislation along here, sometimes I was concerned it was taking so much time. But in hindsight, here, sometimes I was concerned it was necessary to do so.

The American has spent on the floor on this issue. Because of my having responsibility to help move legislation along here, sometimes I was concerned it was taking so much time. But in hindsight, this legislation we are going to soon pass—it will pass sometime tonight—is better legislation. And while it may not be—484 pages may not be better, the knowledge of the American people of this legislation is so much better than we have passed this as people wanted on September 11.

So I want to commend and applaud the Senator from West Virginia for educating the Senate and the American public about what is in this bill and what is not in this bill. As I said, this legislation will pass. But as a result of what the Senator has done over these many months about this legislation, everyone is going to be looking at what is taking place in this new agency that would be placed in place but for the persistence of the Senator from West Virginia. The American public owe you a tremendous debt of gratitude for your knowledge about legislation and, most of all, for understanding what the Constitution is all about and the role, in that Constitution, of the legislative branch of Government.

Mr. BYRD. Mr. President, if I may just respond: First of all, I thank the distinguished Senator, who is the majority whip in this body. I deeply appreciate as I have said. I appreciate very much what he has said.

May I say, in turn, that the American people don’t owe me anything. But I will say this, that the American people are listening. And with respect to the resolution dealing with a war with Iraq, the American people were listening. The American people heard what we said. As a result of speeches—I made two or three speeches in that inaugurating session. I made three speeches that I made, my office received 21,000 telephone calls, and my office received over 50,000 e-mails.

That is an indication that there is somebody out there listening, somebody paying attention. That is gratifying to me. So somebody heard. And I don’t pay all that much attention to the polls. I don’t think they ask the right questions. What are the right questions? I don’t know what the right questions are. But those polls reflect responses to questions. And whether they are the right questions or the questions that ought to be asked, I cannot say.

But I can say the American people do listen. And somebody has to fulfill its duty Woodrow Wilson was speaking about when he said the informing function of the legislative branch is as important, if not more so, than the legislative function.

I thank that Senator. I am well paid. When Plato was about to pass away from this earthly sphere, he said: I thank the Gods that I was born a man. He said:

I thank the Gods that I was born a Greek.

And he said:

I am grateful to the Gods for the fact that I live—live in the same era in which Sophocles lived.

So, I am thankful to God, and to my angel mother and my father, and to the people of West Virginia, for the fact that I have had this great privilege to work in this body, now, for 44 years and I have been able to contribute. God gives me my faculties almost as they were paid for, my picture around my feet. I was always told the first place will be your feet; your feet and legs will give way. I am finding that to be pretty true. But I thank heaven that I was able to be here, to say what I have been able to say about the resolution dealing with Iraq and the homeland security legislation.

I think we have performed a service. I said what I thought. I am on no man’s payroll. I am on the people’s payroll. And I wear no man’s collar but my own. That may be kind of a small collar.

But, anyhow, I do what I think. I could leave here any moment and get just as big a check as I get as being a Senator because I have paid for my life in the system, now, 50 years this coming January 3.

I am doing what I want to do. I don’t have to do this. I probably ought to be home with my wife. We will be married, in another 6 months, 66 years, if the God in whose name I signed the statement.

But I do think the Senator from Nevada, has made a tremendous contribution himself. He has listened to what we had to say, to what PAL SARBANES and I and the distinguished Senator from Vermont, Mr. JEFFORDS, and others have said. We have warned about this measure. We have not been in agreement with the administration in connection with this homeland security agency. We think it was legislated too fast. We think we have been in too big a hurry. We think we have paid too much attention to the polls, and that we ought to have taken more time in this body. I think it should be the greatest deliberative body in the history of the world. It hasn’t been very deliberative in this case. But I am glad that, although the intent was to pass this bill in a hurry— I was told down at White House, I say to the distinguished Senator from Maryland, Mr. SARBANES—I went down there at the invitation of the President. I am not invited very often down there. But on this occasion the President invited me down. He said:

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I am doing what I want to do. I don’t have to do this. I probably ought to be home with my wife. We will be married, in another 6 months, 66 years, if the God in whose name I signed the statement.

But I do think the Senator from Nevada, has made a tremendous contribution himself. He has listened to what
the country, the food lines, and the clean water are the same people who will be here a year or two from now when this agency is supposed to be full blown.

But the President has a year in which to see his plan as to how this organization is to be implemented. Imagine that—a year. He has a year. In the meantime, I am afraid that the people who are out there now at midday and midnight working to secure the safety of the American people will be distracted by going to be worrying about where their offices are going to be; What is going to be the label over my office? Where will my typewriter be? Where is the telephone going to be? What is going to be the vision and the objective of this new agency?

These people are going to be distracted. I am afraid that is what gives the terrorist a good opportunity to work havoc in some way.

I thank the distinguished Senator from Vermont. I have the largest number of kind words. I also thank the distinguished Senator from Vermont who summed up in a few words, in 5 minutes, what I could say in 30 minutes, the very good reasons that we should oppose this bill. I admire him for that. I admire him for his courage, his pluck, and for his good sense. He has made my speech for me. I can just sit down. I thank the Senator from Vermont.

I thank the distinguished Senator from West Virginia for allowing me to take time previously allocated on the floor to speak.

I want to make a couple of comments about homeland security, and in particular about the INS.

I have been privileged to serve for the last couple of years as ranking member on the Immigration Subcommittee of the Judiciary Committee. Immigration is a subject on which we have focused.

We passed two major pieces of legislation already in this Congress dealing with immigration issues—trying to strengthen our borders and trying to give our present agencies some better information, and also better information for the INS and the State Department about terrorists abroad before they get here. There are two good pieces of legislation that we passed.

What we are attempting to do in this bill is to restructure the INS. The reason I want to talk about the INS is that it is a troubled agency, by anybody’s definition—whether you are pro-immigration or anti-immigration. I hear everybody complaining about the INS. It is a function from any perspective that you look at it. It may be an impossible task. Some people may look at it as just impossible.

We have too many people seeking entry into the country each year. The number varies. There are over 250 million entries into the country each year by people who are legally seeking entry into the country. And 1 person may come in and out 10 times. That is 10 entries. But still, you are talking about a large number of entries by people, who are not U.S. citizens, into this country each year, making this a difficult job. It is a troubled agency. It is not functioning well. We need to change it. A lot of that was brought up.

I am pleased about some of the ideas that I and several others put forward that are incorporated into the INS restructuring that is in the homeland security bill. There is a clear distinction between the enforcement and services functions at the INS. We recognize the importance of keeping immigration enforcement and services in the same department. Some people wanted to split them. I think that would work poorly. I think you have to combine the same functions together. They are there.

There are clear distinctions between the enforcement and services functions, which clearly need to be delineated, but they need to work together. Those are two positive features of this reorganization.

I must be frank as well. I think there is some failing that we want corrected in the INS restructuring portion of this homeland security bill. I am concerned that the new department be true and coordinated well—both in the enforcement and services functions. It looks to me as if some of the restructuring may not have good lines of clear distinction in organization and functioning in the enactment services functions; the way it is set up.

I am concerned about the services component of the Department of Homeland Security being effectively coordinated with the enforcement. I am troubled by what I have communicated those concerns to Governor Ridge, and I am hopeful that those concerns are going to be taken seriously.

I think we need strong leadership at the head of the immigration services office. It has to be a strong leader. That is a function of who is picked—not a function of how it is structured. But if we weaken that service component, and if we don’t have somebody who has knowledge, stature, and ability to carry us forward, I think we are going to be left with a continuing troubled agency.

I think the leadership has to have the ear of the Secretary of the new Department. Part of my concern is this is built that the Department built into the positive agency—to the side of the Secretary. If you do not have a strong voice there, if they do not have the ear of the Secretary, I think we are going to have some real problems in this immigration endeavor.

We want strong and effective immigration enforcement. We don’t want the invaluable services of citizenship, family, and business petitions, asylum, and the many public service components of immigration to be forgotten. We don’t want that. We want a strong enforcement, and we want to provide homeland security. But we also are a country of immigrants. We want to take people who are legally here and build this society.

We want strong security. We should never compromise our values or lose the immigration benefits to our culture or to our economy. It is critical that we monitor the development of this new Department to ensure the immigration services component receive the attention and resources it deserves.

I have shared these concerns with Governor Ridge. I am comforted by the fact that he is aware of those facts.

One of the other aspects I want to make note of is the issue of the immigration courts. I want to quickly commend this legislation for keeping the Executive Office for Immigration Review within the Department of Justice. It didn’t move over homeland security. I think providing the General to retain control of the immigration court system is going to be positive.

I think those are some problems we need to revisit. We should do so in the future.

It is time we pass the homeland security legislation.

I yield the floor.

Mr. BYRD. Mr. President, we have come to the end of a long, long road. For nearly 5 months, this Chamber has engaged in discussions about homeland security. But for nearly as long a time as that, this Congress has not engaged in seeing to it that there is actual funding to make our people any safer from the threat of another horrific terrorist attack. It has taken over 4 months—over 4 months—since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God created all of creation. He created the universe. He created the Earth. He created man in 7 days, in the Book of Genesis. The greatest scientific treatise that has ever been written can be found in that first chapter of Genesis. Go to it. Those of you who are scientists, look over that one, the first chapter of Genesis. Do you have any problem with the chronological order in which the creation was made possible, as set forth in that chapter? No. The scientists won’t have any objection to that chronological order, not any. I have four physicists in my own family, and they agree with that, that chronological order.

So 6 days, and God rested on the Sabbath.

How long has it taken for us to pass a regular appropriations bill? The last regular appropriations bill came out of this Congress 4 months ago. It has been over 4 months since the House of Representatives has seen fit to pass a single regular appropriations bill.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BROWNBACK. Thank you, Mr. President. I thank the distinguished Senator from West Virginia for allowing me to take time previously allocated on the floor to speak.

I want to make a couple of comments about homeland security, and in particular about the INS.

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Now, God would not have gotten very far in the creation of this universe, would He, if it had taken Him that long at that pace?

We have talked a lot about homeland security. We have plenty of talk. We just talk, and it just rolls out—rolls out. So talk is cheap.

But we have done very little. We have not given the cities and municipalities, the police, the firemen, the hospital workers, the first responders who are on the front line, we have not given these people one red cent—I will say, one copper cent—not one, to help them keep us safer from the madmen within our midst—in 4 months. Now, get that.

Nothing was said about that during the campaign. The President went all over this country—from the Pacific to the Atlantic, to the Canadian border, to the Gulf of Mexico—talking about this great bill here, this magnificent product of human genius in the bowels of this great country. Nothing was said about these appropriations that have been passed by the Senate and the House that have been on the President’s desk—$5.1 billion, in one instance, made available to the President for homeland security. All that was needed was the President to flourish the pen, attach his signature, and designate that money as an emergency. The Congress has already done it. He said no.

So homeland security has gone wanting. That money has been there—$2.5 billion for homeland security. That is two and a half dollars for every minute since Jesus Christ was born, two and a half dollars for every minute.

So it has been a little over a year and a half months since America was jolted from its tranquility by the noise, the smoke, the flames of two exploding commercial airlines as they smashed into the Twin Towers in New York City. Yet in the past 3 months—except for the initial help that we provided to New York and to Washington to aid in closing the hemorraging wounds of economic disruption and human devastation caused by the terrorist attacks—not enough has changed here at home.

It is true that we have chased bin Laden across the landscape of Afghanistan. We have spent over $20 billion chasing him around in Afghanistan. And now we don’t actually know where he has hunkered down. We have chased bin Laden across the landscape of Afghanistan and probably cleansed that nation of the training camps for terrorists, for now.

We have made some progress, I am sure. In some disruption of the al-Qaida network worldwide, but no one in this Chamber, and no one in this city, can look the American people in the eye and say to them: “Today you are much safer here at home than you were 14 months ago.” I can’t do it.

This Government continues to send out first one alert and then another. Practically the whole litany of top people in this administration has been out there at one time or another saying: Something may happen here tomorrow. Something may happen here within the next week. So the Nation has been put on alert after alert. So I ask the question: Are you better off than you were a year ago?

Because of reckless disregard for the reality of the threat to our domestic security, this administration and many in this Congress have taken part in an irresponsible exercise in political chicanery.

The White House has pressured its Republican colleagues in the Congress—and some of the Democrats as well—to reject billions of dollars in money which could have added to the tangible safety of the American people. This White House has stopped—stopped—this year’s normal funding process in its tracks. I have never seen such action before. This White House has stopped this year’s normal funding process in its tracks. This year—since 1976, when the beginning of the fiscal year was changed from July 1 to October 1—only two appropriations bills have passed and then sent to the White House—only two. That is the most dismal record since 1976; the most dismal record, only two bills. What a lousy record.

