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## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, we are in Your hands and may we rejoice above all things in being so. Do with us what seems good in Your sight.

Today show mercy to the Members of this legislative body. Let Your sovereign hand be over them and Your holy spirit ever be with them, directing their thoughts, words, and works. Lord, prosper the works of their hands, enabling them in due season to reap a bountiful harvest. Strengthen their hearts in Your ways against temptation and make them more than conquerors in Your love.

We pray in Your merciful Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

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

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U. S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, November 18, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUE,  
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Madam President, following any leader remarks, the Senate will turn to a period of morning business for an hour. Senators during that time will be permitted to speak for up to 10 minutes each. Republicans will control the first 30 minutes, the majority will control the final 30 minutes.

Following morning business, the Senate will resume consideration of the motion to proceed to S. 510, the FDA Food Safety Modernization Act. Yesterday cloture was invoked on the motion to proceed. Today we will continue to work with Senators on reaching an agreement to consider amendments so we may complete action on the bill this week.

We are going to complete action on the bill. We may have to—if we have to use up all of the time, waste all of the time, these 30-hour provisions that are allowed under the Senate procedures, we are going to have to be here during the weekend. This is something we need to get done.

Everyone should understand there is nothing to be gained by stalling this. It has been stalled for years, this piece of legislation.

The Senate will recess from 12:30 until 3 p.m. today because we have another Democratic caucus.

### MEASURES PLACED ON THE CALENDAR—S. 3962, S. 3963

Mr. REID. Madam President, I am told there are two bills at the desk that are due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the titles of the bills for the second time.

The assistant legislative clerk read as follows:

A bill (S. 3962) to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

A bill (S. 3963) to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

Mr. REID. Madam President, I object to any further proceedings with respect to these bills.

The ACTING PRESIDENT pro tempore. Objection having been heard, the bills will be placed on the calendar.

### FOOD SAFETY

Mr. REID. Madam President, we are going to continue debate, as I announced, on the food safety legislation. No one in America should have to worry if their salad or sandwich is going to kill them. No one in the Senate should prey on that fear or play with it like a political football. Yet that is exactly what is happening.

If you follow the Senate every day, you might not be surprised to see our Republican friends turn food safety into a partisan political issue. But if you are trying to keep yourself and your family healthy, you may be appalled, and rightfully so.

You might also be troubled to learn that our food safety system has not been updated in almost 100 years, in almost a century. Food processing, production, and marketing have surely advanced over the last hundred years, but

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



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our safety measures have not. New contaminants come up every day, but our safety measures do not keep up.

That is because our FDA does not have the authority or research it needs to keep up. This bill will fix that. It will greatly improve this important system, and it will keep regulatory burdens on farmers and food producers to a minimum. It simply gives the FDA the authority to recall contaminated foods to find out where these dangerous foods come from and to stop them from getting into our grocery stores.

It is a bipartisan bill. The HELP Committee passed it unanimously. But somewhere between the committee and the Senate floor, making sure the food we eat is not poisonous has somehow become a partisan issue. That should be unacceptable to everyone.

Food poisoning kills as many as 5,000 of us, we Americans, every year. Foodborne illnesses sicken one in four people every year. I do not know how many people have been affected by food poisoning. The Presiding Officer is from New York. My wife and I went to New York a number of years ago with our son and his girlfriend. We were going to go to a play. We had dinner at a nice restaurant. We both had chicken, the same dish. About 4 o'clock in the morning, I asked my wife if she would get me a drink of water. She said: No, I cannot; I am too sick. I was too sick too. We were so sick that day. We got out of the room we were staying in sometime midmorning. And, frankly, my wife never, ever got over that completely. She had an illness to begin with called ulcerative colitis. This exacerbated her symptoms so badly that ultimately she was hospitalized for more than a month.

These illnesses affect everyone. Contaminated food affects people and affects people very badly. I repeat, 5,000 of us die every year as a result of foodborne illnesses. The specialists say it is probably more than that, because a lot of times when people die they do not know it is from food poisoning.

One of four of us every year gets sick. If 25 Senators, one-quarter of this Senate, got food poisoning this year, we would do something about it, and we would not think twice about which political party those Senators who got sick were from. People often think of food poisoning as an upset stomach that goes away in a few hours or a day. Sometimes, yes, that is all it is. But sometimes it is much worse. I have met with the families who have been seriously sickened by the food they have eaten, people who are hospitalized for weeks and months and months, who came close to death.

In some cases they will deal with the results of their food poisoning for the rest of their lives. One such person is a little girl named Rylee Gustafson. She is from Henderson, NV. When she was 9 years old, she ate a salad that almost killed her. It had spinach in it. That spinach had E. coli. Rylee got so seriously ill that she, of course, was hos-

pitalized, and for a long time. Three others who got E. coli from fresh spinach died. This little girl is a feisty little thing. But her growth has been stunted. She will never be the size she should be.

There are lots of stories, none of them pleasant. But a woman named Linda Rivera from Las Vegas ate some cookie dough. E. coli was in the cookie dough. She was in a coma for a long time. She is recovering but not really well.

Then a few days ago, the CDC alerted us to another E. coli outbreak. This was cheese. And 37 Americans so far had gotten sick from a brand of cheese sold in the western part of the United States, including two people in Nevada.

So why have we waited this long to make our food safer? We are still playing these games, political games. The answer is nothing more than very base politics. It is shameful. I hope we can end that today. The vast majority of the Senate wants to pass this bill. And we should not have just a few people standing in the way of doing something that will help the health and safety of our country.

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#### RESERVATION OF LEADER TIME

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

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#### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half, and the majority controlling the final half.

The Senator from Kansas.

Mr. ROBERTS. Madam President, I ask unanimous consent that I may proceed for 15 minutes.

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

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#### HEALTH CARE

Mr. ROBERTS. Madam President, health care—big issue. The health care reform bill that is current law—big issue. A lot of talk about repeal, fix what is wrong in the bill, what is right in the bill, depending upon your personal opinion.

I think that the Senate—more especially the committees of jurisdiction, and I am talking about the Senate Finance Committee—has a unique obligation, especially at this time, to conduct its oversight responsibility. Unfortunately, that was not the case as of yesterday.

One of the major problems with the new health care law is the huge amount of power and authority it

grants to one man, the Administrator, perhaps we should call him the czar, of the Centers for Medicare and Medicaid Services, CMS. Rest assured, every health care provider in the country knows what and who CMS is.

The Administrator is Dr. Donald Berwick. One of the major problems with Dr. Berwick is his longstanding, well-documented support for government rationing as a means of controlling health care costs—not my words, his.

Yesterday, the Senate Finance Committee finally had our very first chance to question Dr. Berwick. I say finally, because for months my colleagues and I have requested this opportunity, a request which was denied when President Obama provided a recess appointment for Dr. Berwick. So yesterday's hearing was a hollow one of sorts, since Dr. Berwick had already been installed at CMS, or maybe parachuted in would be the right way to describe it, in that he has made many controversial comments about his love for the British health care system and for rationing and other comments that certainly deserve a hearing in regards to a confirmation process. That did not happen.

He was also installed pretty much after the debate that we had on health care. Now, unfortunately, we were only given 5 minutes each yesterday to question the most important man in American health care as of today. This was 5 minutes, sandwiched in between lengthy remarks by the chairman, the witness, and the floor votes we had yesterday.

I was not able to question Dr. Berwick on many things. I asked unanimous consent of the chairman if I could submit questions for the RECORD. Obviously he agreed and that was it. But when Ranking Member GRASSLEY asked Dr. Berwick if he would commit to appearing before the committee again—which I think the doctor would; he is a very affable and personal man. I do not agree with him, but he is affable and personable—so we could continue our oversight, Chairman BAUCUS interrupted his response and refused to make any further commitments.

How is that for transparency? How is that for finally getting to a hearing about the man who is the most important man today in regards to the new health care law and implementing it?

Because I was not able to ask Dr. Berwick my questions yesterday, I am forced and am asking them here on the Senate floor. Dr. Berwick knows my No. 1 concern with President Obama's health care law is the enormous potential for the government to interfere in the treatment decisions of the doctor and the patient. Dr. Berwick has a long history of statements supporting government control of treatment decisions, or what I would call "rationing." I know some would say that is not the case. But Dr. Berwick has said that:

Most people who have severe pain do not need advanced methods; they just need the morphine and counseling that have been around for centuries.

A most unique statement, to say the least. He has publicly stated an aversion to new medical technology and health care advances, saying:

One of the drivers of low value in health care today is the continuous entrance of new technologies, devices, and drugs that add no value to care.

That is in his eyes. He refers to this as an “excess supply” of health care. And, of course, we have his infamous quote that “the decision is not whether or not we will ration health care. The decision is whether we will ration care with our eyes open.”

It should then come as no surprise that CMS under Dr. Berwick’s leadership has embarked upon a path of increasing government control, centralized decisionmaking, and top-down mandates that treat doctors as nothing more than cooks practicing “cookbook medicine” and patients as nothing more than numbers, despite their individual needs and desires.

One example: attempts by CMS to restrict the number of times seniors with diabetes can test their blood sugar by limiting them to one test strip per day, regardless of what the doctor recommends. Doctors understand that diabetes care is an exceedingly complex and personalized enterprise. My question that I could not ask yesterday: Why is CMS replacing the judgment of a doctor on how many times their patient should test their blood sugar with a CMS-knows-best approach?

An even more egregious example of the government getting in between patients and doctors is Dr. Berwick’s recent investigation into Medicare coverage of the life-extending prostate cancer therapy Provenge. Provenge is a therapeutic vaccine approved by the Food and Drug Administration to treat late-stage prostate cancer through an innovative process that removes immune system cells from patients and exposes them to cancer cells and an immune system stimulator and then injects them back into the patient. Provenge has been shown to increase life expectancy by an average of 4 months but sometimes longer, with one patient living an additional 7 years. In addition, Provenge is special because of its lack of side effects as compared to the traditional chemotherapy methods. So not only can patients live longer, but their quality of life will be better.

Medicare coverage for FDA-approved drugs is usually automatic. My next question to Dr. Berwick would have been, had I had the opportunity in the committee yesterday but was denied because of scheduling: Why did you initiate a coverage investigation so soon after Provenge was approved? Why is CMS seeking to substitute its judgment for not only patients and doctors but for the FDA, the gold standard for drug approval worldwide? Are you questioning the FDA’s decision? When drug companies and research folks produce after many years of research and effort and cost, are they going to have to go through two hurdles—first,

the FDA, which can take years, and then CMS—as to whether Medicare will approve it? It seems that is where we are headed.

I know or I think I know the answer as to why Dr. Berwick decided to conduct this investigation.

It is cost—\$93,000 for a complete cycle of Provenge was the driving factor behind this investigation.

The good news is that yesterday an advisory committee recommended that CMS cover Provenge. But I am very concerned about the precedent this sets not only for other cancer regimens such as the promising breast cancer drug Avastin but for all new medical innovations.

Some may say that an extra 4 months of life is not enough to justify this high price tag. It is a high price tag. First, the government should not be in the business of placing dollar values on life, period. That is what Great Britain is trying to move away from. That is why David Cameron made the unique statement that maybe we ought to have a system that puts the choice between doctors and patients. What a novel idea.

Secondly, the traditional chemo and all of its associated side effects costs Medicare upwards of \$110,000 per patient per year. So Provenge is actually a cost saver when viewed in that context.

Third, this is exactly the type of innovative approach we need to win the fight against cancer. Medical advances don’t come in giant leaps; they more often occur at the margins. We should not deny patients and doctors treatment options simply because they don’t offer a complete cure. That is shortsighted, not to mention cruel.

Finally, if we want companies and investors to continue to pour their dollars and efforts into developing a cure for cancer, this is the wrong approach. The investment into researching and developing Provenge approached \$1 billion over 15 years, 15 clinical trials. Refusing to allow a return on this huge investment will send a chilling effect across the health research industry, resulting in less investment, less innovation, and worse care for patients. Maybe less innovation is actually the goal of this administration and of Dr. Berwick, who has targeted the “entrance of new technologies, drugs, and devices” as “one of the drivers of low value in health care today.” Value is a subjective concept.

Another question I have for Dr. Berwick: I prefer that the value of health care be determined by the patient and doctor, not the government. Would you agree?

Finally, from yesterday’s news, I have been shocked by the number of ObamaCare waivers coming out of the Department of Health and Human Services. According to the New York Times today, 111 waivers have been granted to employers to allow them to avoid the new health care mandates. The only thing more shocking than the

number of waivers is who is getting them. Would you believe that they are some of the most ardent supporters of health care reform? Unions such as the Service Employees International Union, the United Federation of Teachers, and the Transport Workers Union have all applied for and been granted waivers from the rules. They don’t have to follow the rules. They don’t have to follow the mandates. Guess who are the strongest supporters of health care. The fact is, ObamaCare is bad for business, bad for workers, bad for seniors, bad for taxpayers.

My question to Dr. Berwick: When will the American people get a waiver from ObamaCare? Of course, that decision would be under the purview of the Secretary of the Department of Health and Human Services, Kathleen Sebelius, whom I know as a personal friend.

Kathleen, Kathleen, Kathleen, you are granting all these waivers to people in regard to the mandate on health care. When will the American people get a waiver from some of the things they choose not to take part in? This is, indeed, shocking news.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Madam President, I understand I have 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BOND. Will the Chair advise me when 10 minutes has been used.

The ACTING PRESIDENT pro tempore. Yes.

#### BIOTECHNOLOGY: HOPE FOR THE FUTURE

Mr. BOND. Madam President, as I will be leaving the Senate in a few weeks, I ask my colleagues to indulge me as I speak for a few minutes on a subject I believe is very important, and that is continuing the policies and funding that help drive scientific advancement in new areas, particularly agricultural biotechnology.

It goes without saying that we are living in a time of breathtaking scientific discovery, whether the field is aerospace, information systems, or biotechnology.

In the last hundred years, science has taken us from the Wright Brothers first flight to manned space flight. Science has taken us from Henry Ford’s first car to today’s vehicles hosting full-fledged entertainment systems and global positioning systems. Science has taken us from typewriters to supercomputer and from candles to electricity.

Science is moving even faster now. Advances in technology will continue to reach far into every sector of our economy.

Future job and economic growth in the areas of health care, life sciences, industry, defense, agriculture and transportation is directly related to scientific advancement. And America’s

future wealth and economic pre-eminence is tied to technological advancement.

Technological advancement will continue to drive our economy, job growth and our quality of life.

While most of the work is being done by our scientists, engineers, entrepreneurs and educators, government can play a role in helping create the conditions for them to succeed: through research funding, through tax policy, and through free trade agreements. This is especially true when it comes too agrotechnology.

Looking back about 15 years ago, I received a strong push for a new idea—mapping the corn genome, one of the first real biotech projects for commercial agriculture. This push came not from leaders in education, science or the corporate world—and we have many—but from corn growers and soybean producers in Missouri.

Our producers convinced me that biotechnology was not only key to improving farm incomes and the rural economy, but in revolutionizing the world in the same way the steam engine revolutionized industry, and the computer revolutionized the sharing of information.

At that time, it was tough to get anyone interested in the project—Congress, the media, even my own staff. Imagine running for reelection and telling your staff: hey, great idea, I'm going to campaign on the corn genome.

As Mark Twain said:

A crank is someone with a new idea—until it catches on. Back then, those of us peddling biotechnology sounded like cranks.

The first time I asked the Agriculture Appropriations Committee to fund biotech projects, I didn't get a single dime.

But we persisted, anyway. I teamed up with my colleague and good friend, Senator BARBARA MIKULSKI, on a bipartisan initiative to fund biotech research through the National Science Foundation.

Through the years we have provided nearly a billion dollars to NSF.

With the help of Missouri's-own Chancellor Bill Danforth and Roger Beachy as well as others, Senator TOM HARKIN and I sponsored legislation creating the National Institute of Food and Agriculture to support the competitive research at the Federal level needed to advance agriculture science.

Fifteen years later, we now have the proof that this idea really is changing the world, as promised.

Already, hundreds of millions of people have been helped by biotechnology drugs and vaccines that can cure diseases and eliminate the need for surgery. And there are many more drugs and vaccines being tested which will eventually help us treat other diseases.

Agricultural biotechnology is bringing hope to those in the developing world by providing crops that are more pest and disease-resistant and more nutritious.

It helps our farmers by consistently increasing crop yields, especially as our global population continues to increase while available farmland decreases.

From an environmental perspective, the use of transgenic seeds has reduced pesticide application on our fields by tens of millions of pounds annually in the United States alone.

And—especially important now during the tough recession we are in—agriculture biotech creates good, high-paying jobs and helps revitalize rural economies.

The sky is the limit for the future of biotech. Advances here will continue to impact the entire world.

Madam President, 2005 marked the year that the billionth acre of transgenic crops was planted worldwide, a notable achievement in a field of science that was at the time only a decade old.

In 2008, the second billionth acre of a biotech crop was planted only 3 years after the first.

All this while a handful of professional antitechnology activists are still, unsuccessfully in search of their first stomach ache. Their persistent Luddite-type hatred of ag biotech, though without any scientific support, has fueled fear of genetically modified, GMO, foods, even in less developed countries, where near-term starvation is a real prospect without a ag biotech.

The growth of biotech will continue to explode in future years. Developing countries using ag biotech out number industrial countries by a ratio of three to two.

In fact, resourceful farmers in some countries are approving biotechnology before their lagging governments do.

Growth brings with it many opportunities for scientists from the "developed world" to collaborate on biotechnology projects with scientists in the developing world.

But how do we ensure that all people, especially those who need it, are not left behind?

We must do it. There is a humanitarian imperative. People who are well fed have many problems, a people who are hungry have only one problem.

As Norman Borlaug put it:

Without food, man can live at most but a few weeks; without it, all other components of social justice are meaningless.

We simply cannot afford not to tap into the promise of biotechnology. By 2050, developing countries will be home to 90 percent of the expected population of 9 billion.

However, while the world is expected to increase its population by more than 30 percent the area of productive agricultural lands in the world remains relatively unchanged. Traditional agriculture cannot keep up.

Increasing crop yields—and income—is especially important in a world where according to the United Nations Food and Agriculture Organization, FAO, 925 million children go to bed

hungry every day and several million of them die from nutrition-related illnesses every year.

For these individuals, a crop failure can mean the difference between surviving and starving.

We are not without challenges.

Although diminishing, a vocal and aggressive group of advocacy organizations continue to market fear rather than sound science, especially in Europe.

When public policy decisions are based on fear, rather than sound science, we are in trouble.

My good friend Dr. Martina McGloughlin has argued that some multinational corporations operating as NGOs shamelessly hype fear of biotech GMO and use fear to solicit funds for their salaries—these are the modern-day Luddites who know how to profit from their self-generated hysteria.

The result: the science cannot get to the marketplace and improve people's lives.

Fortunately the European Union is perhaps beginning to see they are missing out. They have begun to soften their opposition—however slightly—on genetically-modified imports.

The stakes, of course, are higher in developing nations than in Europe, where most are well fed.

The late Dr. Norman Borlaug, the unassuming humanitarian credited with feeding a billion people and saving the lives of hundreds of millions, warned us about the biotech naysayers.

He worried that "fear-mongering" by environmental extremists against pesticides, fertilizers and genetically-improved foods would put millions at risk of starvation while damaging the biodiversity those extremists claim to protect.

So we must do a better job, as policy makers, educators, business leaders, and scientists to communicate the value of biotechnology to those around us.

As my colleagues know, we are struggling to find our way out of this recession and create new jobs.

Some of the millions of jobs lost during the last 2 years are never coming back.

Biotech shows the promise of replacing some of those jobs. And biotech will provide the jobs of the future. Whether in the research lab, the incubator, in a small company or a large corporation, biotech is creating good, high-paying jobs. It is extremely important for producing enhanced revenues and jobs.

That is why ongoing workforce development and job training in new fields like biotechnology is so important.

And it is good to see some of our educational institutions getting involved.

Missouri Western University in St. Joseph, MO, has built a biotech incubator to encourage new businesses in the area and to help train workers.

Not long ago, I visited a St. Louis Community College program that is

training young people to work in biotech labs. They are getting on-the-job training at an incubator known as BioBench.

That's a win-win. It's a win for young people trying to find jobs in the new economy, and it is a win for the companies who need the skills of these workers.

Efforts like these keep high-paying, cutting-edge jobs right here in the United States.

One key to making sure the benefits of biotech continue to grow is making sure the American public and press, beyond farmers, researchers, a few company leaders and policy makers understand the value of biotech. Those who understand biotech must make a conscious effort to educate their peers and leadership across the country.

We need to develop advanced science and technology curriculum that prepares our students for the high-tech jobs of the future. A growing industry needs a pipeline of future talented workers. We need to continue to expand hands-on training opportunities to prepare and transition our current workforce into these new high-tech jobs.

So there is good news on many fronts when it comes to the future of the biotech movement. But we need a continued, strong, public-private partnership going forward.

As I mentioned earlier, in the last 12 or 13 years, Congress has provided nearly a billion dollars to the National Science Foundation to conduct plant biotech research, building on the initiative Senator MIKULSKI and I introduced in the VA-HUD-Independent Agencies Appropriations Subcommittee.

The need for continued investment in basic research is crucial to the growth of biotechnology and I hope Congress will continue to fund research in this area.

While I won't be around to beat the drum next year from the inside, I have worked with my colleagues Senator JOHANNES and Senator KLOBUCHAR to create a new Biotech Caucus. I hope those of you who understand the challenge and promise of ag biotech will choose to join the ranks and communicate the benefits of ag biotech to our peers.

While we have much to be proud of when it comes to developments and advancements in biotechnology—we cannot rest on our laurels. We must continue to support basic research in our Nation's labs. We must continue our investment in the buildings and equipment that make it possible. We must continue to create policies that allow biotech businesses to flourish—bringing critical research from the lab shelves to the marketplace and the benefits to our citizens. We must support job training for new workers and help transition the current workforce into these high-tech jobs of the future. And, maybe most important, we need to continue to educate those who do

not understand the full magnitude and benefit of biotech.

Only through effective communication can we ensure that sound science—not myths and fear—guide public policy.

In closing, let me say that in 40 years of public life, I have seen a lot of great ideas come and go. I strongly believe ag biotech is here to stay and will grow. We are only just beginning to see the many exciting applications biotechnology can offer. It is truly changing lives, for the better.

In my opinion, a dedicated and collaborative investment by policymakers, researchers, educators, and farmers will result in a vibrant industry that will fuel our economy, improve our environment, and feed our world for years to come.

#### IN MEMORY OF JULIE DAMMANN

Mr. BOND. Madam President, I have a very sad message to bring to the body today. It is with great sadness that I report that we have lost one of our own, Julie Dammann, who lost her brave 11-year battle with cancer.