But this Senate Appropriations Committee reported out all 13 appropriations bills to the Senate no later than July—the best record in years. And yet only two bills have been signed by the President. Why? Because this administration, the President,—I don’t know who is in the White House—we all know who is in the White House—has told the Republican leadership in the other body: Don’t let any more appropriations bills pass.

This White House has stopped this year’s normal funding process in its tracks and even turned back funds for homeland security in emergency spending bills that could have shored up existing mechanisms to prevent or respond to another devastating blow by fanatics who pose as Americans. They do not hate the United States because of its freedoms. The President says they hate us because of our freedoms. I do not believe that. I think they hate us because of our arrogance.

They have done this plain disservice to the people. They have done this plain disservice to the people in order to gain some perceived political advantage in a congressional election year, and in order to ensure that they were holding down spending. So they kept 11 of the appropriations bills from coming down to the White House. But you watch this administration after the turn of the new year. You will see it operating on appropriations bills as we will see then. We have done our work on these bills. But for the most part they have not been sent to the White House because the administration said: We don’t want them.

The administration told the Republican leadership in the other body: We don’t want them. Hold them up. But once this new leadership takes over in January, you watch how quickly they will say: Now send those bills on down. We want to show the American people how fast we can appropriate money, how fast we can move appropriations bills—when all the while we are talking about is the “we” that has held up those appropriations bills and not let them come to the White House.

In order to avoid criticism of the too meager dollars for homeland security, the White House did an about-face and embraced the concept of a Department of Homeland Security. Don’t send us your appropriations for homeland security. Send that bill up there because that is a great political hat trick. Send us the bill on homeland security. Make the people think they are going to have more security in their schools and their homes and their businesses and on their farms.

So the people are being offered a bureaucratic behemoth complete with fancy top-heavy directorates, officious new titles, and noble sounding missions instead of real tools to help protect them from death and destruction. How utterly irresponsible. How utterly callous. How cavalier.

With this debate about homeland security, politics in Washington has reached the apogee of utter cynicism and the perige of candor. No one is telling our people the plain, unvarnished truth. It is simply this: This Department is a bureaucratic behemoth. Watch. Watch and see. With this debate about homeland security, politics in Washington has reached the apogee of utter cynicism and the perige of candor. No one is telling our people the plain, unvarnished truth. It is simply this: This Department is a bureaucratic behemoth. Watch. Watch and see.

Three, it would be used to channel Federal research moneys and grants to big corporate contributors without the usual Federal procurement standards that ensure fair competition and best value for the tax dollar.

Four, it will foster easier spying and information gathering on ordinary citizens which may be used in ways which could have nothing whatsoever to do with homeland security.

The President has said: We want to tie the new homeland security department around the bill with this new bill, with the blue ribbon that will be tied around it, the fancy trimmings that will be around that bill when it goes down to the White House and then to be invited—how wonderful, how glorious that will be, to be invited. I haven’t been down there in so long. It is called the Rose Garden—into that Rose Garden, just to be there in the presence of the chief executive, the Commander in Chief, when he signs this bill into law, this new bill which may be the last step of the Senate, how wonderful that will be, how utterly wonderful that will be.
Insult has been added to injury by provisions that further exploit the already shamefully exploited issue of homeland security with pork for certain States and certain businesses. My, my, my, how low we have sunk.

Senators seemed to be unaware or unconcerned about the transfer of power that will take place under this bill. Some of the Senators who have walked down to that table and who have voted aye or nay or who have voted on amendments that have been offered to improve it, they will have room, they will have time to remember. They will have time to remember how they were stampeded into voting without asking questions.

The most glaring example can be found in title XV of the bill which requires the President to submit a reorganization plan to the Congress which would outline how he plans to transfer to the new Department functions among the officers however he wishes. And the only requirement is that he humble himself enough just to approve of the President's plan. We might as well just dive under the bed and say: Here goes nothing.

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What does it take to make the gamesmanship behind such tactics, I wish them well and may they get help. It is long past time for us to finally do our best to prevent another deadly strike by those who hate us and wish us ill. Terrorism is no playing. Political service is no game. Political office is no place for warring children.

The oath of office which we take is no empty pledge to be subjugated to the tactics of election year chicanery perpetrated on a good and trusting people.

Yesterday, a Federal appeals court upheld, new powers given to the Justice Department to investigate and prosecute people suspected of terrorism. The ruling of the special appeals court, which the Congress to oversee secret Government actions involving national security, will make it easier for the Justice Department to spy on U.S. citizens by circumventing traditional constitutional protections. This court decision gives the executive branch a green light to run roughshod over the civil liberties of innocent Americans in the name of national security.

The Justice Department argued that the expanded authority it is claiming is nothing more than what Congress authorized in last year's USA Patriot Act, in which Congress tore down the protective walls that had previously separated foreign intelligence and domestic law enforcement activities. A three-judge appeals panel agreed with the Justice Department, concluding that the new antiterrorism law did have the effect of eroding the safeguards that safeguard our civil liberties.

The Justice Department now wields dangerous, new power to conduct secret surveillance on American citizens for potential criminal investigations. This expanded power is a license for abuse, and Senators should be concerned about the consequences for our constitutional system.

But any of us who wants to point his finger at the administration for overreaching its authority should also place that blame squarely on himself or herself, because it was the actions of this Senate that set the wheels in motion.

As the Washington Post points out in an editorial entitled “Chipping Away at Liberty” from this morning's paper:

The fault for the problem lies not with the court, but with Congress, for the carelessness and haste with which it passed the USA Patriot Act in the wake of the September 11 attacks, and for its unwillingness to push back against Bush administration excesses.

The editorial goes on to explain that this new authority grants the Government one more sphere in which it gets
to unilaterally choose the rules under which it will pursue the war on terrorism. . . . Which parts of this system need to be reigned in is a profoundly difficult question, one that Congress seems depressingly uninterested in asking. This is a war, the administration has said, without a foreseeable end, so the legal regime that handles these cases may become a permanent feature of American justice. Such a regime should be enacted deliberately, after careful inquiry by legislators—an inquiry that so far scarcely happened.

Mr. President, this Senate passed the USA Patriot Act in October of 2001 by a vote of 98 to 1. I voted for it. Ninety-eight Senators, including myself, this Senator from West Virginia, voted for the bill. Perhaps many of us now realize that we may indeed have acted too hastily to hand over this unchecked power to the executive branch.

During the debate on that bill, one Senator stood up and pleaded with us to take the time to consider the implications of the legislation more carefully before we unleashed such a dangerous and uncontrolled threat to our civil liberties. Senator FEINGOLD stood alone in the path of that Mack truck that was barreling down the Senate, warning that many of us would come to regret our decision to stand out of the way and cheer on the rumbling big rig.

I believe that Senator FEINGOLD was right to caution the Senate during that debate. We should consider the executive branch such a broad grant of virtually unchecked authority. I have tried to draw attention to some of the lengths to which this administration will go to shroud its actions in secrecy. I hope other Senators will also come to the conclusion that these issues deserve more attention from this Congress.

During this debate on homeland security, I have tried to convince the Senate to slow down and look closely at this legislation before giving the executive branch such a broad grant of virtually unchecked authority. I have tried to draw attention to some of the problems in this bill in the short time that we have had to examine it. I have tried to persuade Senators not to give into the political pressures that have loomed over our consideration of this bill before and after this year’s election.

So I hope that Senators will heed the warnings and vote against this bill, although I do not really believe that will happen. I have seen the handwriting on the wall, and I know that this bill has the votes to pass. But I hope that those Senators who worry that we are acting too hastily will have the courage to vote against it.

There will be a lot to do in the name of homeland security during the next Congress. I hope each Senator will remember that when he or she votes on this bill, and I hope the Senators do not treat this vote as something to put behind them. I hope they will at least vote on final passage of this homeland security legislation. I hope that they will understand and think about what that vote will mean a year from now when their voters ask them: Where were you when the Senate approved this bill?

I urge those Senators who are troubled by this legislation, as I am, to vote against it. I know where I will be when the Senate votes to hand over this power to the executive branch, and I know that this bill has the votes to pass. But I hope that those Senators who worry that we are acting too hastily will have the courage to vote against it.

There will be a lot left to do in the next Congress to clean up the mess we will make by enacting this homeland security legislation. Congress will have already cut itself out of the loop with regard to the Implementation of this new Department. It will be incumbent upon individual Members of the Senate to attempt to shed light on the administration’s actions whenever possible. It will be the responsibility of individual Members to fight to defend the constitutional powers of Congress and the constitutional protections of our personal privacy and civil liberties.

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Mr. President, how much time do I have remaining?

THE PRESIDING OFFICER (Mr. DURBIN). There are 12 minutes remaining.

Mr. BYRD. I reserve that time.

FAREWELL TO SENATOR FRED THOMPSON

Mr. President, with the closing of the 107th Congress, the Senate will be saying farewell to a very talented and successful and effective colleague, a Senator who in a relatively short period of time has made important contributions to this Chamber and to our country.

Senator FRED THOMPSON has accomplished so much that it is difficult to realize he has only been here since 1995. As a Senator, he has served on the Senate Finance Committee, the Senate Select Committee on Intelligence, and the National Security Working Group. In 1997, he became chairman of the Committee on Governmental Affairs where he conducted a number of important and controversial investigations.

As a national lawmaker, Senator FRED THOMPSON has played an important role in developing this Nation’s trade policies, including pushing for an import control policy to protect our country’s national security and proposing legislation to curb the proliferation of weapons of mass destruction. He has been an active and important advocate for campaign finance reform. He has authored legislation to protect our Government computers from outside infiltration. He has been a major force for regulatory reform.

As chairman of the Governmental Affairs Committee, he helped lead the flight to reduce waste, fraud, and abuse in Government, and along with Senator FRIST, Senator THOMPSON secured funding to establish a School of Government
have admired him. I admire his bearing, his manner of talking, moving about the Senate and doing his work. He is not a show horse here in the Senate, but he has been a workhorse. I do not know of any enemies he has made in this Senate on either side of the aisle.

We will miss him. I understand he will be resuming an acting career. I can only say that the Senate’s loss is Hollywood’s gain. All of us look forward to seeing him resume his earlier career as a fine actor. I do not watch TV much, and I have not been to a movie in the 50 years I have been in Congress. I have not been to a movie, not one. I have watched some good movies on television, Alistair Cooke, for example, used to have good movies. If I know Fred Thompson is going to play, I will make a point to go and see him.

Retirement of Senator Phil Gramm

Mr. President, seldom in all my years in the Senate have I encountered a Senator whose feelings and attitudes have covered such a wide spectrum as they have for Senator Phil Gramm. They have ranged from intense opposition, as they did in our battles over the Gramm-Rudman legislation, to close cooperation as we worked together during his 6 years on the Appropriations Committee.

Always prepared, always thoughtful, he was always ready to speak on any subject at the drop of a hat. Phil Gramm was always ready to talk and, oh, was he ready to talk. I quickly learned he can talk about anything, everything, and do so intelligently, and always with a good humor, in the best of good humor.

It was during our years together on the Appropriations Committee that I learned of his respect for the Senate and its role in our democratic Republic. He once referred to his work in the Senate as doing the Lord’s work. He has often referred to it as doing the Lord’s work. I liked that. I wish I had said that first.

He has also demonstrated an understanding that fundamental power of Congress is the power of the purse. For that, I applaud Senator Gramm, and I thank him.

In addition to our work together on the Appropriations Committee, we have worked together on important national legislation, including the highway reauthorization bill, TEA-21. I saw that he has a remarkable talent for grassroots organizing.

I watched him here today as he moved around the Chamber. I knew what he was doing. He was talking with some of those Democratic Senators. I knew what he was talking with them about. Someone said: That Senator, you see Senator Gramm, that Democratic Senator will vote against the amendment by Mr. Daschle and Mr. Lieberman. I knew what he was doing, but I respected that.

During a difficult struggle on that highway bill, TEA-21, Phil and I met with representatives from a number of organizations interested in highway construction. I believe my friend from New Mexico was in one of those meetings.

Mr. DOMENICI. I was opposed.

Mr. GRAMM. He has an intellect second to none. But when the Senator from New Mexico is opposed, I pay even more attention to him. Anyhow, after each meeting, our friends would walk away with plans for spreading the good word in favor of our plan, charged up with a pep talk by Phil Gramm. He also has an extraordinary talent, for negotiating. Even when he wins a negotiation and you have lost everything, he can make you feel like you prevailed and he lost everything. Suddenly, on the way home you will pinch yourself and say, wait a minute, that is not quite the way it was.

So this is Phil Gramm, a biting, partisan bulldog one minute, and a gentle, cuddly puppy the next. At times, it is difficult to decide if you should jump back in fright or reach out and pet him.