All of you who knew Julie knew of her superior abilities, high spirit, and unshakably impervious character in the face of adversity. As she was struggling with this disease and going off for weekend treatment on Friday, with a bright smile, she always insisted, when asked, that she was "doing great." Her life was far too short, but few on Earth live a life as fully as she did.

Julie was a rural kid from Minnesota and graduated from the University of Minnesota. She worked for Rudy Boschwitz before I was fortunate enough to hire her in 1987. Most recently, she went to work as a senior vice president with Ogilvy Government Relations.

But in 1987, after joining my staff as legislative director, she met Rolf Dammann at the National Republican Senatorial Committee, who was apparently interested in more than her highly regarded legislative acumen. Rolf's newfound interest in budget and appropriations issues eventually paid off, and they were married—after the 1988 election, of course.

They both enjoyed politics, history, golf, German beer, and their two lovely daughters Monika and Paula. Throughout her battle with cancer, they were always by her side.

Within any successful enterprise, there is the heart of the operation. In the case of Julie, she was the heart, the legs, the mind, the backbone, and the can-do spirit of my staff. For me, from the first time she walked into my office, she was also my friend.

Remarkably, from that first day through 24 congressional sessions, three reelections, marriage, motherhood, and her bravely defiant fight against cancer, she never stopped. She never rested. F. Scott Fitzgerald once said, "Action is character." In that case, Julie was character. Now, some

who dealt with her would say "character" is probably an understatement.

Her ability to multitask was legendary. During her time as chief of staff, she could simultaneously talk with me, listen to C-SPAN, BlackBerry instructions to her staff, check out statistics of the previous Vikings game, and evaluate the potential draft picks 9 months in advance—not only for the Vikings, but she learned to do the same for the Kansas City Chiefs and the St. Louis Rams. We tried to keep up, but it was hard.

The fact that she was able to stay in my employ after the Twins-Cardinals World Series of 1987—an epic tragedy for Cardinal fans—speaks volumes to her otherwise high value.

There is seldom enough recognition of the high-caliber people who staff us in the Congress and the government. Julie was exceptional among the exceptional. From 1987 to 2005 while on my staff she was a perfectly reliable source of sound judgment, energy, cheer, and friendship.

She knew the budget, the whip count, the box scores, the news ratings, the third down conversion rate, the poll numbers, the economic report, the schedule, the process, the players, the politicians, as well as every competing argument. But mostly she knew and loved people. She was the ideal public servant.

Our sincere condolences go to Julie's husband Rolf and their daughters Monika and Paula. The girls will carry on with the richest of all inheritances: having their mother's genes and love and guidance to remember. Julie could not have been in more diligent, loving hands than those of her husband Rolf. We thank him for taking such special care of her. We have lost a special friend, but now we are blessed with a special angel.

Madam President, I ask unanimous consent to have a copy of her obituary from the Washington Post printed in the RECORD.

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

Julie Ann Dammann, age 51, passed away on November 13, 2010, after a long battle with cancer. She was born in Roseville, MN, on May 23, 1959, to Mrs. Ervina and the late Dr. Paul Hasbargen. After celebrating their wedding anniversary on November 12, Julie is survived by her loving husband of 22 years, Rolf and their daughters, Monika (15) and Paula (13) of Arlington, VA; as well as her sister Linda Bazille, and husband, Brad, of Emerald, WI; mother-in-law, Leslie Morton of Gainesville, VA; and her father-in-law Rolf Dammann Sr. of Nashua, NH. Julie attended Alexander Ramsey High School in Roseville, MN (1977), and then became a proud Golden Gopher and graduate of the University of Minnesota (1980), where she was an Economics and Political Science major. After graduating, Julie commenced a long career in service to the country she loved. Her career in the United States Senate began as a Legislative Assistant to Sen. Rudy Boschwitz (R-MN). Twenty-five years later, she retired from the U.S. Senate as the Chief of Staff to Sen. Christopher S. "Kit" Bond (R-MO), after serving on his staff since

1987. Throughout her career, Julie played a role in the passage of major pieces of legislation including: The Federal Highway Reauthorization Bills of 1992, 1998 and 2005; the 1987 Farm Credit Act; the 1991 Clean Air Act Amendments; the 1992 Family Medical Leave Act; and the 2002 Help America Vote Act. In 2005, after retiring from the U.S. Senate, Julie joined Ogilvy Government Relations as a Senior Vice President, where she continued her work on various transportation and appropriations issues. Throughout her life, Julie was an accomplished athlete, including playing on the University of Minnesota basketball team. Her lifelong love of sports continued into her adult life as an avid golfer and a formidable soccer player. She was a long-time fan of all Minnesota sports, especially the Vikings and the Minnesota Twins, having attended multiple games during the 1987 World Series. Julie's focus on family and work was only equaled by the intensity with which she followed her Minnesota teams, remembering every play from every game. The passion with which Julie lived her life will be sadly missed by all who knew and loved her. The family will receive guests on Friday, November 19, 2010 from 10 a.m. until the time of service at 10:30 a.m. at the Immanuel Lutheran Church, 1801 Russell Road, Alexandria, VA with a private interment to follow. The family requests that in lieu of flowers, gifts will be received for the "Julie Dammann Family Education Trust". Donations may be sent to: Redmon, Peyton & Braswell, L.L.P., 510 King Street, Suite 301, Alexandria, VA 22314.

Mr. BOND. Madam President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### EMPOWERING STATES TO INNOVATE ACT

Mr. BROWN of Massachusetts. Madam President, I rise today and join my colleague, Senator WYDEN, to speak about legislation we have introduced that will protect not only his State but my State of Massachusetts and other States by allowing them to waive out of specific requirements of the Patient Protection and Affordable Care Act.

As my colleagues know, my single priority is and always has been to ensure that what we do in Washington does not harm my State of Massachusetts or the rest of the country, and that we are responsible stewards with every tax dollar that flows from the States into the Federal Government.

This has been true when it comes to voting against raising taxes on families and businesses. It has been true when it comes to fighting for commonsense, pro-growth policies that will create jobs in Massachusetts. It has been true in my efforts to be sure that the Federal health care reform bill does not diminish or harm the health care innovations that have occurred in Massachusetts.

It is my belief that Congress needs to be held responsible for its actions, for the policies it advocates, and the legislation that ultimately passes through these Halls to become law. When Congress passes legislation that is harmful—in this case the Federal health care reform legislation, which I did not support—or there is an unintended consequence—which I think is the case when it deals with Massachusetts and the innovations we have had for years, where we have 98 percent of our people already insured—Members need to be bold enough to stand up and fix it regardless of party affiliation and regardless of whether it is popular.

I commend the Senator who is about to speak after me for his leadership on this matter. Senator WYDEN has been working very diligently on addressing the concerns for his State. Today I get a chance to do the same. Today we get an opportunity to make a correction to the Federal health care reform bill to be sure we are doing the right thing, not just for Massachusetts but for other States that seek to waive out of certain requirements of the Federal health care reform law.

In many ways, Massachusetts has been on the forefront of implementing health care reform: expanding access—as I mentioned, 98 percent of our people are already insured—designing systems to increase market participation—from the Cadillac plan, all the way to the fully subsidized Commonwealth Care Program—and increasing transparency for consumers and providers. We continue to learn, however, lessons every day in Massachusetts about what works and what does not work, and we are continuing to work on those very issues to make sure we can do it better.

This is an important point because it speaks directly to the purpose of this piece of legislation that I have introduced in a bipartisan manner with Senator WYDEN from Oregon.

As you know, the health care reform efforts of Massachusetts are our own. We were one of the first States in the country to take this upon ourselves to address the very serious problem we had in providing funds to hospitals that were providing care for people who were making a good wage but who were not paying the bills. As a result, the citizens had to subsidize the hospitals to the tune of over \$1 billion. So we believed it was imperative for us to get something done.

As difficult as it is to admit this, not every State wants to be like Massachusetts. I understand that. They may not want to be like Oregon either. Massachusetts is a great State, with, I believe, the best hospitals, physicians, doctors, nurses, treatment facilities, research facilities in the country and around the world. There is a reason why people come to Massachusetts for the care and coverage they need so badly.

But I recognize that my colleague from Oregon is interested in protecting reform efforts in Oregon as well. He

does not want to be like Massachusetts because Oregon is different from Massachusetts. Oregon's insurance market is different. Its provider network is different. Its beneficiaries and population are different than in Massachusetts.

Oregon might want to implement reforms or create a coverage mechanism that I do not like or that I would not want to work in the State of Massachusetts, but that is OK. That is what this bill is about. It allows the individual States to have the right to do what they believe is imperative and important for their particular State, which is why the legislation we have introduced—the Empowering States to Innovate Act—is so important.

Right now, as provided under section 1332—the Waivers for State Innovation—of the Patient Protection and Affordable Care Act, States can waive out of provisions of the Federal reform law. That is the good news. We are allowing States to participate in the process and allowing them not to have duplicate processes or maybe potentially have lesser care and coverage if the Federal health care bill is implemented. So it allows us to continue to provide the care and services we want to provide to our citizens in Massachusetts. The bad news is, this waiver authority is not scheduled to take effect until 2017. So what are we doing until then—a full 3 years after the PPACA is scheduled to be fully implemented?

For me and my dear friend from Oregon it does not make any sense. When I see something that does not make any sense in Washington, I do my best, regardless of party affiliation, to fix it.

The first thing our bill does is to allow States to waive out of specific parts of the PPACA in 2014 rather than 2017. This makes sense not only from an operational standpoint, because the PPACA takes effect in 2014, but also from an economic and fiscal standpoint. Why should Massachusetts be delayed in obtaining a waiver from the Federal reform bill when it may already have met or exceeded, in many cases, the provisions of the act? So holding Massachusetts back by limiting my State's ability to continue to innovate and remain flexible and responsive to the health care market costs money, and it costs the taxpayers money at a point right now where we don't have a whole heck of a lot of money to go around.

The second piece our bill does is to provide States with certainty with the waiver process. Not every State will be eligible. Let me repeat that: Not every State will be eligible for a waiver and not every waiver will be granted. But our bill provides some certainty for States that apply for a waiver by requiring the Secretary of Health and Human Services to begin reviewing applications within 6 months of the enactment of this bill. I hope this bill is enacted quickly. The earlier a State knows whether it has received a waiver, the earlier it can begin implementing its specific plans and proposals. It makes fiscal sense.

Taken together, these two changes are not only good for Massachusetts but potentially for other States. They are good for the other States that are trying to innovate and advance in the areas of health care reform, cost containment, and coverage. That is what it should be. It should be a symbiotic relationship between the Federal Government and the States. The States should have the right to determine what they want to do for their citizenry. Do we think maybe some States could do it better than the Federal Government? I believe when we deal with health care, Massachusetts is second to none, with all due respect to the other Senators in this Chamber.

During Wednesday's Finance Committee hearing, Dr. Berwick, who is from the State of Massachusetts, I might add, said this about State innovation and flexibility:

The cliché about states as laboratories of democracy is not just a cliché, it's true. The diversity of approaches that we're seeing emerge state by state has been there for long time. I think we should be doing everything we can to encourage it.

I couldn't agree more. I am a strong supporter of States rights, especially when it makes sense, and for allowing States to solve problems without the Federal Government's interference.

Madam President, I ask unanimous consent to have printed in the RECORD a letter from the Massachusetts Hospital Association in support of my efforts today.