Senator Gramm is perhaps this country’s most consistent and strongest proponent of smaller taxes and smaller government. The legislation he has authored, sponsored and promoted, from Gramm-Rudman to the Bush tax cuts, give the lie to Emerson’s observation that a “foolish consistency is the hobgoblin of little minds. It is also the hobgoblin of big minds.”

Phil Gramm definitely has a big mind. I have learned so much from him. I certainly learned a lot about his “mamma.” Among other things, I learned she receives Social Security, that she can’t drive a gun, and she knows how to use it. The Senator Phil says, I certainly learned more than I ever wanted to know about Dicky Flatt, the hard-working print shop owner in Mexia, TX, and how the Government keeps taking away his money to spend on someone else.

I learned do not mess with Phil Gramm. He has an intellect second to none. He has a tenaciousness and he has a razor tongue second to none. But through it all, let me assure my colleagues that my disagreements have never lessened my respect and my admiration for the man and Senator. He was always straightforward and fair and always sincerely dedicated to the best in our country and its policies. And that is why I came to respect his integrity, his wisdom, and his courage.

In his book, “Profiles in Courage,” Senator John F. Kennedy wrote: Surely in the United States of America, where brother once fought brother, we did not judge a man’s bravery under fire by examining the banner under which he fought.

Senator Gramm and I have fought under different banners, but we have always fought under and for the same flag. Whatever he did, whatever he said, whatever he promoted, it came from his deep, undeviating love of the United States of America. While he is always ready to tell you what is wrong with our country, he will never hesitate to tell you what is right with it. We will miss him.

There is. I did not realize that while I was talking about the man, he was sitting here listening, but I can say to the Senate that on more than one occasion, Senator Phil Gramm has come to my office on difficult matters, in which I may have had some interest, as in mountaintop mining or the highway bill, whatever it was, and in many instances he has proposed a compromise which enabled us to get over a mountain, get over a hump, and get on with the business.

I appreciate the contributions he has made to legislation in this body. I do not need all of any Senator’s contributions, but I have been a more knowledgeable and able legislator. The Senator has exemplified reverence for the Constitution, respect for the Senate, and an unbounded love for his country.

While he will no longer be my colleague, Phil Gramm will always be my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator’s time has expired.

The majority leader.

Mr. DASCHLE. Mr. President, what is the order?

The PRESIDING OFFICER. The majority leader has 5 minutes. The minority retains 2 minutes of time.

Mr. DASCHLE. Mr. President, I will have more to say about our departing colleagues tomorrow, but let me share as well my admiration for our colleague Senator Gramm. He is a hard-nosed legislative adversary, but I have a great deal of respect for his ability and the manner with which he conducts himself on the floor. I have fond memories of the many years we have served together.

I recall so vividly our first days together riding a bus as freshmen Congressmen in 1979. So we wish him well. As I said, I will have much more to say about him and about our colleagues tomorrow.

I wanted to come to the floor simply to express what I have said on several occasions. It is with some misgivings that I will cast my vote tonight in favor of the creation of this Department. I do so, fearful we have not done the kind of work on this legislation I wish we could have. I do so even though language has been inserted in the bill that I think we will regret, but I do so recognizing we have to start rebuilding our infrastructure, reorganizing our Government, recognizing...
more consequentially the threat that is now posed by terrorism within our borders as well as without. I intend to support this legislation with every expectation that this is the first in a long series of steps which must be taken to better protect our country and our Government. I have no doubt we will be back next year addressing many of the shortcomings we will be incorporating in this legislation tonight.

This bill still needs work. This Department needs work. But as much work as it needs, not to have done anything in recognition of the tremendous challenges we face as a country is something I could not accept either. So I will support it, recognizing as well that it is critical for us to provide the funding—and there is no funding. In fact, if I have any regret about what we are doing tonight, it is that we are not passing the requisite resources needed to get started in an earnest and successful way. We are going to have to wait until next year. The more we wait, the harder it will be. The more we wait, the more complicated our mission. The more we wait, the more underfunded will be our effort in so many other ways.

If I regret we are not willing to commit the resources that match the infrastructure we will be authorizing tonight.

Finally, let me say there are many people who have recognized the thanks. I acknowledge especially the leadership of Senator Joe Lieberman, the chair of the Governmental Affairs Committee. He and others on the committee have done an outstanding job getting us to this point, whether or not you agree with all of the components of the bill. I congratulate Senator Thompson as the ranking member. They worked oftentimes together, and where they could not work together, they worked in a way that was not disagreeable.

I thank the whole Governmental Affairs Committee for the work they did in getting us to this point over the many months they have been involved. Let me say I also thank Senator Byrd. He and I may come down on different sides tonight, but he has done the Senate and the country a real service. I have admired him for many reasons for many years. But his powerful advocacy of his position, the extraordinary effort he has made to enlighten us, to educate us, to sensitize us, and to ensure that we are fully aware of all of the concerns he has about the creation of this Department is something for which we all ought to express our deep indebtedness to him. I thank him for what he has done in adding to the debate, acknowledging as he has the inevitability of our consideration and ultimately the passage of this legislation tonight. There are many others, including Senator Harry Reid, our extra-ordinary Democratic leader who has done all the work he has done to allow this opportunity to complete our work tonight.

As I said, we will be in session tomorrow and we will have much more to say about many of these issues, reflecting back, but I close simply by thanking our colleagues for the work they have done. I hope we can complete our work and pass this legislation tonight. I also ask following the first vote, all subsequent votes be limited to 10 minutes.

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

Mr. DASHIELL. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding we have 2 minutes remaining.

The PRESIDING OFFICER. Two minutes.

Mr. GRAMM. I could hardly say what I feel in my heart in 2 minutes. Too often, as people leave the Senate, they talk about things they are unhappy about. To all people to know I am not discouraged; I am not disillusioned; I am not disappointed. I am proud and I am honored. I am proud to have had an opportunity to serve the greatest country in the history of the world. I am proud to have served with extraordinary men and women. I think we are so close to them and what they have done here that it is hard to put it all in perspective. But someday when I am sitting in a nursing home talking to my grandchildren, I think I will have that perspective right and there will be names such as Senator Byrd, Senator Domenici, and others that will flow from my lips as men I was honored to know and to love.

I thank the people of Texas for giving me an opportunity to serve. I conclude by reading a remark by, of all people, Aaron Burr. Senator Byrd is familiar with it. It is wonderful and I want to conclude by reading it. Aaron Burr was leaving the Senate, and he concluded his remarks this way:

...this house is a sanctuary and a citadel of law, of order, of liberty—and it is here—it is here—in this exalted—refuge, here, if anywhere else the resistance be made to the storms of popular phrenzy and the silent arts of corruption;—And if the Constitution be destined to expire, its expiring agonies will be witnessed—Some will resist to the storms of popular phrenzy, and the silent arts of corruption; and where will resistance be made to the storms of popular phrenzy, and the silent arts of corruption; and one will resist to the storms of popular phrenzy, and the silent arts of corruption; and the silent arts of corruption; and the silent arts of corruption...
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.
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.
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Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
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Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY
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Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
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Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
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Sec. 414. Separate budget request for customs.
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Sec. 416. GAO report to Congress.
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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.
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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 systems.
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.
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Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.
Subtitle E—Citizenship and Immigration Services
Sec. 452. Citizenship and Immigration Services Ombudsmen.
Sec. 453. Professional responsibility and quality review.
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Sec. 456. Transition.
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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.
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Sec. 474. Sense of Congress.
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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. Definitions.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
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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.
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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.
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Sec. 821. Functions transferred.
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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 executives.
Subtitle E—Human Resources Management
Sec. 841. Establishment of Human Resources Management System.
Sec. 842. Labor-management relations.
Subtitle F—Federal Emergency Management 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.
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Sec. 871. Advisory committees.
Sec. 872. Reorganization.
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Sec. 874. Future Year Homeland Security Program.
Sec. 875. Miscellaneous authorities.
Sec. 876. Military activities.
Sec. 877. Regulatory authority and preemption.
Sec. 878. Counterterrorism offices.
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 whistle-blower protections.
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; or
(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 Constitution 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 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 validity 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 focus for, and coordinating efforts by, the Federal Government to respond to natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subagencies within the Department that are not transferred to the Department are not diminished by efforts of critical infrastructure or key resources; and

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland;

(G) monitor connections between illegal drug trafficking, money laundering, and other criminal activities and other crimes; and

(H) monitor connections between illegal drug trafficking and other criminal activities.

(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 and other appropriate authorities and 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 and 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 bureaus, agencies, 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, States, local government, or international or intergovernmental organizations 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 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 701) the provision of training (and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including—

(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, coordinating with the Federal Government's communication 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, local government, 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; and

(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 issues.

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations.

(c) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative research approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions.

(d) 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 SECRETAIRES.—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.


(6) A Director of the Bureau of Immigration and Customs Enforcement.

(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 Financial Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Assistant Secretary for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer in 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.

(c) DIRECTORATE FOR 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; and

(B) detect and identify threats of terrorism against the United States; and

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the risk assessments that determine the risks posed by particular types of terrorist attacks against the United States (including an assessment of the probability of success and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and security activities of the Department and agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) 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.

(5) 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.

(6) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, 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.

(7) To coordinate with the Director of Central Intelligence and other intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(8) To provide intelligence and information analysis and support to other elements of the Department.

(9) 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 having appropriate expertise and experience 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.

(f) DEFENSE COUNTERS INTELLIGENCE AND INTELLIGENCE RELATIONSHIP.—The Under Secretary for Information Analysis and Infrastructure Protection shall provide an intelligence 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.

(6) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, 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.

(7) To coordinate with the Director of Central Intelligence and other intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(8) To provide intelligence and information analysis and support to other elements of the Department.

(9) To perform such other duties relating to such responsibilities as the Secretary may provide.

(f) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff having appropriate expertise and experience 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.

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(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.

(h) DEFENSE COUNTERS INTELLIGENCE AND INTELLIGENCE RELATIONSHIP.—The Under Secretary for Information Analysis and Infrastructure Protection shall provide an intelligence 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.

(6) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, 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.

(7) To coordinate with the Director of Central Intelligence and other intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(8) To provide intelligence and information analysis and support to other elements of the Department.

(9) To perform such other duties relating to such responsibilities as the Secretary may provide.

(f) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff having appropriate expertise and experience 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.

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(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.

(h) DEFENSE COUNTERS INTELLIGENCE AND INTELLIGENCE RELATIONSHIP.—The Under Secretary for Information Analysis and Infrastructure Protection shall provide an intelligence 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.

(6) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, 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.

(7) To coordinate with the Director of Central Intelligence and other intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(8) To provide intelligence and information analysis and support to other elements of the Department.

(9) To perform such other duties relating to such responsibilities as the Secretary may provide.
(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, the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(b) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT OF ENERGY 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 subpart I (j) and

(2) by redesignating subparagraph (j) as subparagraph (k) and

(3) by inserting after subparagraph (l) the following new subparagraph:

“(m) the elements of the Department of Homeland Security relating thereto, including the functions of the Administrator of General Services relating thereto.”

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security officer or employee, and all information shall be deemed to be obtained from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:


(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. 401(a))) or other any element of the Federal Government from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence or other intelligence official, shall 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:

(A) AGENCY.—The term “agency” means the Administration on behalf of itself or its members.

(B) CONGRESSIONAL COMMITTEE.—The term “congressional committee” means a committee of the Senate or the House of Representatives of the Congress of the United States.

(C) CRITICAL INFRASTRUCTURE INFORMATION.—The term “critical infrastructure information” means all information, from receiving any intelligence or other information relating to terrorism.

(D) 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, with respect to its own or any element of the Federal Government to receive critical infrastructure information for purposes of—

(I) 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;

(II) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(III) voluntarily disseminating critical infrastructure information to State, local, and Federal Governments, or any other entity that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(E) PROTECTED SYSTEM.—The term “protected system” 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

(F) SHARING OF INFORMATION.—The term “sharing of information” means the submittal thereof in the absence of any element of the Federal Government of any critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of any 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.

(G) RULES.—The term “rules” means the rules of the Securities and Exchange Commission, or any rule promulgated by any other Federal agency with respect to the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78(a)(47)).

(H) INCLUSION OF CERTAIN 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 subpart I (j) and

(2) by redesignating subparagraph (j) as subparagraph (k) and

(3) by inserting after subparagraph (l) the following new subparagraph:

“(m) the elements of the Department of Homeland Security relating thereto, including the functions of the Administrator of General Services relating thereto.”

(I) 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, with respect to its own or any element of the Federal Government to receive critical infrastructure information for purposes of—

(I) 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;

(II) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(III) voluntarily disseminating critical infrastructure information to State, local, and Federal Governments, or any other entity that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(J) PROTECTED SYSTEM.—The term “protected system” 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

(K) SHARING OF INFORMATION.—The term “sharing of information” means the submittal thereof in the absence of any element of the Federal Government of any critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of any 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.

(L) RULES.—The term “rules” means the rules of the Securities and Exchange Commission, or any rule promulgated by any other Federal agency with respect to the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78(a)(47)).

(M) INCLUSION OF CERTAIN 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 subpart I (j) and

(2) by redesignating subparagraph (j) as subparagraph (k) and

(3) by inserting after subparagraph (l) the following new subparagraph:

“(m) the elements of the Department of Homeland Security relating thereto, including the functions of the Administrator of General Services relating thereto.”

(N) 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, with respect to its own or any element of the Federal Government to receive critical infrastructure information for purposes of—

(I) 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;

(II) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(III) voluntarily disseminating critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(IV) sharing of information.—The term “sharing of information” means the submittal thereof in the absence of any element of the Federal Government of any critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of any 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.

(V) RULES.—The term “rules” means the rules of the Securities and Exchange Commission, or any rule promulgated by any other Federal agency with respect to the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78(a)(47)).

(W) INCLUSION OF CERTAIN 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 subpart I (j) and

(2) by redesignating subparagraph (j) as subparagraph (k) and

(3) by inserting after subparagraph (l) the following new subparagraph:

“(m) the elements of the Department of Homeland Security relating thereto, including the functions of the Administrator of General Services relating thereto.”

(X) 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, with respect to its own or any element of the Federal Government to receive critical infrastructure information for purposes of—

(I) 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;

(II) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(III) voluntarily disseminating critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a terrorist or other interference, compromise, or incapacitation problem related to critical infrastructure or protected systems; and

(Y) PROTECTED SYSTEM.—The term “protected system” 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

(Z) SHARING OF INFORMATION.—The term “sharing of information” means the submittal thereof in the absence of any element of the Federal Government of any critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of any 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) 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 submitting person or entity, be used directly by any agency, or 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 Comptroller General;
(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) shall not—
(i) permit 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—
(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.”;
(B) in the case of oral information, a similar written statement submitted within a reasonable period of time, and in any form or medium.
(3) 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 private 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 for the submission of such information to a Federal agency under any other provision of law.
(e) PROCEDURES.—
(1) TREATMENT.—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 5 years 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 information and systems, in a manner that does not disclose the specific identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or 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 any 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 action to protect from disclosure—
(1) the source of any voluntarily submitted critical infrastructure information that forms the basis of the warning;
(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.
(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under section 211, 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 209 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 section.

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 dissemination 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 reporting and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to be the primary responsibility for privacy policy, including—
(1) assuring that the use of technologies sustains, and do not erode, privacy protections related to the use, creation, and disclosure of personal information;
(2) assuring that personal information contained in Privacy Act systems of records is handled for the nation’s 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) (a) an 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 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 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 1220 of title 18, United States Code.
(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—
(A) ensure that the guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the...
(a) Authority. — The Office shall be headed by a director, who shall be appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

(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.

(c) 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.

(d) 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 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 prototypes.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers
and, to the extent necessary, establish new centers within a merit-based, competitive process.

(g) ANNUAL REPORT.—The Director of the Office shall include in 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 1102(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 3 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 and cooperation between the Office and other executive agencies in combating cybercrime.

(2) A strategic plan for meeting such needs of such law enforcement agencies.

(2) 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 tools, tools for intelligence coordination and technology, 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 FOR 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) TITLES, FUNCTIONS, AND DUTIES.—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 necessary to perform that function, power, or duty, or any 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 funds 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 information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND INTELLIGENCE TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Intelligence Technology Centers (hereinafter in this section referred to as “Centers”) and, to the extent necessary, establish new centers within 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 technical 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 conduct a meeting 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 support law enforcement, corrections, 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” after “assess the effectiveness of”, and in subsection (b) by inserting “—coordinate and” after “assess the effectiveness of”.

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safe 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 products”; and

(2) by striking “and” after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9), and striking “; 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.

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Director 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 policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government’s civilian efforts to develop and deploy countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based development goals for such efforts, and the 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 of the activities of the Department of Justice, Department of Transportation, and the Department of Homeland Security;

(5) establishing priorities for, directing, funding, and conducting national research, development, and evaluation 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 an initiative to transfer homeland security technologies or technologies to federal, state, local government, and private sector entities;

(7) entering into intergovernmental agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the nuclear 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 Biodefense Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1708(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological and chemical agents that shall be listed as “select agents” in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a); and

(10) supporting United States leadership in science and technology;

(11) establishing and administering the prior coordination and development of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) establishing and administering 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.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary, personnel, assets, liabilities of the following entities:
(I) 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 prevention program and verification programs for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Energy.

(C) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(D) The weapons defense analysis centers of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

§ 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian health-related research and development activities related 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 3022.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall, in consultation with the Secretary of Homeland Security, establish and make available 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:

"(g) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—"

"(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, an individual 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, containing 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 substances that shall be provided 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 declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the close of the effective period of any prior amendment.

"(IV) PUBLICATION.—The Secretary shall promptly publish 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), the United States shall be liable under the law of the United States for any claim arising out of the administration of a covered countermeasure in an individual only if—"

"(i) the covered 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 subsection (a) with respect to such countermeasure; and

"(ii) the individual was within a category of individuals specified in such declaration.

"(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINA INOCULATION.—"

"(1) 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)."

"(2) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deemed status in clause (i) shall apply if—"

"(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A); and

"(II) the close of such period; or

"(III) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clause (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

"(d) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit brought under this subsection.

"(e) 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 to the Court of Federal Claims, is certified 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 CONCLUSION.—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.

"(f) DEFENDANT TO COOPERATE WITH UNITED STATES.—"

(a) Definitions.—In this section:

(1) "Fund" means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) ROLLAND 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.—The Homeland Security Advanced Research Projects Agency established in subsection (b).

(c) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(d) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(e) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to Federal agencies, federally funded research and development centers, and universities. The Director shall administer the Fund to:

(1) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(2) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(3) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(f) TARGETED COMPETITIONS.—The Director may provide for selected competitions specific vulnerabilities identified by the Director.

(g) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant Federal agencies, and may run projects jointly with other agencies.

(h) 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. App. (2001 ed.) Sections 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).

(i) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(j) FUND.—The Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(l) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year after 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 maximizing the possible applications of these technologies to these operational environments.

(m) TECHNOLOGY TRANSFER.—The Director shall ensure that technology transfer and commercialization programs so as to:

(1) ensure that colleges, universities, private research institutions and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(2) ensure that funds are awarded to the highest quality, as determined through merit review processes developed under section 302(4); and

(3) distribute funds through grants, cooperative agreements, subcontracts, task orders, or other mechanisms.

(n) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(1) ESTABLISHMENT.—There shall be created University Centers for Homeland Security.

(2) CRITERIA FOR SELECTION.—In selecting colleges or universities to be a headquarters laboratory pursuant to paragraph (1), the Secretary shall:

(A) select the most capable laboratory on the basis of:

(i) demonstrated leadership in conducting research of national importance in the advanced areas of homeland security;

(ii) evidence of national recognition of leadership in conducting research in the advanced areas of homeland security;

(iii) demonstrated expertise in educational outreach and technical assistance.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—The Secretary shall—

(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.

(f) LIMITATION ON OPERATIONS OF LABORATORIES.—In awarding contracts or grants, or making such awards as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

(g) 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 mission of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any one 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 LABORS 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 on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—
(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 to defray costs of laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Energy shall be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy.

(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 (a) 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 6 of the Plum Island Animal Disease Center Act.

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 homeland security-related 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, members of whom shall be drawn from an array of individuals who, in the opinion of the Under Secretary for Science and Technology, are members of the following categories:

(A) shall be eminent in fields such as emergency response, research and development, 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;

(D) shall be selected so 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) NATURE OF MEMBERS.—The members of the Advisory Committee shall consist of individuals who are not employed by the Federal Government and who do not hold any federal contract or grant or hold any pecuniary interest in any contract or grant of the Federal Government.

(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 distribution 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 targets of terrorist attack.

(4) Identification of instances where common standards and protocols could improve the interoperability and effective utilization of tools developed by Federal and other agencies 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.

(a) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out subsection (c), the Institute shall consult with representatives from private industry, institutions of higher education, nonprofit organizations, Federal agencies, and federally funded research and development centers.

(b) 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 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 described in subsection (b).

(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, as appropriate, to Federal, State, and local government and private sector entities, and an associated database.

(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.

(c) PROVISION OF GUIDANCE, RECOMMENDATIONS, AND TECHNICAL ASSISTANCE.—

(1) The provisions of this section shall be carried out in consultation with the National Advisory Committee on Information Technology and the Federal CIO Council.

(2) The provisions of this section shall be carried out in consultation with the Privacy Act of 1974, the Freedom of Information Act, the Paperwork Reduction Act, and the E-Government Act.

(3) The provisions of this section shall be carried out in consultation with the Office of Management and Budget.

(4) The provisions of this section shall be carried out in consultation with the Office of the Director of National Intelligence.

(5) The provisions of this section shall be carried out in consultation with the Office of the Under Secretary for Intelligence and Analysis.

(6) The provisions of this section shall be carried out in consultation with the Department of Justice.

(7) The provisions of this section shall be carried out in consultation with the Department of Homeland Security.

(8) The provisions of this section shall be carried out in consultation with the Department of the Treasury.

(9) The provisions of this section shall be carried out in consultation with the Department of Agriculture.

(10) The provisions of this section shall be carried out in consultation with the Department of Commerce.

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(b), 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.”

(c) COMMISSIONER OF CUSTOMS.—

(1) TERMINATION.—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 FUNCTION BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTION 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 United States Customs Service on the effective date of this Act under 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. 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; section 2 of the Act of March 4, 1923; section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985; section 58c; section 1 of the Act of June 26, 1939; the Foreign Trade Zones Act (19 U.S.C. 551 et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 138); the Act of 1978; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any
other provision of law testing 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 Specialists, 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 International Trade Specialists, Financial Systems and Rulings, Customs Auditors, and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Entry Specialists, Drawback the day before the effective date of this Act: Implementation of the Automated Commercial Environment computer system for the processing of documents 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:


(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. 158 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).


(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 with respect to 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 1901, the Secretary of Agriculture and the Secretary of Transportation into an agreement under section 501(e) 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 agreement 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, with respect to any other official in the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) The Secretary of Agriculture to use employees of the Department of Homeland Security to carry out the authority delegated to the Secretary pursuant to subsection (e), to the Secretary for activities covered by the Secretary for which such fees were collected.

(2) Limitation.—The proportion of fees collected pursuant to such sections that are transferred by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

(g) Transfer of Department of Agriculture Employees.—Not later than the completion of the transition period defined under section 1901, the Secretary of Agriculture shall transfer to the Department of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Protection of Inspection Animals.—Title V of the Final 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”;

(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”;

(3) by striking “Secretary” each place it appears (other than in sections 501(a) and 501(e)) and inserting “Secretary concerned”;

(4) by striking “Secretary” each place it appears (other than in sections 501(a) and 501(e)) and inserting “Secretary concerned”;

(5) by striking “Secretary” each place it appears (other than in sections 501(a) and 501(e)) and inserting “Secretary concerned”.

(k) Preservation of Transportation Security Administration as a Distant Entity.—

(1) 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.

(2) Sunset.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 435. 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 and Infrastructure 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 such a determination,

“(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representa-

“(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 areas of 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 Report Required.—Each air-

ter 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 accommoda-

tive explosive detection systems; and

“(ii) take such other actions as may be necessary to ensure full compliance with this Act through—

“(i) the Secretary of Homeland Security, or any other official in the Department to obligate amounts in accordance with the requirements of this Act; and

“(ii) the Administrator of the Federal Aviation Administration.”.

SEC. 436. 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 paragraph (G);

(B) by redesignating paragraphs (A) through (F) as subparagraphs (A) 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;

“(B) The Chairperson—

“(i) Section 115(b)(2) of title 49, United States Code, is amended by striking “Secretary of Homeland Security” and inserting “Secretary of Homeland Security”;

“(i) Section 115(b)(1) of title 49, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security”;

“(ii) the Secretary of Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.”.
and Nationality Act (8 U.S.C. 1101(a)(9)).

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.

(c) 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 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 OF AFFECTED AGENCY.—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 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)), and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities 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 and employees 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 of Homeland Security shall conduct a study of the role of federal consular personnel in their assigned overseas posts, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Exit Reform Act of 2003 (11 U.S.C. 1723); and

(2) shall have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(3) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1) of any other provision of law, except as provided in paragraph (c) of this subsection.