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

MASSACHUSETTS HOSPITAL  
ASSOCIATION,  
Burlington, MA, November 16, 2010.

Hon. SCOTT BROWN,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR BROWN: As you know, the Commonwealth of Massachusetts has succeeded in expanding healthcare coverage to more than 400,000 uninsured residents. We can be proud of the fact that the state has the lowest rate of uninsured in the country, which has improved the lives of so many Massachusetts residents and allowed the healthcare system to operate more efficiently. Our state was able to achieve expanded coverage of this magnitude through innovative programs like Commonwealth Care and Commonwealth Choice, along with other provisions that were part of the Commonwealth's 2006 healthcare reform law.

For these reasons, the Massachusetts Hospital Association (MHA) supports the bill that you intend to introduce that will advance the timeframe for waivers that were included in the Patient Protection and Affordable Care Act (PPACA). As we understand Section 1332 of PPACA, states may apply for a waiver to certain requirements of the federal law so long as the changes achieve healthcare coverage that is at least as comprehensive as the federal law would have provided. The changes are also required not to increase the federal deficit. The law currently allows states to apply for such a waiver beginning in January 1, 2017. Your proposed legislation does not change the terms or process for approving a waiver that currently exist in the PPACA but does move up the date by which the waiver process may begin.

While the Commonwealth is still years away from decisions that will be made in 2014 and beyond, we believe allowing Massachusetts the opportunity to apply for such waiver earlier than 2017 may allow the Commonwealth flexibility it may desire to continue the success it has achieved thus far. We note that Massachusetts is often referred to as a model for national healthcare reform and we believe any waiver that the Commonwealth would apply for, if it so chose, would seek to achieve a similar goal of affordable, comprehensive health insurance coverage as required by Section 1332.

Massachusetts hospitals have been and continue to be supportive of the federal effort to expand coverage to the uninsured and provide affordable health insurance for all Americans. At the same time, we have stressed throughout the national healthcare debate that national reform should support the Commonwealth's own health reform achievements.

On behalf of Massachusetts member hospitals and the patients they serve, we look forward to working with you to preserve Massachusetts healthcare reform as the nation begins to implement the national healthcare reform law.

Sincerely,

LYNN NICHOLAS,  
President & CEO,  
Massachusetts Hospital Association.

Mr. BROWN of Massachusetts. Thank you, Madam President.

We should be encouraging State innovation and not hampering it, and that is what the Empowering States to Innovate Act does. It helps ensure that States are not held back from innovating and seeking solutions that work for their citizens, their taxpayers, and their communities.

Finally, I wish to associate myself with the comments of the Senator from Oregon when he makes them about how our bill fits into the Federal health care reform debate. Enacting this legislation is the right thing to do because it is good for States such as Massachusetts and Oregon and Utah that have begun to make changes and reform at the State level that make sense for their citizens.

The legislation provides flexibility and says one size fits all is not appropriate and it does not always meet the needs of that individual State. I know the Federal standard is not in the best interests of the people of Massachusetts, which is why passing this bill is the right thing to do.

Let me say I deeply appreciate the Senator from Oregon and his effort to weed through the quagmire of rules and regulations and come up with a commonsense solution. I am hopeful others in this Chamber will learn from our example, that we can work together in a bipartisan manner to tackle problems and try to solve them without the rhetoric and without the bomb throwing and just solve problems. Because right now, we need more people like the Senator from Oregon to do just that.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BROWN of Massachusetts. Thank you, Madam President.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. WYDEN. Madam President, let me commend the Senator from Massachusetts on a very fine statement, which I think highlights exactly what we are seeking to do.

The Senator from Massachusetts has been a real pleasure to work with on this matter. As he says, the whole point of this, as shown by the recent election, is that people want to find some common ground. They are not interested anymore in food fights and bickering back and forth between the political parties. What Senator BROWN and I are seeking to do is to show it is possible on a significant issue—I think we all understand health care is about as important as it gets—that we can come together, and the two of us have said we are going to come together to put the focus on innovation. It is pretty clear that what works in Springfield, OR, may not be exactly ideal for Springfield, MA. But what we can do is come up with a way to provide more flexibility and particularly more choice and more competition for our States and other States around the country.

So I am very grateful to the Senator from Massachusetts for his effort. It is early in the lameduck session, and it is my hope this will be a signal in the Chamber that even on these difficult issues—issues that were so contentious in the political campaign—it is going to be possible to come together and find some common ground.

As the Senator suggests, if we can just move away from a Federal cookie-cutter approach and encourage the kind of creative thinking we have seen in Oregon and in Massachusetts and other parts of the country, I think we will be well served and will be in a position to better contain health care costs. I think we all understand that how to rein in these medical costs that are gobbling up everything in sight is first and foremost on the minds of our constituents. Literally, for the amount of money we are spending today in this country, one can go out and hire a doctor for every seven families in the United States and pay the doctor more than \$225,000 a year just for taking care of seven families. I always bring up this as almost a metaphor for health care, but usually after I am done, the physician who was listening in the audience comes up and says: Where can I go to get my seven families? It sounds like a pretty good deal. It just shows that we are spending this enormous sum of money.

What Senator BROWN and I are seeking to do is to encourage additional innovative approaches in States, approaches that are tailored to the needs of States' own residents, that will help us, in my view, to promote choice and competition in the American health care system. The States are free to do

whatever they choose. I just offer up my own judgment that right now, at a time when most Americans still don't get much choice in their health care coverage, this is an ideal opportunity that both Democrats and Republicans can support. As States seek to go forward with this approach, they can make their own choices.

I hope, in particular, States will take a look at what you, Madam President, the Senator from New York, and I have in our own health care plan. The Federal Employee Health Benefit Plan provides a lot of choice, a lot of competition. You can go out and fire your insurance company if you don't think they are doing a good job. That is the kind of idea a State could pursue and do so, we hope, more quickly if we act legislatively to speed up the waiver process. But as Senator BROWN has correctly noted, this is about giving States the freedom to chart their own course, and I am very hopeful we will be able to get this legislation passed.

In particular, what I have been concerned about, after talking to health policymakers over the last few months, is if, in the State of New York, for example, you go out and set up a process to comply with the legislation for purposes of 2014 and you see that the waiver, as now constituted under 1332, starts in 2017, you say: How am I going to reconcile those two? Am I going to set up one approach for 2014 and then do another approach in 2017? It is going to put us through a lot of bureaucratic water torture to try to figure out how to synchronize those two dates. So it only makes sense to speed it all up and make it possible for everybody to get started in 2014.

One other point because my intentions have been much discussed. When I originally started talking about the State waiver, people questioned whether this was something that was going to be a special opportunity for Oregon and not for other States. For over a decade, I have been promoting the idea that all States—all States—be given the freedom to innovate under health care reform legislation. In fact, to give a sense of how I got into this, going back and looking at the history of the Clinton health care plan, in the early 1990s it was pretty evident that had President Clinton and Republicans thought then about giving States the kind of freedom Senator BROWN and I envision, it might well have been possible back in the early 1990s to enact health care reform that would have gotten all Americans quality, affordable coverage. That opportunity was missed. So I decided by the mid 1990s—if I had the opportunity, the honor, of representing Oregon in the Congress, I was going to use every single opportunity to let all States—and I want to underline all States—have the opportunity to innovate in health care.

So in mid 2005 I started putting together a piece of legislation called the Healthy Americans Act. It was a bipartisan bill, that had 14 or 15 Senators as

cosponsors, depending on when you look back at the legislative history, that were almost evenly divided between the political parties. In the Healthy Americans Act, there was a specific section called "Empowering States to Innovate." There was a provision in that bill that was first introduced in 2006, and a similar provision was included as section 1332 in the law the President signed.

So I have long been interested in letting all States have the opportunity to innovate. One of the reasons I have been interested—and my good friend, Senator MERKLEY, is here—is that our State has been one of the leaders in the whole effort to reform American health care. From time to time, folks have said I am the Senator from the State of Waiver rather than the State of Oregon because we have tried so often to pursue innovative approaches in health care waivers. We were, as Senator MERKLEY knows, one of the first States to say Medicaid dollars that have been authorized for seniors to pay for services in institutions such as nursing homes should be used instead for home health care; thereby giving seniors more of what they want, which is to stay in their homes, at a cheaper price to taxpayers. We began those efforts, as Senator MERKLEY knows, with waivers from traditional Federal law. So we have a long history of doing this, and I have spent well over a decade trying to establish the principle that all States ought to have the opportunity to bring their creative juices to this issue of health care reform.

We have outlined the two key changes in the legislation that is law today. The first change is to make the waivers effective in 2014 rather than in 2017 so States only have to change their systems once. The second thing the Empowering States to Innovate Act does is it requires the Department of Health and Human Services to begin to review State waiver applications within 6 months of enactment of the legislation. This would allow States early notification of whether their State waivers have been approved and would give them adequate time to roll out their State-specific plans. I think this, too, will help us create more competition, more choice, and more affordability in American health care because it will give the States adequate time to gear up. That is the philosophy behind the Empowering States to Innovate Act, whether one likes one particular approach or another. Clearly, there will be great diversity of approaches tried at the State level.

At a time when we are looking for ways to bring this country together to deal with the most contentious issues of our time, we ought to be supporting innovation. We ought to be supporting unleashing creative kinds of approaches to deal with domestic issues. That is what Senator BROWN and I propose in this legislation. I look forward to working with colleagues on both sides of the aisle.

I yield the floor.

The ACTING PRESIDENT pro tempore. The junior Senator from Oregon is recognized.

Mr. MERKLEY. Madam President, I applaud the work my senior Senator from Oregon, RON WYDEN, has been doing in seeking affordable, effective health care for all Americans and, in particular, his work to utilize our State laboratories in developing smart health care strategies that then, if successful, can become a model for the Nation.

This process of utilizing waivers isn't about a State wanting an exception so that it can be different; it is about recognizing that States have powerful opportunities to form policies that work well under particular circumstances but also may provide insights into our whole national strategy for affordable, quality health care.

So for the work Senator WYDEN and Senator SCOTT BROWN are doing, I applaud them and support them, and I thank Senator WYDEN for his decades of advocacy for affordable health care.

#### FOOD SAFETY

Mr. MERKLEY. Madam President, it is a pleasure to rise to speak about the historic Food Safety Modernization Act.

I thank Chairman HARKIN, who worked with me to include provisions to help small farms and processors and organic farms so that they have before them in this bill provisions that support them and will help make them successful. The last thing we want to see is an effort to make our food safety system work better be used as a tool to diminish the ability of small farms and organic farms to thrive. That has been effectively addressed in the bill but also by provisions I will speak to in a while that Senator TESTER is bringing forward.

I also compliment Senator DURBIN, who has been advocating for this bill, working on the elements of the bill for a very long time, and his determined, tenacious advocacy is the reason this bill is on the floor before us at this moment.

I also appreciate the bipartisan problem-solving approach of the ranking member of the Health, Education, Labor, and Pensions Committee, Senator ENZI, and all of the members of the committee for coming together to say: This is not a Republican or a Democratic problem, this is a national health care issue, a national nutrition issue, and let's tackle it together.

The safety of the Nation's food supply is a serious concern for every family in Oregon and across this Nation. I wish to highlight one Oregon family in particular, Jake Hurley and his dad Peter. I am sure they are very happy to see that we have this bill on the floor, and they will be particularly thrilled when we have it on the President's desk because the issue of tracing contaminated food is an issue that has affected their family very directly.

This picture is one of Jake taken when his father Peter came with him to Washington, DC, to testify before this Congress and share their story. Jake's favorite food was peanut butter crackers. When he was 3 years old, he became very, very ill. Those crackers he loved so much were the source of his illness, but because we didn't have an effective tracking system, there was no recall and there was no understanding that the crackers were contaminated. So in his illness, his family continued to share with him his favorite comfort food—those same peanut butter crackers that were making him extremely ill. It turns out they were contaminated with salmonella, and the result was that a child's snack ended up putting Jake's life in danger.

The Food and Drug Administration had already determined that peanut butter was a cause of sickening people across the country, but they hadn't been able to trace the peanut butter and know it had made its way into processed products—in particular, the product Jake was consuming. The Peanut Corporation of America, a peanut processing facility in Georgia, had contaminated peanut butter that went into thousands of products, sickening 714 people in 46 States, including Oregon, and killing 9. The Hurleys and countless other families have been waiting for Congress to pass this bill so that other families don't have to be worried that their children will become terribly sick because we can't track contaminated food.

This bill requires the FDA to create rules for tracing processed foods, such as the peanut butter crackers that made Jake sick last year. It took the FDA over a year to trace all the products that the peanut butter went into during that outbreak in 2009. It is still not clear that they ever found all of the products. This is unacceptable. Provisions in this bill will help prevent not only future outbreaks but also future problems tracking down the contaminated food products.

In my work in the HELP Committee, I secured a provision to ensure that in addition to tracing produce, which was already in the bill, we set up a pilot project to calculate the best practices for tracing processed food, which is a more difficult undertaking. But after the bill came out of committee, Senator SHERROD BROWN worked hard to build on that, and he has strengthened the tracing provisions further in the bill. I certainly thank him for doing that. The bill now requires the FDA to create regulations ensuring quick and accurate tracing of all types of contaminated food.

Better tracing of contaminated food and better coordination between local, State, and Federal food safety officials can help prevent children like Jet Valenzuela from getting food poisoning. I turn now to a picture of Jet. I met Jet earlier this summer in Oregon. This is a picture of him in the hospital 2 years ago, when he became

violently ill from contaminated food. He had a deadly form of E. coli. He was hospitalized in Bend, OR. He became so ill that he was flown to Portland for more intensive care. Jet underwent multiple surgeries, blood transfusions, and was eventually put into a medically induced coma. He came within a hair's breath of dying twice. The scariest part of Jet's story is that we were never able to find what made him sick, despite their best efforts, because we didn't have the type of produce and processed food procedures that could assist in tracking down the source.

So for Jet and Jake, it is urgent to pass this bill. Not only does this help respond, but it helps prevent food outbreaks. No family should have to go through what these families went through. Most parents, including myself, have spent a lot of time worrying about how to keep their kids safe, but we should not have to worry about how to protect our children from the food on our plates.

Implementing food safety provisions has to be done in a way that supports our small farms, our family farms. We cannot have a process that hinders them in operating successfully or puts unnecessary restrictions in their path.

I thank Chairman HARKIN for including language in the bill that I suggested, so that no new regulations would conflict with or duplicate the requirements of the National Organic Program. This ensures that there will not be any food safety regulations that would put their organic certification in jeopardy.

I wish to draw attention to the work Senator TESTER has done. He authored provisions that provide reasonable exemptions for very small farms and processors—farms that sell their products directly to local consumers, farms that sell their products directly to local restaurants or to local grocery stores. This comprises only about 1 percent of our national food production, but it is a very important part of our local economies, a very important foundation for our family farms. So I am proud to support the work Senator TESTER has done in making sure our small local farms are fully accounted for and supported in this legislation.

Also in this bill are exemptions for farms that produce low-risk food, no matter what their size. This is a type of logical flexibility to make regulations apply when they are needed and not provide unnecessary restrictions or hurdles when they are not.

In conclusion, I urge all of my colleagues to support this bill. It will improve the tracing of contaminated food, whether that be produce or processed. It will increase inspections. It will create safety guidelines for farms and processors. It will protect organic farms, protect small farms.

This bill works to prevent contamination as well so that we can avoid unnecessary illness and death. Improvements to tracing contaminated food will not only prevent illness but will

prevent costly recalls for farms and food processors who are not at fault for a particular contamination.

Most important, this bill will help other families avoid what Jake and Jet and their parents went through. Parents should be able to pack their children's lunch boxes without fear.

Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

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#### EXTENDING CURRENT TAX RATES

Mr. MCCONNELL. Madam President, we have a lot to do and not much time to do it in before the end of the session. The American people spoke loudly and clearly on election day. They want us to put aside the liberal wish list and focus on jobs. The most important thing we can do to create jobs between now and January 1 is to send a message to job creators that we are not going to raise their taxes. That is why I offered a bill back in September—S. 3773—that would make current tax rates permanent. This is the only bill that has yet been offered that would prevent a tax hike on anyone. In other words, nobody in America would get a tax hike at the end of this year.

The White House didn't seem to like that idea. They said we should raise taxes on small businesses. But this should be an easy one. We should be promoting private job creation, not killing private job creation. So I look forward to hearing any ideas the White House has to achieve that.

One thing we will need to do before we leave this year is to fund the government because Democrats didn't pass a single appropriations bill this year. So now we will have to mop up in the eleventh hour with an omnibus spending bill that covers all of it. This is one more sign they aren't learning many lessons from the election.

If this election showed us anything, it is that Americans don't want Congress passing massive trillion-dollar bills that have been thrown together behind closed doors. They want us to do business differently. So I will not be supporting an omnibus spending bill. We have seen what happens when Democrats rush legislation and try to jam it through at the last minute, with no time for review or for the American people to learn what is actually in the bill. The "Cornhusker kickback" and

the “Louisiana purchase” are fresh on their minds.

Americans want us to take our time and get things right, and they want us to spend less. The voters have spoken. We need to show that we heard them.

TERRORIST AHMED GHAILANI

Madam President, yesterday’s acquittal in a Federal court of accused terrorist Ahmed Ghailani on all but 1 of 285 charges of conspiracy and murder is all the proof we need that the administration’s approach to prosecuting terrorists has been deeply misguided and, indeed, potentially harmful as a matter of national security.

You will recall that Attorney General Holder assured the American people last year that Ghailani would not be acquitted of the charges against him. Holder said back then:

With his appearance in Federal Court today, Ahmed Ghailani is being held accountable for his alleged role in the bombing of U.S. Embassies in Tanzania and Kenya and the murder of 224 people.

Holder also said back then that Ghailani’s prosecution in civilian court would prove its effectiveness in trying terrorists who were picked up on the battlefield.

At the time, most Americans wondered why we would even take the chance. Now they are wondering when the administration will admit it was wrong and assure us, just as confidently, that terrorists will be tried from now on—from now on—in the military commission system that was established for this very purpose at the secure facility at Guantanamo Bay or detained indefinitely if they cannot be tried without jeopardizing national security.

When it comes to terrorism, we should err on the side of protecting the American people.

Madam President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### FDA FOOD SAFETY MODERNIZATION ACT—MOTION TO PROCEED

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 510, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of Calendar No. 247, S. 510, a bill to amend the

Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. TESTER. Madam President, I wish to make a brief statement about the food safety bill. I very much appreciate the opportunity now that this important legislation is shaping up to be a much better bill with the inclusion of my amendment for family-scale producers. It protects the jobs of family farmers and ranchers and processors. It is time to get this bill passed and strengthen food safety for all Americans.

There is little disagreement that the necessity of this bill is real. If you take a look at the impacts of recent E. coli outbreaks, of salmonella and those kinds of foodborne diseases out there, it is absolutely critical we get this bill passed. I had some concerns with this bill as it was originally introduced, on its impacts to family-sized growers and processors. The fact of the matter is, these are folks who help build this country, and undue regulation on them—and I do believe it would be undue regulation—would simply stop a movement in this country that has gone on since this country’s inception, but more recently we have gone back to it with locally produced foods.

It is critically important my amendment be part of this bill. I appreciate everybody who worked to make that happen. Here is why. We deal with consolidation in our energy sector, we deal with consolidation in our banking sector—we have done it since I have gotten here, and before. We have consolidation in our food industry too. The fact is, we need to not encourage that consolidation. If we can get more locally grown food, if we get producers who connect up with consumers eyeball to eyeball, that is a positive thing. I don’t want to diminish their ability to do that. My amendment protects the ability for farmers markets to flourish and provide food for people locally, without shipping it halfway around the world and back again. Yet this bill also puts regulations on the industrialized folks because, frankly, with the size of their operations and because they are highly mechanized, when a mistake is made it can affect hundreds of thousands of people in 10, 20, 30 States. So this bill is a win-win for consumers, both locally and consumers who deal with the more highly industrialized food suppliers.

People have asked me why do you think the small guys can even be regulated by the local and State regulators in this country? First of all, they are small and there is a pride of ownership there that is real. They raise food, they don’t raise a commodity, as happens when operations get bigger and bigger. There is a direct customer relationship with that processor or that farmer that means a lot. If a mistake is made—which rarely happens—it doesn’t impact hundreds of thousands of people. We know exactly where the problem

was and we know exactly how to fix it. So the traceability of the outbreaks is immediate and is taken care of without impacting 20 or 30 States and hundreds of thousands of people.

As we move forward with this bill, I think it is incredibly important that we do things as we did in the last farm bill—move forward with locally grown food, move forward with that farmers market model that helps people get to know the people who produce and process their food. We don’t want to throw undue paperwork on those folks. They don’t have the ability to do it. It takes them out of the field to do that, and honestly, as they move forward, the consumer and the connection with that consumer makes it so that local entities can do that regulation much better than we can, anyway.

We have been over a pretty long road here over the last many months. I very much appreciate the work Representative DINGELL has done, in the House, on this bill. I very much appreciate the work that was done on my amendment over here. KAY HAGAN in particular, a great Senator from North Carolina, worked closely with me on this amendment and her input was incredibly valuable. I also thank Senator MERKLEY and the work he did on the amendment. I thank the consumers groups out there that I think found a commonsense solution to this issue, and many of the organizations we worked with over the last many months to make sure this bill meets the needs of the people, to make sure we do address the issue of foodborne illnesses and safe food but yet allows the little guys to grow, employ people, and allow that economy to get bigger and better as time goes on.

This is an important bill we need to get done. It makes sense for this country and it makes sense for people in agriculture.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BURRIS. Madam President, I ask unanimous consent to be able to speak as in morning business.

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

Mr. BURRIS. Madam President, I ask unanimous consent to be recognized for as much time as I need to consume.

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

FAREWELL TO THE SENATE

Mr. BURRIS. Madam President, as you know, one of the first duties delegated to freshman Senators is the high honor of presiding over the Senate. I

remember the very first time I sat where you are sitting now, Madam President. Throughout my time as a Member of this august body, I have had the opportunity to spend more than 200 hours in the Presiding Officer's chair and have earned two Golden Gavel. I also had the honor of delivering our first President's—President George Washington's—Farewell Address on his birthday of this year to this august body. From the chair, I have had the opportunity to listen to the words of my colleagues and reflect upon the great debate that unfolds each and every day—as it has always done throughout our Nation's history—in this, the greatest deliberative body in the world.

We come to this Chamber from every State in the Union—Democrats, Republicans, and Independents alike. Each of us carries the solemn responsibility of giving voice to the concerns of those we represent. Although we do not always agree, as the debate on this floor will often show, I am always struck by the passion that drives each and every Senator to stand in this singular place in the world and to speak their mind. It is this passion that will always define this Chamber for me. For all the weight of history—for all the great and eloquent sentiments that have been expressed by our forefathers—on a fundamental level this remains a very human place.