(c) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect the employment status of consular officers or employees of the Department of State, or the authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of Homeland Security to the extent that such delegation is made by the Secretary of State to the Secretary of Homeland Security.

(d) CONSECUITIVES OFFICERS AND CHIEFS OF MISSIONS.

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 227 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (12 U.S.C. 227).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State to the extent that such delegation is made by the Secretary of State to the Secretary of Homeland Security.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to diplomatic and consular posts to the extent that such assignments are made under paragraph (2) of this section.

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to alter or affect any delegation of authority to the Secretary of Homeland Security to the extent that such delegation is made by the Secretary of State to the Secretary of Homeland Security.

(f) ASSIGNMENT OF HOMELAND SECURITY OFFICERS TO DIPLOMATIC AND CONSULAR POSTS.

(1) IN GENERAL.—The Secretary is authorized to assign officers of the Department of Homeland Security to diplomatic and consular posts to the extent that such assignments are made under paragraph (2) of this section.

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to alter or affect any delegation of authority to the Secretary of Homeland Security to the extent that such delegation is made by the Secretary of State to the Secretary of Homeland Security.
Sec. 419. 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 basis of the denial and the name of the applicant into the interoperable electronic data system established under section 202(b) 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 considers the alien's visa application and has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's visa 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. 420. 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 training, exercises, and equipment support; coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers to combat terrorism, including training, exercises, and equipment support; coordinating or, as appropriate, consolidating visa applications and systems of information relating to homeland security at all levels of government; supplementing 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; incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness; and providing agency-specific training to agents and analysts within the Department.

[Other provisions related to the Director's responsibilities, including legal advisor and quality review.]


(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 2 years professional experience in intelligence, and shall have a working knowledge of the operations of the bureau.

(c) Responsibilities.—The Assistant Secretary of the Bureau of Border Security—

(1) shall develop and implement 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 overseer the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to the provision of such policies to the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under title E, including potentially conflicting policies or operations.

(4) Program to Collect Information Relating to Nonimmigrant 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 1101 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 section 1102.

(b) Chief of Policy and Strategy.—

(1) In General.—There shall be a 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 D, including potentially conflicting policies or operations.

(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 employees or personnel 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 provisions of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation or any other law enforcement agency.


(a) In General.—The Secretary, not later than 1 year after being sworn into office, shall—

(1) conduct a study of the existing organization of the Federal Bureau of Investigation and establish recommendations for improvement; and

(2) submit a report to the Committee on Foreign Relations, and the Committee on the Judiciary, the Committee on the Budget, and the Committee on Governmental Affairs of the Senate.
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. 1312, et seq.) relating to such functions.

SEC. 441. 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 F—Citizenship and Immigration Services

SEC. 431. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a Bureau 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 the proper 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 432 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 develop 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 the Bureau of Citizenship and Immigration Services; 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.

(C) PILOT PROGRAM FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any 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, forming partnerships, or using other innovative tools.

(D) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455—

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with the Bureau of Citizenship and Immigration Services personnel in field offices, the 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, and 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.—The budget officer shall be responsible for—

(A) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(B) financial management of the Bureau of Citizenship and Immigration Services; and

(C) 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. 432. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—With respect to 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 and related functions.

(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 administration of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORT.—

(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. 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 as a result of the activities of the Office of the Ombudsman.

(2) ITEMS IDENTIFIED.—

(A) 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;

(B) 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;

(d) ADMINISTRATION.—

(1) IN GENERAL.—Not later than 60 days after the submission of each annual report to Congress, the Ombudsman shall—

(A) identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(B) contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive delays in the adjudication of immigration benefit petitions and applications; and

(C) 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 submitted 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.

(e) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman; and

(2) shall coordinate in the Department with 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.

(p) 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 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; and
(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;

(2) C ONSULTATION.
(A) to appoint local ombudsmen and make available, at least 1 such ombudsman for each State; and
(B) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(h) OTHER TRANSITION ISSUES.—
(1) EXERCISE OF AUTHORITY.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for the purpose of exercising that function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official or any other Federal official to whom the function was transferred by this subtitle 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 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, 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 affected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

(i) 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 other means of electronic communication access, so that a consumer shall maintain a phone, facsimile, and post office address, that is separate from other means of electronic communication access, so that an individual or employer seeking the assistance of the Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services contact with, determine not to disclose to 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 a nondisciplinary nature or report 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.

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised by, 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 a nondisciplinary nature or report from which such function is transferred—
(1) (A) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or
(B) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—
(1) 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 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, 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 affected pursuant to this subtitle for a period of 2 years after 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 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, 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 affected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

(3) 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.
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 180 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, in consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be established from 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 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; and

(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, information 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 recognition.

(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 program pursuant to section 412(a) 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 411 takes effect.

(e) REFERENCES.—As used in this section—

(1) the term ‘‘transfer date’’ means the date on which the transfer of functions specified under section 411 takes effect;

(2) the term ‘‘unaccompanied alien child’’ means an alien who—

(A) has not lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) is not the parent or legal guardian in the United States;

(i) no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term ‘‘employee’’ means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 633(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; and

(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 411 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments described in this section, the Attorney General or the Secretary 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 662(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 Oversight 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 plans described in subsection (b), make voluntary separation incentive payments to employees.
(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; and
(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary.
(4) may not be paid except in the case of any quality involuntary separations (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 may be required to meet the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States for appropriated funds and other deposits under section 471 of this Act, an amount corresponding to the employees in the Department of Homeland Security.
(2) a summary description of how the 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).
(C) Computations to be Based on Separations Occurring in the Fiscal Year Involved.—The employees described in this paragraph 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 a part-time basis, with appropriate adjustment therefor.
(e) Effect of Subsequent Employment with the Government.—An individual who receives a voluntary separation 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 or appointment in 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 noticeably reduce the 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 in any voluntary separation under this section to make other positions available to more critical occupations 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 751 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(g) of such title 5). (d) Actions Involving Discrimination.—Notwithstanding the preceding sentence, if, in the case of any matter described in section 702(g)(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 statement of a claim under title 28 in the same manner as provided in section 7702(e)(1) of such title 5 (in the manner following subsection (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.
(f) Implementation Plans.—The Attorney General and the Secretary shall prepare and submit to Congress a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and obligations between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.
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; and
(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 Border Security 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 Transferrable.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.
SEC. 477. Reports and Implementation Plan.
(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 of the Senate 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 obligations between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.
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 the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(1) IMPLEMENTATION PLAN.—(I) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination date, 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.

(B) 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 application for asylum.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101) to address the separation of the bureaus.

(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.

(2) REPORTS GENERAL STUDIES AND REPORTS.—

(I) 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 on the completed transfers.

(A) A determination of whether the transfers of functions made by subtitules D and E have been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and the Judiciary of the United States a report after the transfers made by this subtitle have had taken place, identifying the reasons why the transfers have not taken place.

(B) If the transfers of functions made by subtitules D and E have been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and the Senate a report on the completed transfers.

(C) An identification of any issues that may arise due to the future transfer of functions.

(II) 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 the 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) Information management.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations made in the study in paragraph (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. 479. 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 have had on immigration functions.

(II) 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) Begin-study 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—

(I) 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

(II) 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—

(I) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies; and

(II) 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) the Nuclear Incident Response Team.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibilities 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) the Homeland Security Director, for the purposes of homeland security planning, direction, 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 public health and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Secretary, and by corresponding activities of the other governmental entities described in such subsection.

(b) RESPONSE TEAM.—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) the entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations), and exposure functions at the medical assistance facility known as the Radiological Emergency Response Center/Training Site (REAC/TS), radiological assistance 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) 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 program to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing medical treatment and shelter, and moving people 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) 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. 43299) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) AGENCY OF OPERATION PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall issue the Federal Response Plan to reflect the establishment of and implementation of the plan.

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 COMMERCIAL AVAILABILITY TECHNOLOGIES, GOODS, AND SERVICES.

It is the sense of Congress that—

(a) the Secretary should, to the maximum extent possible, use, to the extent 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

(b) in order to further the policy of the United States to act in concert with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

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 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 die 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 curtailment, compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DEFINITIONS.—For purposes of this section:

(1) JOHNNY MICHAEL 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 MICHAEL 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 (or earnings therefrom, including income from 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 subsection 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) Federal, state, county, city, or local governments related to the death of an individual described in paragraph (1).

(2) Not later than 6 months after the date of the death of an individual described in paragraph (1), the M. E. McClelland collection will participate in any political campaign on behalf of (or in opposition to) any candidate for public office, issuing by publication or distribution of statements.

(3) 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 confidentiality disbursing funds.

SEC. 610. USE OF COMMERCIALLY AVAILABLE TECHNOLOGIES, GOODS, AND SERVICES.

The Administrator of the Department of Homeland Security, in the performance of the functions, and related functions (including accident response, search response, advisory, and technical operations), 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.

(c) OF INCOME TAXES.—The grant or contract holder shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.
(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 323(e) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (4)(A) of such section will be permissible if it meets the requirements of paragraph (4)(A) of such section.

(e) Notification of Trust Beneficiaries.—Notwithstanding any other provision of law, and in order to ensure consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary, in consultation with 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) After being 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.

(b) Responsibilities.

(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 and other homeland security activities.

Subtitle B—Inspector General

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, 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 and other homeland security activities.

Subtitle A—Coordination with Non-Federal Entities

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 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.

SEC. 704. 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. 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;
(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 of the United States and to 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.

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 a plan and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are or shall be housed in the Department under this Act, if such offices 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.
may be authorized by the Attorney General to
review the exercise of the law enforcement powers established under paragraph (1) of this subsection, the exercise of the law enforcement powers authorized to be exercised by any Office of Inspector General under this subsection shall be performed in consultation with the Attorney General.

SEC. 612. LAW ENFORCEMENT POWERS OF IN-
SPECTOR 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) Access to Information by Congress.—

(1) In addition to the authority otherwise provided by this Act, each Inspector General under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App.) may, under the authority of the United States Secret Service, make an arrest without a warrant while engaged in official duties under this Act or any other statute, or as expressly authorized by the Secretary of the Treasury.

(b) Authority.—During the 3-year period following the effective date of this Act, the Secretary, upon a determination that the person to be arrested has committed or is committing such felony; and

(c) Effectiveness.—Subsection (b) shall take effect on the date of enactment of this Act.

Title V—United States Secret Service

Subtitle A—Functions Transferred

Section 521. Functions Transferred.

(a) Authority.—In accordance with this Act, the Secretary may carry out a pilot program with which such limitations as the Congress may determine.
(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 be authorized, pursuant to a determination made by the Secretary of Homeland Security based on a finding that the property or services for which the procurement is made are to be used to support homeland security or to address a disaster, to exceed the simplified acquisition threshold.

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 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 Governmental Affairs of the Senate and the Committee on Governmental Affairs of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(A) 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.

(B) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(C) The number of employees designated by each executive agency under subsection (b)(1).

(d) APPLICATION OF CERTAIN OFFICE OF FEDERAL PROCUREMENT POLICY ACT PROVISIONS.—For purposes of this section, references to the Federal Acquisition Regulation (41 U.S.C. 423-1 et seq.) shall be deemed to be $7,500.

(e) LIMITATION.—

The amount specified in subsection (c) shall be deemed to be $7,500.

(f) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall—

(A) decrease by the number of employees of the Department who are authorized to make procurements without obtaining competitive quotations, pursuant to section 31(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 423), except that the amount specified in subsections (c), (d), and (f) of section 31 shall be deemed to be $7,500.

(g) REVIEW.—The Secretary shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Governmental Affairs of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(A) 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.

(B) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(C) The number of employees designated by each executive agency under subsection (b)(1).

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 competitive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(i) is not submitted to a previously published agency requirement; and

(ii) 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 corporation or entity which is treated as an inverted domestic corporation under subsection (b).

(b) INDIAN DOMESTIC CORPORATION.—For purposes of this section, a foreign corporation shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transfers) under this section (A) the entity completes after the date of enactment of this Act and (B) the entity is treated as a domestic corporation for purposes of this section.

SEC. 836. EXPANDED AFFILIATED Group.

(a) IN GENERAL.—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.

(b) OTHER DEFINITIONS.—The terms ‘‘person’’, ‘‘domestic,’’ and ‘‘foreign’’ have the meanings given to them 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 contract if the Secretary determines that the waiver is required in the interest of homeland security, or to
present 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) 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 consistent with political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) the procedures set forth in section 3020, relating to prohibited personnel practices;

(C) all agreements involving the Department and the Merit Systems Protection Board;

(D) any provision of law referred to in sections 3020(b), 3021, 3022, or 3023 regarding automatic discharge or removal for cause; and

(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 exclusions from coverage or limitation on negotiability established by law; and

(5) permit the use of a category rating system for evaluating the performance of employees in the competitive service.