We stand today, as the Members of this body have done frequently throughout our great Republic's history, at a critical moment. Partisanship and obstructionism threaten to somewhat paralyze this great institution. But it is a testament to the inherent wisdom and durability of the Senate—of the rules and the tradition that govern this institution—that even in the face of great discord we have had the high privilege of serving in the most productive Congress in generations.

Despite our many differences, I believe the men and women who make up this Senate remain its greatest strength. It has been the honor of my lifetime to once again represent the people of Illinois and to do so in the Senate. First, as a cabinet member for our Governor, as the Illinois State comptroller, and as Illinois attorney general, the people of my State placed in me a sacred trust and one that throughout my 30 years in public service I made into my life's work: to serve the people of my State to the very best of my ability.

In my younger years, shortly after graduating from law school at Howard University, not far from where we stand today, I was turned off by a city with far too much government. I headed to Chicago, convinced that I would not return to this city unless I could be an effective and meaningful part of the solution to the many challenges we face and dreaming of a time I might come back to Washington as a Senator or as Vice President of the United States.

That dream took longer to achieve than I could have imagined that day, but in a towering testament to the vibrancy of the American dream, that day came. After decades of experience in the executive branch of Illinois government, I was sworn in as a Senator for Illinois, and this became my first introduction to serving as a legislator. It was the steepest of learning curves, but with the warm assistance of my Senate colleagues, the steady support of my loving family, and the dedication of my tireless staff, I could not be more proud of what we have been able to accomplish together.

To my family, my friends, and my staff I owe the deepest thanks. My wife Berlean has always been by my side, and I will always be grateful beyond words for her constant support. My son, Roland II and his wife Marty, and my daughter Rolanda are the pride and joy of my life. Of course, they were just here yesterday, my two grandchildren, Roland Theodore and Ian Alexander, to whom I dedicate my service and for whom I have the greatest hopes and even greater expectations.

To my friends and supporters from Chicago to Centralia, I will never forget your smiles and your kind words during even the most difficult of times. To my staff, in DC and those in Springfield, Moline and Carbondale, you have been some of the most dedicated, talented, and professional individuals with whom I ever had the privilege to serve. From the front office staff assistants and interns answering the endless ringing telephones, to my circle of senior advisers who gave me wise and thoughtful counsel throughout, my team has been indispensable to me, and they have all served the people of Illinois with distinction. I am deeply grateful for their service.

Madam President, I ask unanimous consent that the complete list of my staff be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BURRIS. Thank you, Madam President.

I wish to extend a special word of gratitude to my old friend who is sitting right there, the Sergeant at Arms, Terry Gainer; the Secretary of the Senate, Nancy Erickson; the secretary for the majority—where did she go—Lula Davis; for their many kindnesses, and a thank-you to the Senate Chaplain, Dr. Barry Black, for his counsel and prayers during my time here.

I also wish to acknowledge my fellow freshman Senators: Senators BEGICH, BENNETT, FRANKEN, GILLIBRAND; the Presiding Officer, the North Carolinian, Senator HAGAN; as well as Senators MERKLEY, SHAHEEN, MARK UDALL, TOM UDALL, MARK WARNER, and our just departed Senator Kaufman from Delaware. They are tremendous individuals possessing incredible talents and have been a very supportive group

for me. Thank you, my freshman colleagues.

In a broader sense I wish to also thank all of those who serve under this hallowed dome with quiet and often unheralded dignity and duty. The Senate floor staff, you all do a heck of a job—the maintenance crews, the elevator operators, the Capitol Police, the Senate train drivers, the dining room servers, and the scores of others whose hard and important work ensures the smooth and constant operations of the business that takes place within our Capitol.

As I stand to address this Chamber for the last time, I cannot help but reflect on the unlikely path that led me to this point and upon the challenges we continue to face. When I first came to the Senate nearly 2 years ago, our Nation was only days away from inaugurating an African-American man from Chicago as the 44th President of the United States of America. It was a national milestone I never thought I would ever live to see, an incredible moment that speaks volumes about the progress our country has made even in my lifetime.

As a child, I knew the injustice of segregation. When I was only about 15 years old, I helped integrate the swimming pool in my hometown of Centralia, IL. Although that incident drove me to pursue a life of public service—dedicating myself to the goals of becoming both a lawyer and a statewide elected official—there was never any guarantee that such a path would be open to me. There were no people of color in elected office in those days, especially not in Illinois and not in Centralia, and there was no path to follow. So I knew from the start that I would have to blaze a trail.

Despite the lack of established role models, my parents provided nothing but support and encouragement. They nurtured my dreams and helped me develop the skills to achieve them. In the end, they and my older brother Earl, who is now deceased, and my sister Doris, God bless her, who is still living, were the only role models I needed. The values they instilled in me—of hard work, determination, and unwavering dedication to principle—have guided me throughout my life, and the same values have driven me to take an interest in the next generation.

It is that focus on the future that drives all of our legislative energy, to constantly improve the quality of life for the generations to come.

Not too many generations ago, my family roots told a different story. I stand in this Chamber as the great-grandson of a man who was born into slavery, in an era when this Senate debated whether he and others like him were worthy of freedom and equal treatment under the law. Yet today I stand among my colleagues on the Senate floor, a Member of the highest body of lawmakers in this land. In some ways, this is a remarkable testament to our Nation's ability to correct the

wrongs of generations past, to move always toward that “more perfect Union.”

However, in other ways, it is a solemn reminder of how far we still have yet to go. In a country as progressive and diverse as any on this planet, I am today the only Black American Member of this Senate. Aside from myself, I can count the number of Blacks who have served in this body on the fingers of a single hand: Blanche K. Bruce, Hiram Revels; Edward Brooke, the last from Illinois, Carol Moseley-Braun, and our President, Barack Obama.

Throughout 220 years of Senate history and 111 Congresses, only six Black Americans have been able to serve. This is troubling in its own right. But when the 112th Congress is sworn in this coming January, there will not be a single Black American taking the oath of office in this Chamber.

This is simply unacceptable. We can and we will and we must do better. In this regard, and in others, our political process has proven less successful and less representative than it ought to be. Although I have never allowed my race to define me, in a sense it has meant that my constituency as a Senator has stretched far beyond the boundaries of Illinois.

Letters, e-mails, and telephone calls have poured in to my office from Black Americans from all across the country, and at times, as I have tried to bring their voices to this Chamber, I have acutely felt the absence of any other Black person to represent them.

Our government hardly resembles the diverse country it was elected to represent. Partisan bickering has driven moderates out of both parties and made principled compromise more difficult for those who remain. Too often our politics seem to have become a zero-sum game. It is easy for people to believe that the best argument or the plainest truth would not necessarily win the day anymore. In such a destructive political environment, people are often left wondering who will speak up for them. And the media certainly isn't blameless. News outlets which could play a critical role in educating the American public with facts too often bow to ratings or quick sales and, in the process, end up choosing to pursue the entertainment value of conflict over thoughtful analysis.

This is the harsh reality we face.

America just can not afford this any longer. We should check these notions at the cloakroom door.

This is a critical moment.

So I believe it's the responsibility of everyone in this chamber to take ownership of this process once again, to demonstrate leadership, and pledge a return to more responsible rhetoric, and more responsive government.

What we face is a test—not only of our willingness to meet the challenges we face, but of the democratic institutions designed to cope with these challenges.

Here in the U.S. Senate, this question is paramount.

Have our destructive politics left this great body locked in a stalemate—unable to move forward, because of the petty obstructionism that has taken root?

Or can this Chamber be made to address these problems once again? Can it be redeemed, by the good people who serve here?

I have confidence that it can.

It will require the concerted effort of all one hundred Senators to overcome the partisanship that has paralyzed this chamber, and the obstructionist tactics that have become the rule rather than the exception.

Colleagues, this is the moment to summon the strength of our convictions, and fight for what we believe in.

This is the hour for principled leadership, originating right here in the U.S. Senate.

But even as we look to the future and debate the agenda for the upcoming year, I must note with regret that my time here is nearly at an end.

Serving as a Member of this body, alongside so many fine colleagues who have become good friends, has been the honor of a lifetime.

Together we have achieved passage of the most ambitious legislative agenda since the Great Depression. And a great deal of the credit for our success is owed to Leader HARRY REID.

And I am proud of every vote I cast in the name of the people of Illinois, and proud of the more than the 60 bills I sponsored and over 300 I have cosponsored.

In the 22 months I have been a Member of the Senate, I have advocated for comprehensive health care reform designed to meet the goals of a public option, and fought to address health care disparities that separate minority communities from the population as a whole; pushed for redirection of subsidized funds that made \$68 billion available for new Pell grants and extended new opportunities for minority students to attend historically Black colleges and universities, and predominantly Black Institutions; stood up for minority-owned businesses, and made sure they will have equal opportunity to share in America's renewed prosperity as our economy continues to recover; worked hard to extend unemployment insurance, improve access to COBRA benefits, and create jobs for the people of Illinois and across the country; voted for the sweeping stimulus package that brought this country back from the brink of economic disaster and started us on the road to recovery; introduced legislation that would improve transparency and accountability as stimulus dollars are spent, so the American people can keep their elected officials honest; cosponsored legislation to repeal the military's discriminatory don't ask, don't tell policy, so all of our soldiers, sailors, airmen and marines can serve openly and had a press conference on that.

I say to my colleagues, don't filibuster that issue. We need all of our in-

dividuals to have an opportunity to serve in the military service, regardless of their sexual orientation. Don't be surprised if I come back for that vote. I am from Chicago, and I will vote twice. I supported major credit card reforms, to prevent credit card companies from abusing their customers; fought for equal pay and benefits for women, to cut down on workplace discrimination; fought for additional impact aid funding, to shore up federal support for school districts that serve military communities and other Federal activities; honored the accomplishments of pioneers like Vice Admiral Samuel Gravely, the first African American to serve as a flag officer in the Navy, and the Montford Marines, the first African-American Marine division; supported the Matthew Shepard Act, which will help make sure those who target people based on sexual orientation, race, or other factors are brought to justice; raised my voice on behalf of Main Street, and all those who have been left behind in our continuing economic recovery, so that everyone can share in the benefits; introduced legislation calling for the Department of the Interior to study a historic site called New Philadelphia, IL—the first settlement founded by a freed African-American slave—for its preservation as part of the National Park system.

I hope, as a legacy to BURRIS, that someday that legislation will pass.

I raised awareness of youth violence, which threatens our children and tears our inner cities apart—and must be stopped; fought for veterans' benefits, including the implementation of the new GI bill, so we can honor the service of those who defend our freedom.

And now, as we ready to close the books on the one hundred and eleventh Congress and the long and significant chapter of legislative accomplishment, it is time for a new class of Senators to join this fight.

I am deeply grateful to my friends on both sides of the aisle for the passion they bring to their work every day.

I have witnessed it from the Presiding Officer's chair—and have had the privilege not only to watch the debate but to take part.

But now it is time for me to find new ways to serve.

This is the arena where great ideas are put to the test, on a national stage. This is where our identity is forged anew, every day, and where our principles are challenged.

It is the heart of our democratic process. And although there will be few easy solutions for the problems we face, I will never forget the courage and patriotism that I have seen from countless citizens of Illinois and America over the course of my time here.

This is a trying time for our Nation. But as long as the American people have the wisdom to elect leaders like the ones I have come to know in this Chamber—and as long as this Senate remains true to the people we serve—I

will never lose faith in our ability to overcome these challenges together.

These are my parting remarks from this body. I treat this as an opportunity of a lifetime, and I treat this with great respect and dignity for all of those I have worked with and have come to know in this body.

With that, I thank the Chair, I thank all my colleagues, and I yield the floor for the final time. God bless you all. Thank you.

## EXHIBIT 1

OFFICE OF SENATOR ROLAND W. BURRIS STAFF LIST

## WASHINGTON DC OFFICE

Dori Alexandre, Legislative Aide; Roosevelt Barfield, Military Legislative Assistant; Eleanor Bastian, Legislative Assistant; Charles Brown, Legislative Assistant; Nicholas Catino, Legislative Aide; Nate Davern, Legislative Aide; Cynthia Dorsey, Intern Supervisor; Amanda Fox, Legislative Assistant; Joel Griffith, Staff Assistant/Driver; Cristen Hall, Counsel/Legislative Assistant; Giana Hutton, Staff Assistant; Renee Johnson, Legislative Aide; Andy Keeney, Correspondence Manager; Brady King, Chief of Staff; Ursula Lauriston, Deputy Press Secretary; Ken Montoya, Legislative Director; Kyle Moore, Military Fellow; Terry Mullan, Legislative Aide; Robin Nichols, Director of Scheduling; Jim O'Connor, Communications Director; Ford Porter, Legislative Aide; Aleysha Proctor, Administrative Director; Shomaila Sharif, Deputy Administrative Assistant; Stephan Tibbs, Special Assistant.

## CHICAGO OFFICE

Rachelle Badem, Grant Coordinator/Special Assistant; Matt Berry, Outreach Rep.; Jacqueline Dawkins, Constituent Service Agent/Outreach Rep.; Scott Kagawa, Outreach Rep.; Rodney LaBaue, Staff Assistant; Jazmine Hasty, Small Business Outreach Rep.; Frank S. McClatchey, Small Business Coordinator; MyRon McGee, Constituent Service Agent/Outreach Rep.; Kristina Michell, Constituent Service Agent; Jason Miller, Constituent Service Agent; Richard Porter, Director of Outreach; Chris Russo, Special Assistant; Kenneth Sawyer, State Director; Tami Stone, State Scheduler; Audrey Till, State Press Secretary; Zorie Valchev, Constituent Service Agent; Erin T. Williams, Assistant to State Director; Marianne Wolf-Astrauskas, Office Manager/Intern Coordinator.

## SPRINGFIELD OFFICE

Ceceilia Haasis, Constituent Service Agent; Jamar Johnson, Constituent Service Agent; Sally Millichamp, Constituent Service Agent; Bradley Smith, Constituent Service Agent; Jimmie Voss, Downstate Director.

## CARBONDALE OFFICE

Dina Timmons, Field Rep./Constituent Service Agent.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of New Mexico). Without objection, it is so ordered.

Mrs. HAGAN. Mr. President, as I see my colleague, Senator BURRIS, still on the floor, I wish to thank him for his excellent work and his comments today. He will certainly be missed by all of us.

Mr. BURRIS. I thank the Senator from North Carolina.

Mrs. HAGAN. Mr. President, today I rise in support of S. 510, the FDA Food Safety Modernization Act, and also in support of an amendment I cosponsored with my colleague from Montana, Senator JON TESTER.

Each year, upwards of 70 million Americans are sickened from foodborne illnesses. Thousands of the most vulnerable, including children and the elderly, die. I do not think there is anyone who has not heard of the massive recall of millions of tainted eggs that sickened nearly 1,500 people. We need to find a better way to protect Americans from these tragic deaths.

During the HELP Committee's consideration of the bill late last year, we had the opportunity to hear from Dan Ragan, director of the North Carolina Department of Agriculture and Consumer Services Food and Drug Protection Division, about the innovative steps that North Carolina is taking to prevent and address food safety problems. North Carolina was one of the first pilot States for the Manufactured Food Regulatory Program Standards, MFRPS. And North Carolina has a robust training program for those dealing with food safety issues. I am proud that my State is leading the way forward in trying to prevent and quickly address foodborne illnesses.

At the same time, North Carolina is a farming State. And in my State, we have honest farmers who work very hard to make a living. Unfortunately, oftentimes when there is a food safety breach followed by a massive recall, the producers or farmers suffer dire financial consequences. Farmers are at the front of the food supply chain and frequently are not responsible for the food safety breach further down the line.

Many farmers in North Carolina are still struggling, particularly after the salmonella outbreak at the Peanut Corporation of America and after the massive recall of tomatoes nationwide in 2008.

One such farm is Patterson Farms, a third generation family-run farm in China Grove, NC. The family has been growing tomatoes since 1919 when James A. Patterson began growing vegetables.

Currently, Patterson Farms, Inc., operated by James A. Patterson's grandsons, Doug and Randall, grows about 350 acres of tomatoes, including mature green, vine ripe, and Roma tomatoes. In addition to growing tomatoes, the Pattersons grade, pack, and ship their tomatoes across the United States and Canada. Patterson Farms is currently the largest tomato grower in the State of North Carolina.

The 2008 erroneous safety citation for tomatoes by the Food and Drug Administration cost the Pattersons dearly. While consumer demand for tomatoes dropped between 50 and 60 percent, Patterson Farms lost hundreds of thousands of dollars. The damage was so severe that Doug and Randall could not pay back their farm operating loan at the end of the year—marking the first time in the history of Patterson Farms

that they were not able to pay back their operating loan.

In fact, they had to borrow more money to stay in business. With very narrow profit margins, the massive recalls such as this certainly can jeopardize the financial stability of farms that have been in families for generations. That is why I think the FDA needs to be very sure about the source of a foodborne illness when it institutes a recall, and why I fought hard to include a provision in this bill to look at new and existing mechanisms available to provide restitution.

Specifically, the language in this bill directs the GAO to conduct a review within 3 months on new and existing mechanisms available to provide restitution in the event of an erroneous mandatory food safety recall. If such mechanisms do not exist or are inadequate, then within 90 days the Secretary of Agriculture must conduct a feasibility study on implementing a restitution program.

One false recall can put a family farm out of business. And while I support giving the FDA mandatory recall authority, I want to make sure there are enough protections in place for farms such as the Patterson farm, which were brought to the brink of bankruptcy through no fault of their own. This study language is an important step in ensuring that farmers are treated fairly.

I am also pleased to be a cosponsor of the amendment by my colleague Senator TESTER, which will be included in the final bill. While I believe strengthening our food safety standards and giving FDA the enforcement authority it needs is critical to ensuring public safety, this bill would have imposed Federal regulation on even the smallest food producers, including family farms.

Take, for example, a small family farm in North Carolina that produces homemade jams and jellies to sell on their farm, at the farmers market, or to the local food co-op. This farm would have to register with the FDA and develop a costly hazard analysis and risk-based preventive control plan, similar to the plans required of large food companies. Small producers in North Carolina already have to use a North Carolina Department of Agriculture-approved commercial kitchen to make these products.

To allow small producers to remain in business, this amendment ensures that the smallest producers selling directly to consumers can continue being regulated at the State level. Also, farmers raising produce to sell directly to consumers at farmers markets and food co-ops face significantly different issues and pose less risk than those selling into the industrial supply chain, and should not be regulated in the same way.

North Carolina is a farming State, and I value farming as an institution that is central to my State and America's history and our culture. In my

State we have honest farmers who work very hard to make a living.

I believe, with the restitution study language, and with the adoption of the Tester-Hagan amendment, this food safety bill strikes the right balance between protecting the public health from foodborne illnesses while ensuring our Nation's farmers can continue to feed Americans.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 3 p.m. and reassembled when called to order by the Presiding Officer (Mr. FRANKEN).

#### FDA FOOD SAFETY MODERNIZATION ACT—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Oklahoma.

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

The PRESIDING OFFICER. The Senate is not in a quorum call right now.

Mr. COBURN. Oh, very good. Then I withdraw my request and ask that I might be recognized.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COBURN. Thank you, Mr. President. I wish to spend a few minutes discussing the bill that is before us. Having been a manufacturing manager for 10 years, producing products that came through the medical device industry, and having dealt with the FDA as a manufacturer and then having dealt with the FDA and the consequences of the FDA as a physician over the last 25 years and then looking at this bill that is on the floor today, I think it addresses three things I have talked about, especially in Oklahoma over the last year.

Everybody recognizes this Nation is at a critical point—fiscally, internationally. From the standpoint of foreign policy, it has been impacted by our fiscal problems. But there are three structural reasons why I think we are there, and I think we need to learn from them. This bill provides us a great example.

The first is, as a physician—and I knew it as a business manager—you have to fix real problems. If you fix the symptoms that have been created or the circumstances that have been created by the real problems, you will make things better for a while, but you actually will not solve the underlying problem. What happens when you do not solve the underlying problem and fix the symptoms is, you delay the time and you also increase the consequences of not fixing the real problems.

Second, if you only think short term, you do not have the planning strategy with which to do the best, right thing

in the long term. We consistently do that in Washington. Consequently, the CBO put out the unfunded liabilities for Medicare, Medicaid, and Social Security yesterday. It is now \$88.9 trillion. It was \$77 trillion last year. It was \$63 trillion the year before. So we are up \$26 trillion in unfunded liabilities that we are going to pass on to our kids in 3 years because we continue to think short term instead of long term.

Then, the fourth thing is to have the courage to stand and say: No, we should not do things that address the symptoms; we should address the underlying problems. No, we should not think short term or parochially; we should think long term and address that issue.

As to the food safety bill, all my colleagues are very well intended in terms of what they are trying to accomplish with it. But there are some facts we ought to be realistic about. We could spend \$100 billion additionally every year and not make food absolutely safe. There are diminishing returns to the dollars we spend. But if you look at what the case is: In 1996, for every 100,000 people in this country, we had 51.2 cases of foodborne illness—the best in the world, by far. Nobody comes close to us in terms of the safety of our food. But, in 2009, we only had 34.8 cases—three times better than anybody else in the world. So the question has to be asked: Why are we doing this now when, in fact, we are on a trendline to markedly decrease it? The second question that should be asked is: No matter how much money we spend, is there a diminishing return?

There are a lot of things in this bill that I agree with—a lot. I think foreign food ought to be inspected before it comes into this country and I think those who want to sell products in this country ought to have to demonstrate the quality of it and I think the cost of that ought to be on the person selling the food, not on the American taxpayer. But ultimately that cost will be added to the cost of the food.

I think the recognition of peanut allergy is a realistic one, and I understand the purpose for wanting a grant for that. But as I read the Constitution, that is a State function. That is not our function. The other thing that bothers me about the grant proposals—I walked out of the deficit commission to come over here. I have spent 8 months in that commission looking at the problems in front of this country. We cannot afford another grant program. We do not have the money.

So we can say we are going to authorize it in this bill, but, do you know what, it is not going to get funded next year because we do not have the money. When the interest rates skyrocket in less than a year from now because of our misplaced spending over the past 20 years and our continued short-term decisionmaking instead of long-term decisionmaking, our situation is going to grow even darker. So this bill provides a wonderful example

of how we ought to fix the real problems instead of the symptoms of the problems.

The other thing that truly is not addressed is the long-term criticisms the GAO has continually made on our food safety. Senator HARKIN has the best idea of all, but he could not get everybody to do it; that is, an independent food safety agency, to where we are not relying on the CDC, we are not relying on the FDA, we are not relying on the Department of Agriculture, that we put them all into one and say: You are responsible for food safety. But he could not sell that.