(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b) (to the extent not otherwise specified in subparagraphs (A), (B), (C), or (D) of subsection (b)(3))—

(1) apply to any part of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director; and

(2) apply to any part of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, unless extraordinary circumstances require that the proposal be implemented immediately.

(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(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 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, provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

(B) 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 that representatives of individuals designated, or individuals nominated by such organization;

(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 APPEAL 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) in any appeal brought by an employee against the Merit Systems Protection Board, the Board shall be required to comply with the rules of the Merit Systems Protection Board; and

(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 described in subparagraph (A); and

(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to expedite the resolution of matters involving the employees of the Department.
“(1) IN GENERAL.—Subject to the determination of the Secretary of Homeland Security, in accordance with section 842 of title 5, United States Code, a person shall be in conformance with the requirements of this subsection if the person performed immediately preceding such appointment or reappointment an equivalent 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 to which such exclusion is given in accordance with paragraph (1).

(3) DETERMINATION.—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).

(b) NEW POSITIONS.—

(1) IN GENERAL.—The authorities provided in this subtitle apply to any procurement referred to in section 852, including authorities and procedures under a provision of law referred to in paragraph (1) are as follows:


(B) Section 2306(q) of title 10, United States Code.

(C) Sections 301(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).
(I) 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 303(d) (41 U.S.C. 253), relating to orders under task and delivery order contracts.

(C) Title II, UNITED STATES CODE.—In chapter 137 of title II, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (e) of section 2204, 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)(ii) of the Small Business Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures established pursuant to paragraph (2) of subsection (a) for a procurement referred to in section 822.

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 procurement policies 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 at each stage with this technology have contributed to the capacity of the workforce of Federal General 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.

(3) 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 General shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the issues that shall 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. 885. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE

The head of the 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 the Federal marketplace, 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, chemical, or biological 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) Marketability 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, tragedies 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 approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for such actions shall be derived from the laws, 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 courts 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 such award may not exceed a maximum amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff.

(b) DEFINITION.—For purposes of subparagraph (a), the term “noneconomic damages” means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary loss.

(c) LIMITATION OF 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 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, such plaintiff shall be entitled to 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 wilful 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, non-Federal Government, or commercial 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 examination 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, but:

(1) attempts to commit, knowingly participates in, aids and abets, or consents any act of terrorism, or any criminal act related to or resulting from such act of terrorism.

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT

(a) IN GENERAL.—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 unobtainable 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 would not reasonably 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 for any claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

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, qualification, 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 suffers as a result of prohibited acts of terrorism committed by any 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.

(5) Extent of Liability.—Notwithstanding any other provision of law, liability for all claims pursuant to this subsection 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 contributory 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 subsection.

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 (A) of section 102(b)(1) or section 102(b)(2) of title 18, United States Code, or section 221 of title 49, United States Code, or any other Act, the Secretary shall exercise this 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 regulatory, organizational unit, program, or function established or required to be maintained by this Act.

(3) Use of Appropriated Funds.—For Disposal or Procurement (1) Strict Compliance.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this function established or required to be maintained by this Act.

(4) Provisions of Law and Regulations.—Authority under subsection (a)(3) does not extend to the abolition of any regulatory, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. Use of Appropriated Funds.

(a) Disposal or Procurement

(1) Strict Compliance.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this function established or required to be maintained by this Act.

(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) Research and Development.—Authority 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 Secretary of Defense under section 221 of title 10, United States Code.

SEC. 874. Future Years Homeland Security Program.

(a) In General.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) Contents.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Secretary 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.

(c) Relegation of Functions.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be relegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary, or any department or agency of the Department, 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 to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREPAREDNESS AND RESPONSE.

(a) Regulatory Authority.—Except as otherwise provided in sections 206(c), 826(c), and 1706(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority...
as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another component or 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 appointment, reappointment, or transfer to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority or responsibilities 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 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. COUNCIL ON NATURAL RESOURCES.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and stemming the movement of money involved in 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) Advice on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has demonstrated weaknesses 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 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 enforcing, to the maximum extent practicable, the elimination of disparities in pay and benefits 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 OF NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary an 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(h)(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.

(b) COOPERATION.—The Secretary shall coordinate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officials in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the Department, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(c) REFERENCES.—This Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperating 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 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, domestic preparedness, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies of the United States Government for the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, in the National Capital Region to facilitate access to Federal grants and other programs.

(c) REPORT.—The Office established under subsection (a)(2) shall submit an annual report to Congress that includes—

(1) a description 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.

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—

(a) to provide equal rights of employment 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

(b) to provide whistleblower protections for employees of the Department pursuant to the provisions in section 2302(b)(6) 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 the 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 Force 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 domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determined 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 the civil authority.

(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 the mission of the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

SEC. 587. 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)(1) of the Public Health Service Act (42 U.S.C. 247d), the Secretary of Health and Human Services may, under the direction of the Secretary of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently inform:

(A) the Committee on Transportation 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 submit a report 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.

(1) 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 production 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. 588. 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) Ports, waterways, and coastal security.
(B) Drug interdiction.
(C) Migrant interdiction.
(D) Search and rescue.
(E) Aids to navigation.
(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) Search and rescue.
(E) Aids to navigation.
(F) Ice operations.

(b) Preserving Mission Performance.—

(1) In General.—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.

(2) Changes to Missions.—

(a) In General.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard to perform its homeland security duties; and

(b) 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. Under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demon- strates that the Secretary cannot respond effectively if the restrictions under paragraph (1) are not waived.

(c) 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.

(d) Stabilization Act.—

(1) Funding and Obligational Authority.—The Department shall conduct an annual review of the obligations and disbursements under this section and the Congressional Budget Office.

(2) Committee Reports.—

(a) In General.—The Committee on Transportation and Infrastructure of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives (or their appropriate subcommittees) shall submit a report to the Senate and the House of Representatives respectively in each of the fiscal years after the date of enactment of this Act, or a report to Congress in the event the Department is unable to comply with the requirements of this section.

(b) Failure to Meet Requirements.—If the Department fails to meet the requirements of this section, the Inspector General of the Coast Guard shall submit a report to the Senate and the House of Representatives, respectively.

(c) Effect of Failure.—Any budgetary or administrative action of the Department that fails to meet the requirements of this section shall be null and void.

SEC. 589. 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 261 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 employers 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 contracts with the Federal Aviation Administration or on or before 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. 591. 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) 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 by which such information is acquired.

(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 to declassify, redact, or otherwise protect homeland security information when it is 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) Federal, State, and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence agencies, 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;

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate; and

(D) to share, with others who have access to such information sharing systems, the homeland security information in question, which shall be marked appropriately as pertaining to potential terrorist activity.

(2) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall receive and assess the information shared under paragraph (1) 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 required by subsection (a) and described 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 measures:

(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 Anti-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.—

(1) Under procedures prescribed under this section, information from a Federal agency under this section shall remain subject to the control of the originating 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;

(D) would improve the response to a terrorist attack.

(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. 403a(4)).

(3) The term “State and local person” 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.

(4) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures pursuant to this section.

(5) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(6) The term “construction” in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to 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 appropriate requests, including the requirement 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.
Rule 6(e) of the Federal Rules of Criminal Procedure is hereby amended by—

(i) in paragraph (2), by inserting "or of a foreign government" after "including personnel of a State or subdivision of a State"; and

(ii) in paragraph (3)—

(A) in subparagraph (Ai), by inserting "or of a foreign government" after "including personnel of a State or subdivision of a State";

(B) in subparagraph (Ci),—

(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) by inserting "or foreign" after "may disclose a violation of State";

(iii) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State" and

(IV) by striking "or" at the end;

(iv) by striking the period at the end of subparagraph (C) and inserting after "shall be designated by the Attorney General and Director of Central Intelligence shall jointly issue."—

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED. Section 203(c)(2) of the Unitig and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; 50 U.S.C. 403) is amended by adding at the end the following: "Consistent with the responsibility of the Director of Central Intelligence 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 by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to an appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat.";

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking "section 2517(b)" and inserting "section 2517(b) and (c)";

(2) by inserting "or clause (vi)" after "clause (v)";

(3) by inserting in subsection (c) the following:

"(vi) by striking "Federal"; and

(b) INFORMATION SECURITY. Section 206(c)(1) of the Unitig and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; 50 U.S.C. 403) is amended by inserting after "law enforcement officers" the following: "or law enforcement officer to the extent that such content 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. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

(a) IN GENERAL.—In subsection (c) of section 2516 of title 18, United States Code, as amended by section 203(c)(2)(A) of the Unitig and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; 50 U.S.C. 403), the term "wire" means a telephone line, system, or oral or electronic communication, and foreign information is any information relating to, or foreign intelligence evidence to a foreign investigation or use by a law enforcement officer to the extent that such content 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."—

(b) CONFORMING AMENDMENTS.—Section 2517 of title 18, United States Code, as amended by section 203(c)(2) of the Unitig and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; 50 U.S.C. 403) is amended by inserting "wire" after "oral".
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 technologies, software, and information security solutions should be left to individual agencies from among commercially developed products.

§3533. 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 non-repudiation 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, signal conversion, or reception of data or information, and includes—
(A) computers and computer networks;
(B) auxiliary equipment;
(C) software, firmware, and related procedures;
(D) services, including support services; and
(E) 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
(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify information security protection mechanisms commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems; (B) 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; (A) determining the levels of information security appropriate to protect such information and information systems in accordance with the requirements promulgated under section 11331 of title 40 for information security classifications and related requirements;
(2) (B) discovering and validating their access;
(2) (A) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 276g–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;
(2) (C) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11003(b)(5) of title 40 for accountability for compliance with such requirements;
(2) (D) reviewing at least annually, and approving or disapproving, agency information security policies and procedures with related information resources management policies and procedures; and
(2) (E) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—
(2) (i) a summary of the findings of evaluations required by section 3533; (B) significant deficiencies in agency information security programs; (C) planned remedial action to address such deficiencies; and
(2) (D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 276g–3).

§3534. Authority and functions of the Director
(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 information and information systems that support the operations and assets of the agency; and
(B) implementing policies and procedures to ensure that they are effectively implemented; and
(2) 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; and
(iii) have information security duties as that official’s primary duty; and
(B) developing and maintaining an agency-wide information security program as required by subsection (b); (C) developing and maintaining information security policies, procedures, and control technologies to address all applicable requirements, including those issued under section 3503 of this title, and section 11331 of title 40; (D) training and overseeing personnel with significant responsibilities for information security with respect to such policies and procedures; and (E) assisting senior agency officials concerning their responsibilities under paragraph (2).
(2) (A) ensuring 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
(2) (B) ensuring 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 agency-wide information security program, approved by the Director under section 3533(a)(5), to provide information security for 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
(2) (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
(2) (iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President; and
(2) (B) subdivide 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;

(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 through the following:

(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under subsection (a); and

(B) may include testing relied on in a evaluation under section 3535;

(6) procedures for detecting, reporting, and responding to security incidents, including—

(A) mitigating risks associated with such incidents;

(B) notifying and consulting with, as appropriate—

(i) law enforcement agencies and relevant Offices of Inspector General;

(ii) an officer 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;

(7) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

(c) Each agency—

(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 of the Auditing 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, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

(3) annual agency budgets;

(B) information resources management under subchapter 1 of this chapter;

(C) information technology management under subchapter III of title 40;

(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2001 and 2005 of title 39;


(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 Improvement Act’’); and

(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (2)(B) and—

(A) as a material weakness in reporting under section 3512 of title 31; and

(B) if relating to financial management systems, a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

(4) 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 the requirements of subsection (b).

(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 subsections (b) and (c).

(c) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures that will support such systems 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.

(b) Each evaluation by an agency under this section shall include—

(1) testing of the effectiveness of information security policies, procedures, and practices of a representation subset of the agency’s information systems;

(2) 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

(3) 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.

(b) Any acts or omissions arising out of or in connection with the preparation, review, or approval of the evaluation required by this section 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.

(c) 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.

(d) 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 shall take appropriate steps to ensure the protection of information that may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

(g) 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.

(h) The annual independent evaluations required by this section shall be performed by the Inspector General of the agency or by an independent external auditor designated by the agency head, as determined by the Director.

§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. 278j–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 protection of personal privacy or to the protection of confidential or sensitive but unclassified information, or to the head of any agency, with respect to the protection of personal privacy.

§3539. Effect on existing law

(2) C LERICAL AMENDMENT.—The items in the table of sections at the beginning of this chapter are amended to read as follows:


3532. National security responsibilities.

3533. Authority and functions of the Director.

3534. National security responsibilities.

3535. Annual independent evaluation.

3536. National security systems.

3537. Authorization of appropriations.

3538. Effect on existing law.

(c) INFORMATION SECURITY RESPONSIBILITIES OF CIVIL AGENCIES.

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of 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 protection of national security systems, as defined by section 3523(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.—(17) and inserting "(b) OBJECTIVES OF THE PROGRAM.—";
(ii) in subsection 2224(b), by striking "(2) the program shall at a minimum meet the require-
ments of sections 334 and 335 of title 44, United States Code;"; and
(iii) in subsection 2224(c), by inserting "—
cluding through compliance with subtitle II of chapter 113 of title 40, United States Code, including through compliance with title 10, United States Code;"

(2) ATOMIC ENERGY ACT OF 1946.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1946 (42 U.S.C. 1731 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 security systems standards
(a) DEFINITION.—In this section, the term ‘information security standards’ means the meaning given that term in section 3522(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-2(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

(B) REQUIRED STANDARDS.—Standards promul-
gated under subparagraph (A) shall include—
(1) 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

(2) such standards that are otherwise neces-
sary to improve the efficiency of operation or security of Federal information systems.

(C) REQUIRED GUIDELINES.—Infor-
mation security guidelines described under sub-
paragraph (B) shall be compulsory and binding.

(D) STANDARDS AND GUIDELINES FOR Na-
TIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as de-
finite 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.

(E) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards to the extent such effective information secu-
ritv 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 a standard by the Director under subsection (b) shall occur not later than 6 months after 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 promulgate or not to promul-
gate, a proposed standard submitted to the Di-
rector by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Techno-
logy Act (15 U.S.C. 278g-3), shall be made after the public is given an opportunity to com-
ment on the Director’s proposed decision.

(3) CLEARENCE.—The table of sec-
tions 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 tech-
niques for information systems;

(2) develop standards and guidelines, includ-
ing minimum requirements, for information sys-
tems used or operated by an agency or by a con-
tractor of an agency or other organization on behalf of the agency or on national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

(3) develop standards and guidelines, includ-
ing minimum requirements, for providing ade-
quately information security for all agency oper-
ations 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) standards to be used by all agencies to categorize all information and information sys-
tems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security ac-
cording to a range of risk levels;

(2) guidelines recommending the types of in-
formation and information systems to be in-
cluded in each such category; and

(3) minimum security require-
ments for information and information systems in each such category;

(4) a definition of and guidelines concerning detection and handling of information security incidents; and

(5) guidelines developed in coordination with the National Security Agency for identifying an information security system that is 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 De-
partments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to es-
sure—
(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnec-
essary 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 sys-
tems;
“(g) the term ‘national security system’ has the same meaning as provided in section 3532(b)(2) of this 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), as 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)(3)—

(A) by striking “computer systems” and inserting “information system”; and

(B) by striking “computer systems security” and inserting “information security”;

(4) in subsection (b)(1) by striking “computer systems security” and inserting “information security”;

(5) in subsection (b)(1) by striking the semicolon and inserting a period; and

(6) in subsection (b) by striking paragraph (2) and inserting the following:

“(2) The term ‘information security’ includes through review of proposed standards and guidelines developed under section 20; and”;

(7) in subsection (b)(3) by inserting “annually” after “reprogramming”;

(8) by inserting after subsection (e) the following new subsection:

“(f) The Board shall hold meetings at such locations 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.

(b) FEDERAL 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, is amended by striking the item relating to section 11332;

(c) 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—

(1) deleting the item relating to section 11333 of title X of such Act and inserting in their stead the following:

“11333. fences, barriers, and territorial waters.

(ii) monitoring, testing, and evaluation of information security controls under subchapter II;

(iii) preparation and maintenance of the inventory of information resources under section 3506(b)(4); and

(iv) technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance:

“(B) used to support information resources management,

“(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4); and

“(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance:

“(C) used to support information resources management for records management under sections 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 “subsection II of this chapter”;

(ii) by striking “;” 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 3506(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3(a)).

TITLE XI—DEPARTMENT OF JUSTICE

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,

(b) POWERS OF THE SECRETARY.—The Secretary, by and through the heads of the Immigration and Naturalization Service, and the Immigration and Naturalization Service, has such powers and duties relating to the Immigration and Naturalization Service as are invested in the Secretary 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.

(c) USE OF FEDERAL LAW.—The Attorney General may, on the recommendation of the Attorney General, authorize the use of any of the provisions of this Act in any matter within the jurisdiction of the Attorney General as the Attorney General determines to be necessary for an investigation or a hearing.

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.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives, which shall be subject to the direction and regulation of the Attorney General under this section.

(b) POWERS.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section 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.

(c) 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.

(d) DEPARTMENT OF THE TREASURY.—The Attorney General may make such provisions as the Attorney General determines to be necessary for carrying out the purposes of this section.
(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 4182 and 4182A of the Internal Revenue Code of 1986, title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-08W10, 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) There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be administered 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 922 of the Consolidated Omnibus Budget Reconciliation Act of 1986 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking “Secretary” and inserting “Secretary of the Treasury”.

(c) 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.”.

(d) Section 1952(c) of title 18, United States Code, is amended, by striking “Secretary of the Treasury” and inserting “Attorney General”.

(e) Chapter 53.

(f) Sections 4181 and 4182 of the Internal Revenue Code, is amended to read as follows:—

“(c) Section 2(4)(J) of the Enhanced Border Security and Activity Act of 2015 (13921(a)) is amended by striking “Secretary” and inserting “Attorney General”.

(g) Sections 2341(5), and inserting the following:—

“(1) IN GENERAL.—Except as provided in paragraph (3), by striking “Secretary” and inserting “Attorney General”.

(h) Section 609N(2)(L) of the Justice Assistance and Control and Law Enforcement Act of 1994 (42 U.S.C. 13000(2)(L)) is amended by striking “Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury”.

(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 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury to carry out the provisions of this chapter) is amended by striking “Secretary” and inserting “Attorney General”.

(k) Chapter 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

(l) IN GENERAL.—Nothing in this Act alters or repeals sections 5051. Powers of Special Agents of Bureau of Alcohol, Tobacco, and Firearms and Explosives, Department of Justice and 5052. Attorney General and the Federal Bureau of Investigation, except as provided in paragraph (3) of section 5052 of such title.

(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 Office, 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 “Bureau of Alcohol, Tobacco, Firearms, and Explosives.”

(n) Section 8030 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 (3) of section 8030(a), the Attorney General” after “Secretary”.

(2) by inserting “, the Attorney General” after “Secretary”.

(o) Section 8030 of title 49, United States Code, is amended—

(1) by striking section (a)(1), by striking “(b) and (c)” and inserting “(b), (c), and (d)”; and

(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 provisions of this title to the extent that the violation of this chapter involves contraband described in section 8030(a)(2) or (4),”.

(p) 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:—

“§5051. 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
Subtitle C—Explosives

SEC. 1112. 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 paragraph (1) and inserting the following:

“(1) ‘Permittee’ means any user or permittee of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter;

(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” and inserting “or”;

(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 transferee are located."

(c) LICENSES AND USER PERMITS.—Section 843(a)(1) 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 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) 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 the following: “Each license or user permit shall be not valid for longer than 3 years from the date of issue and each limited permit shall be valid for not less than 1 year from the date of issuance. Each license or permit shall be renewable under the same conditions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.”

(d) CIVIL FORFEITURES; 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 and each employee of such applicant) is not a person described in section 842(c);”;

(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 application 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:

“(g) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in—

(1) 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 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 “licenses 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:

“(A)(1) If the Secretary receives, from an employer the name and other information of a responsible person or 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).”

“(B)(1) If the Secretary determines that the responsible person or 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.

“(2) 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, to the responsible person or employee, a letter of clearance, which confirms the determination.

“(i) confirms the determination;

(2) by inserting “clearance” before “the employer” and

(3) by striking the period at the end and inserting a semicolon.

(i) provides information on how the disability may be relieved; and
“(iv) explains how the determination may be appealed.”; 

(1) EFFECTIVE DATE.—

(2) IN GENERAL.—The amendments made by this subsection 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 842(d) 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 842(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; and—

(2) in paragraph (6), by striking the period at the end and inserting “where such person is”—

(3) by adding at the end the following:

“(7) is a member of the armed forces of the United States, has renounced the citizenship of that State, entering the United States on official business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such official law enforcement business;

(ii) a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association, or association licensed pursuant to section 842(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such official law enforcement business;

(iii) in 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;

(B) has been discharged from the armed forces under dishonorable conditions;

(C) has been a citizen of the United States, has renounced the citizenship of that person; and

(D) by inserting “or affecting” before “interstate” each place that term appears.

SEC. 1124. REFUND OR REPLACE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE

Section 842 of title 18, United States Code, as amended by the 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 each such explosive materials or ammonium nitrate;

(B) information on chemical composition of those products;

(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to the identification of the ammonium nitrate;

(D) REIMBURSEMENT.—The Secretary shall, by regulation, authorze 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 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) SPECIAL RULE.—Notwithstanding paragraph (2)—

“(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 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 specified in this subsection as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall be barred 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 person who has a reportable theft involving explosive materials 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 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.

The Secretary of Transportation shall, pending final action on an application for relief filed pursuant to this section, shall remain valid until that license or permit is revoked under section 842(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1129. 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 shall, pending final action on an application for relief filed pursuant to this section, shall remain valid until that license or permit is revoked under section 842(d) or expires, or until a timely application for renewal is acted upon.”

(2) 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.”

(3) in subsection (c) (as so redesignated) the first sentence by striking “the 180-day period following the date of enactment of this Act, the Secretary of Transportation” and substituting “the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary”;

and

(4) in the last sentence by striking “this paragraph” and inserting “this paragraph (c)”.

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

“(c) EXTENSION OF POLICY.—

(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 for any term less than 180 days following the date of enactment of this subsection, and at an added premium charged for third-party casualty coverage under such policy.

(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

“(A) A no event shall the total premium paid by the air carrier for the policy, as amended, be less than the total premium charged for third-party casualty coverage under such policy.

“(B) The premium charged for third-party casualty coverage under such policy shall begin with the first dollar of any covered loss that is incurred.”;
SEC. 1302. 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.
"(a) 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's 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 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) has 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;

"(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.

(c) 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 assist 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 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) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

"(B) integrating those strategies into the budget and strategic plans of those agencies; and

"(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 personnel accountable for effective and efficient 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) by redesignating paragraph (a) as paragraph (b) and inserting the following:

"(2) provide a description of how the performance goals and objectives are to be achieved, including the operational processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116 of title 31, United States Code, is amended—
"(1) by inserting after subsection (f) as subsection (g);

"(2) by redesignating paragraph (5) as paragraph (6); and

"(3) by inserting after paragraph (4) the following:

"(I) 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)."

(c) BENCHMARKING STUDIES.—Section 1117 of title 31, United States Code, is amended—
"(1) by redesignating subsection (b) as subsection (c) and inserting the following:

"(2) require the Director of the Office of Management and Budget to 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) by redesignating paragraph (5) as paragraph (6); 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 3306(a)(2), may establish a ranking system 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-eligible candidates 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, preference-eligible candidates shall be placed on a separate list of qualified preference-eligible candidates who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

"(c) The Office 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 appointment shall 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.

(3) A limitation established with respect to a category rating under this section shall be submitted in each of the 3 years following that establishment, a report to Congress on that system including information and may not pass over a preference-

(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.

\( § 3521. \) Definitions

("In this subchapter, the term—"

(1) ‘agency’ means an Executive agency as defined under title 5; 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)(3) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590b(h)(5)) who,

(i) is serving under an appointment without time limitation;

(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 whose reemployment rights are on transfer employment with another organization; or

(vi) an 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 would 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

(1) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for the purpose of 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.

(2) 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—(Chapters 33 and 35 of title 5, United States Code, are amended—

(I) by striking the chapter heading and inserting—

SEC. 3313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITY TO PROVIDE VACATION SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) Voluntary Separation Incentive Payments—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE—Chapter 33 of title 5, United States Code, is amended by inserting after subchapter I the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

§3521. Definitions

(1) ‘agency’ means an Executive agency as defined under section 105; and

(B) ‘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)(3) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590b(h)(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 whose reemployment rights are on transfer employment with another organization; or

(vi) an 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 would be paid under section 5379; or

(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

(1) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for the purpose of 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.

(2) 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.”

(2) TECHNICAL AND CONFORMING AMENDMENTS—Chapter 35 of title 5, United States Code, is amended—

(I) by striking the chapter heading and inserting—

"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) CONSIDERATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in other statutes until such date of the subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

§3526. Effective date.—This subchapter 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 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 separated or subject to an immediate restructure, or is serving under a written commitment that is subject to being recertified under section 3393a of title 5, United States Code, is amended by striking ‘‘§ 4107. Academic degree training’’ and inserting the following:

(1) I or more organizational units;

(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 33, or comparable provisions);

(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

(iv) 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 separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 33, or comparable provisions); or

(iv) 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: 12:31.94)

costs of academic degree training from appro-
priated or other available funds if such train-
ing—

(1) contributes significantly to—
"(A) meeting an identified agency training need;
"(B) resolving an identified agency staffing problem; or
"(C) accomplishing the strategic plan of the agency;

(2) is part of a planned, systemic, and co-
ordinated agency employee development pro-
gram 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 prin-
ciples set forth in paragraphs (2) and (7) of section 3301 and training initiatives of Federal depart-
ments, bureaus, agencies, and offices; and

(2) assure that the training is not for the sole purpose of enabling an employee an-
fertility to obtain an academic degree or quality
for appointment to a particular position for which the academic degree is a basic require-
ment;

(3) assure that no authority under this sub-
section 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 ex-
cepted from the competitive service because of its confidential, policy-making, or policy-advocating character and

(4) to the greatest extent practicable, facili-
tate the use of online degree training.

(b) TECHNICAL AND CONFORMING AMEN-
DMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by strik-
ing the item relating to section 4107 and insert-
ing the following:

"§ 4107. Academic degree training."

SEC. 1323. MODIFICATIONS TO NATIONAL SECUR-
ITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) Under Secretary finds that—

(A) the United States Government actively en-
courages and financially supports the training, educa-
tion, 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 em-
ployment 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 retain 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 appointments are considered in all recruit-
ment and hiring initiatives of Federal depart-
ments, 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 UNAVAIL-

(1) in paragraph (a), by striking clause (ii) and inserting the following:

"(ii) if the recipient demonstrates to the Sec-
retary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having na-
tional security responsibilities is available, work in other offices or agencies of the Federal Gov-
ernment or in the field of higher education in a discipline relating to the foreign country, for-
gain language, area study, or international field of study for which the scholarship was award-
ed, 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 Sec-
retary (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 the foreign country, foreign lan-
guage, 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);"

TITLIE 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 car-
riers providing passenger air transportation or intra-state passenger air transportation as Fed-
eral 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) PROCEEDURAL REQUIREMENTS.—

"(1) IN GENERAL.—Not later than 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.

"(2) ISSUES TO BE ADDRESSED.—The proce-
dural requirements established under paragraph (1) shall address the following issues:

"(A) The type of firearm to be used by a Fed-
eral 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 Fed-
eral flight deck officer on the aircraft to ensure both its security and its ease of retrieval in an emergency;

"(E) An analysis of the risk of catastrophic failure resulting from the discharge of a firearm (including an accidental discharge) of a firearm to be used in the program into the avionics, elec-
trical systems, or other sensitive areas of the air-
craft.

"(F) The division of responsibility between pi-
lots 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 pas-
senger 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 par-
ticipate in the program based on their fitness to participate in the program, including whether an additional background check should be re-
quired beyond that required by section 492306(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 air-
port.

"(K) Methods for ensuring that security per-
sonnel, science, and transportation officer who is authorized to carry a firearm under the pro-
gram.

"(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law en-
forcement officer who is authorized to carry a firearm aboard the aircraft.

Any other issue that the Under Secretary

considers necessary.

"(N) The Under Secretary’s decisions regard-
ing the methods for implementing each of the foregoing procedural requirements shall be sub-
ject to review only for abuse of discretion.

"(O) PERFEERENCE.—In selecting pilots to par-
ticipate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

"(P) CLASSIFIED INFORMATION.—Notwith-
standingly section 522 of title 5, subtitle D, sub-
section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

"(Q) NOTICE TO CONGRESS.—The Under Sec-
retary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Com-
merce, Science, and Transportation of the Sen-
ate after completing the analysis required by paragraph (3)(E).

"(R) MINIMIZATION OF RISK.—If the Under Secretary determines that there is a significant risk of the catastrophic failure of an air-
craft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

"(S) TRAINING, SUPERVISION, AND EQUIP-
MENT.—

"(1) IN GENERAL.—The Under Secretary shall
only be obligated to provide the training, super-
vision, 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 em-
ploying the pilot.

"(2) TRAINING.—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 respon-
sibilities of Federal flight deck officers and Fed-
eral air marshals.

"(T) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

"(1) Training to ensure that the officer achieves the level of proficiency with a firearm

required under subparagraph (C)(1).

"(2) Training to ensure that the officer main-
tains exclusive control of the firearm at all times, including training in defensive ma-
neuvers.
(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.

(b) PROVISION 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 standard shall be comparable to the level of proficiency required of Federal air marshals.

(ii) CRITERIA FOR 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 when the pilot has completed the training 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 so deputized.

(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.

(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for providing Federal flight deck assistance.

(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 and carry a firearm that is 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 49403(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) 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 under the program.

(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.

(i) 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 procedures.

(j) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a 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 shorter period of standards, training, or procedures would be responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortening is corrected.

(k) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier in the performance of a Federal flight deck officer under this section.

(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 or participating in the program under this section.

(l) LIABILITY.—

(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 155.119 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.

(m) CONFORMING AMENDMENTS.—

(1) CHARTER ANALYSIS.—The analysis for such chapter is amended by striking the item relating to section 4921 the following:

“4921. Federal flight deck officer program.”

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71, 115 Stat. 593) is amended by striking the item relating to section 4921 the following:

“(b) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshaling program is critical to the security of the United States air transportation. Failing any other means of ensuring the security of the United States air transportation from criminal violence and air piracy;”

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed to preclude the use of the Transportation Security Administration for the purpose of providing 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:

“(i) IN GENERAL.—The Under Secretary;”

(2) by adding at the end the following:

“Additional requirements.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

(1) require both classroom and effective hands-on situational training in the following elements of self-defense:

(ii) recognizing suspicious activities and determining the serious risk they pose;

(iii) deterring a passenger who might present a problem;

(iv) crew communication and coordination;”

(b) 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 combatting 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 report 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 are qualified to fly, that provide protection 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 paragraphs (1) and (2) and track their travel over a 6-month period.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall submit 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 section, an air carrier requests the Under Secretary to authorize the use of weapons that are less-than-lethal, 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 thing places it appears in insert "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 (ii);

(2) by redesigning the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesigning 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 enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan referred to in subsection (b).

(b) PLAN ELEMENTS.—The plan transmitted under who was such immediately before the effective date of this Act, shall respond to that request.

(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.

(3) Specification of the funds available to each agency that will be transferred to the Department and whose duties following such transfer are germane to those performed before such transfer.

(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 subfunctions 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 (c), 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 be extended for up to 5 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) applies notwithstanding section 565(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 to ensure that the committee structure is consistent with the functions of the Department and whose duties following such 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.

Sec. 1504. ACTING OFFICIALS.—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 the advice and consent of the Senate, the President may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

Sec. 1505. USE OF PERSONNEL AND ASSETS.—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 the advice and consent of the Senate, the President may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

Sec. 1506. 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.

Sec. 1507. 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.

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.

(2) The President 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, superceded, terminated, set aside, or revoked in accordance with law by the United States or a court of competent jurisdiction, or by operation of law.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) Pending judicial or quasi-judicial proceedings involving notices of proposed rulemaking, and applications for licenses, permits, certificates, grants,
and financial assistance, shall continue not-withstanding 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 and judgments rendered and enforced in such proceedings, shall be, 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 statute, departmental rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall continue to apply to such agency, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that apply 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 published with the Director 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 transferee 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 pursuant to this Act, each position and office the incumbent of which has been transferred pursuant to this Act, the Department or any component of the Department the Secretary may, in regulation referred to in subparagraph (C), by striking "the Department" and the appointment of the Inspector General prescribed jointly with the Director of the Department the Secretary may, in regulations, 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

§ 1515. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized to make adjustments in the effective date of this Act of personnel shall not by reason of the enactment or transfer had not occurred; and

(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 the 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 statute, departmental rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall continue to apply to such agency, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that apply 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 published with the Director 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 transferee 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 pursuant to this Act, each position and office the incumbent of which has been transferred pursuant to this Act, the Department or any component of the Department the Secretary may, in regulation referred to in subparagraph (C), by striking "the Department" and the appointment of the Inspector General prescribed jointly with the Director of the Department the Secretary may, in regulations, 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

§ 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF HOMELAND SECURITY.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "the Administrator of the Federal Aviation Administration" after "for Security"; and

(B) by striking "criminal violence and aircraft piracy" and inserting "criminal violence, aircraft piracy, and terrorism to ensure security"; and

(2) in subsection (b)—

(A) by striking "the Under Secretary" and inserting "the establishment of a Department of Homeland Security, the Secretary of Transportation";

(B) by striking "carrying out" and all that follows through "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 411 of title 49, United States Code, is amended by adding at the end the following:

"(a) 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 the Department of Homeland Security, 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 TRANSPARENCY OF DUPLICATES.—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." 

§ 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 flying an aircraft for personal convenience), an individual for a willful breach of a regulation.
Section 1706. Transfer of Certain Security and Law Enforcement Functions and Authorities

(a) Amendment to Title 20—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); and

(B) by striking “;” and “;” at the end of paragraph (2) and inserting a period; and

(c) Classification: The provisions of this section shall be classified as laws of the United States in the Code of Federal Regulations under the heading “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 to serve as Judge Advocate General or Judge Advocate of the Army, the Secretary of the Air Force, the General Counsel of the Department of Homeland Security with respect to the Coast Guard, and the General Counsel of the Department in which the Coast Guard is 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; and

serve warrants 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 officers and agents for duty occupied by the Federal Government or persons on the property.

(F) carry out such other activities for the protection of homeland security as the Secretary may prescribe.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Federal Emergency Management Agency, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The United States Code, as section 1315 of title 40, United States Code, may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be published in the Federal Register and 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, or imprisoned for not more than 30 days, or both.

(d) DETAILS.—

(1) REQUESTS OF AGENCIES—On the request of the Administrator of the Federal Emergency Management 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 to the same extent that the regulations are provided in this section; or

(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agency.

(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may enter into agreements with Federal, State, and local law enforcement agencies, with the consent of the agencies.

(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—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 local law enforcement officers.

(f) SECRETARY AND ATTORNEY GENERAL AUTHORITY.—Regardless of any other Federal law enforcement agency, or the authority of any other Federal or State or local law enforcement officers.

(1) SECRETARY AND ATTORNEY GENERAL APPROPRIATIONS.—Except as provided in this section; or

(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator.

(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) PUBLIC AMENDMENT.—The table of sections at the beginning of chapter 13 of title 49, 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(i)(2)(B), by inserting “for a period not to exceed 90 days” after “effective”; and

(2) in section 114(i)(2)(B), by inserting “or ending” 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 to investigate and 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 section of section 351A(a)(1) of the Public Health Service Act (42 U.S.C. 262A(a)(1)) is amended by striking “consultation with” and inserting “consultation with and inserting “consultation 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 “consultation with and inserting “consultation with the Secretary of Homeland Security”.}

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended by—

(1) by striking “Secretary of Transportation” in the first sentence of subsection (a) and inserting “Secretary”;

(2) by striking “Secretary” each place it appears (except the first sentence of subsection (a)) and inserting “Secretary concerned”; and

(3) by striking “Securities 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 under section 114 of this title (in the case of the Secretary of Homeland Security)”;

(b) 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)”;

(c) by striking “chapter,” in subsection (i) and inserting “chapter (in the case of the Secretary of Transportation)”;

(d) in subsection (k) (in section 20106 of such title), by striking “Secretary” and inserting “Secretary, with the consent of the agencies.”

(e) in subsection (n), by striking “Secretary” and inserting “Secretary, with the consent of the agencies.”

(f) in subsection (p), by striking “Secretary” and inserting “Secretary, with the consent of the agencies.”

(g) DEFINITIONS.—In this section—

(1) the term “security” includes security; and

(2) the term “secretary” 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.

(h) REGULATIONS AND ORDERS.—Section 21010(a)(20) of such title is amended by striking “the first place it appears after “351A(e)(1)” 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.”

(i) NATIONAL UNIFORMITY OF REGULATION.—Section 21016 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)(D) and inserting “aspects, including security,”; and

(3) by adding at the end the following:

(C) CONSULTATION.—When prescribing a security regulation or 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 (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 “hazardous security, after “national security,” and


SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(h) of title 10, United States Code, is amended by adding at the end the following new paragraphs:


“(14) Other Federal officials the Council considers appropriate.”

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(2) of the Public Health Service Act (42 U.S.C. 300aa–33(2)) 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 2123(5) of the Public Health Service Act (42 U.S.C. 300aa–35(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 and product label.”

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2112 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 vaccine’s product license application and product label.”

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

Mr. SANTORUM. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.