Ask yourself the question: If you had three different agencies stepping all over each other with different sets of rules with agreements between themselves that they will do certain things, and then they do not do them—that, by the way, is why we had the salmonella problem; they did not follow their own protocols to notify the FDA of the problem—most commonsense thinking people would say: Well, maybe you ought to put all those things into one agency, with one boss and one line of accountability and responsibility.

So Senator HARKIN is absolutely right in where he wants to go. We are going to spend \$1.5 billion over the next 5 years on this bill that does not accomplish what we need to accomplish, which is what Senator HARKIN wants to do—and he is right—and we are not going to fix the criticisms that have been leveled against the agencies by the GAO for 8 years, in spite of the fact, as I stand here and am critical of different agencies, they actually have done a very good job. That is known by the fact that our incidence of foodborne illness is now less than 34 per 100,000 people. Think about that. Think about all the sources of food we get in this country and the diverse places they come from. Yet only 34 people get a staph poisoning or a nontoxicogenic *E. coli* poisoning or a salmonella poisoning or a *Yersinia* poisoning or a *Shigella* poisoning in a year. So that is the incidence of illness.

The question is, How do we stop the 10 or 20 deaths a year from foodborne illness? Can we do that? Well, as a physician trained in epidemiology, we could do it. But I will posit we do not have the money to do that because it would take billions upon billions upon billions of additional dollars to ever get there. So we find ourselves in a dilemma.

I commend to my colleagues the reports GAO-09-523, GAO-09-873, and GAO-05-213.

The GAO does a wonderful job telling us where we are failing, and we ought to address everything they raised in these reports.

Even further than that, Dr. Hamburg, around the time we were having the salmonella with the eggs problem, released an egg standard. The bureaucracy took 11 years to develop that standard. That falls on the shoulders of President Bush's administration as

well as this one. I am proud of her that she got it out. But the fact is, 11 years to do what you are responsible for, to get an egg standard so we do not have significant salmonella poisoning coming from eggs? Then, lo and behold, after the egg standard is out, the FDA inspectors on farms in Iowa are violating their own protocols, cross-contaminating egg farms, as documented in the press.

It is not a matter that we do not have enough rules and regulations. That is borne out by the fact that we are continually seeing a decline in foodborne illness. That is not the real problem. The problem is effectively carrying out the regulations that are there today. So we have a bill on the floor that has 150 to 170 pages—I cannot recall exactly how many it is—here it is. It is 266 pages of new regulations, new rules, new requirements.

Let me tell you something else I learned about dealing with the FDA. The FDA overall in this country does a fantastic job. They do. They are very professional. They are very slow sometimes, but they are very professional, and they are very cautious. In this bill is a mandate to require recalls. Not once in our history have we had to force anybody to do a recall. It has always been voluntary, and you can check with the FDA on that. They do not need that authority. Why don't they need that authority? Because if you have a problem with your product in the food system in this country, you are going to get sued. You are going to get fined if you do not recall that product.

What is wrong with a potential mandatory recall? What is wrong is it is going to markedly raise the cost of foods. Let me explain why. It is called Coburn's bureaucratic principle: Do what is safe first in the bureaucracy rather than what is best.

Here is what I imagine happening with a mandatory recall. Because we have a problem, we are going to recall something and we are going to force a mandatory recall. Even though they may recall it voluntarily, somebody is going to pull the trigger earlier, because they don't want any criticism. There is a great example for that. How many people remember the toxigenic *E. coli* jalapeno pepper episode? Voluntary recall for tomatoes, because we said it had to be in the tomatoes, so they did that. That cost \$100 million to the tomato farmers in this country and didn't save one life, because they got it wrong. They discovered about 10 days after that, it wasn't the tomatoes, but the damage was already done. I can remember I ordered my hamburger in my special place in Muskogee, My Place BBQ, and I couldn't get a tomato on it. The reason we couldn't get a tomato—there wasn't anything wrong with tomatoes in this country; it was because a recall had been suggested by the FDA and the tomato growers responded.

So what we are going to see is a heavy hand rather than a working, co-

ordinated foundation upon which we do recall, as we do now. We have not had one instance ever when a food needed to be recalled that wasn't voluntarily recalled.

What I worry about is the fact that we will have recalls that are mandated much too soon on the wrong products at the wrong time. We don't have a track record that says the government needs additional power. As a matter of fact, the FDA doesn't say they need additional power.

So let's summarize for a minute. Where is the crisis in food safety, when the science demonstrates that we have the safest food in the world and we are on a trendline to have it even safer? Where is the cost-benefit analysis in terms of what we are going to get from spending another \$1.5 billion in terms of lowering that number? There is nothing in this bill to show that. What is in this bill are tremendous new sets of regulations and authorities on top of the authorities that both the CDC, FDA, and Department of Agriculture already have, that I don't believe—and I agree I am in the minority on that, but I am trained in the area of medicine, science, and epidemiology—I don't believe we are going to get a significant cost-benefit from it.

We are going to feel better because we did something. But, again, that goes back to the first three principles. If we don't treat the underlying problem—in other words, have the oversight hearings to make sure the agencies are actually carrying out their functions every day on a thorough basis that can be vetted and making sure we are doing the right things to create the opportunities to have safe food—we are not accomplishing anything, but we are going to feel better. But do we know who is going to feel worse? Our kids. Because they are going to pay—if we appropriate this money, and I highly doubt a good portion of it will be appropriated—they are going to pay for it. If you followed last week in international finance, the scare over Ireland's ability to repay its debt, and the pressure it had—and we got good news on the economic front today—good news, and it is welcome news by all of us. But the fact is, what is happening in Ireland and in Greece and Spain and Portugal is getting ready to happen to us. And this is a small example of why—very good-intentioned, well-intentioned people trying to do the right thing, fixing the symptoms instead of the underlying problem.

Our answer is more regulation has to be the answer. That is what we did in the financial regulation bill. That is what we did to the SEC after Bernie Madoff. Everybody knows the SEC was alerted several times, but they didn't do their job. Consequently, we put all of these new rules and regulations to not let another Bernie Madoff scandal happen when we should have been holding people accountable for not doing their jobs.

I am not against regulation, but I think it ought to be smart, targeted,

and focused to real problems, not the symptoms of the problems. It is my personal belief—that we are targeting symptoms and not the real problems with this bill.

Senator HARKIN has bent over backward to work with me. He is an honorable man. He is interested in food safety and the welfare of this Nation. Nobody should ever say otherwise. But my experience leads me to believe it isn't going to accomplish the very purpose he wants to accomplish, and my recommendation is to go back and work in the new Congress to develop a true food safety center organization within the Federal Government that combines all the factors.

Do my colleagues realize right now when we buy a pizza at the grocery store, if you buy a cheese pizza it comes through the FDA, but if you buy a pepperoni pizza, it gets approved by the U.S. Department of Agriculture? How many people in America think that makes sense?

The other thing with this bill—and I will finish with this and then yield the floor—is this bill wants more inspections. That is great. There is no question that inspections will help; the question is what is the return on the dollars we spend for it. But if we are going to use more inspections, there is not nearly enough money in this bill to do it effectively. That is what we are going to trust.

Let me tell my colleagues why I think we have the safest food in the world: because we have the best legal system in the world. That is why we have the safest food, because the market forces applied on somebody selling food into our commerce are so great and the consequences legally are so negative that it is only in their best interests to bring a safe product to the market. When we have food scares, most of the time it is not an intentional act that created the problem, it is an unintentional act. It is a failure of someone in carrying out a protocol that should be established.

Under this bill, anybody who sells more than \$500,000 worth of food—that is almost every Amish farmer in America—a co-op of Amish at every farm—will have to have a detailed, laid-out plan, written down, double checked, cross checked and everything else. What do my colleagues think that is going to do to the cost of food? Do my colleagues think as we implement new regulations, those costs aren't going to be passed on? So as we grow the government, if, in fact, we are treating symptoms and not underlying problems—and I don't have any problems with regulations that address real problems—all we are doing is raising the costs and making ourselves less competitive, decreasing the number of jobs that are available in this country, and not truly ensuring an increased level of safety with our food supply.

It is hard to dispute the facts about our incidence of foodborne illness. One case is too many. But we don't have

the resources to make it where there is not one case, even. It is the same question on homeland security. Can we ever spend enough money to 100 percent guarantee that we won't have another terrorist attack? Anybody who looks at it says no, we can't do that. It is the same with food. For every additional dollar expended, what is the return to the American consumer for that?

If it were an achievable goal to eliminate all foodborne illness, I would be right there with you. It is not achievable. It is going to happen. The question is: Can we continue on a slope to continue to decrease the frequency where we have the least amount for the dollars we spend? There is a balance, and we need to be there. I will take the criticism of my colleagues that they think we need to spend this additional \$1.5 billion to get it further down the road. But I still raise the question of how we cut it in half over the last 9 years—or 5 years—and didn't spend anything. So we are on a good trend.

We are, unfortunately, going to have complications with our food supply, but we have a great legal system where we have bad actors such as the peanut butter factory in Georgia which is now shut down, in bankruptcy, and people are going to jail, because they intentionally violated the rules we have today. But how did they intentionally do it? Because we didn't have effective carrying out of the regulations we have today.

I appreciate the great manner in which Senator ENZI and Senator HARKIN have worked with me. I have another amendment I wish to offer on this bill. Everybody knows what it is. It is an earmark amendment. I understand the disdain for having to vote on that and I understand the procedural moves that will be made for that, but we are going to vote on it. We are going to suspend the rules to get the first vote, but I can assure you in the next Congress we are going to get an up-or-down vote on it, and it is going to pass in this body because the American people expect it to pass. It is something we ought to put away until we get out of the problems we are in nationally.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Minnesota.

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

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

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

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

Ms. KLOBUCHAR. Mr. President, I am here today to highlight the urgency of passing the legislation to overhaul

our Nation's food safety system. The last time the FDA's law related to food was changed in any substantial way was 1938. Think of how things have changed since that time: food coming in from all over the world. We think about all of the new producers and the new processing plants and the new kinds of food we have that weren't available in 1938. An overhaul of the food safety system is long overdue, and so is the passage of the Food Safety Modernization Act. Food safety reform should have passed Congress and should have been signed into law months ago. I have stood in this Chamber many times saying the same thing. Each time, each month, something new comes up where people get hurt or people die. Whether it is jalapeno peppers or peanut butter or more recently eggs, these outbreaks of foodborne illness and nationwide recalls of contaminated food highlight the need to better protect our Nation's food supply. We need to fix it.

The good news is we know how we can do it and we have legislation sitting right here on the table that could go a long way toward helping families at their own kitchen tables. The bad news is this legislation has been stalled in the Senate since last November.

This legislation is, first of all, comprehensive. It covers everything from ensuring a safe food supply at the front end to ensuring a rapid response if tainted food gets into the supply chain.

I wish to respond to a few points my colleague from Oklahoma raised. First he noted that somehow the FDA didn't need the authority to recall. In fact, right after the last outbreak, the egg issue, the eggs in Iowa, the FDA Commissioner came out and said she needed additional authority to do a recall. So let's set the record straight on that. That was wrong.

Secondly, I would point out that this legislation is bipartisan. It has both Democratic and Republican sponsors and it passed through the committee, the committee on which the Presiding Officer serves, last November with bipartisan support. Food safety is not a partisan issue and it shouldn't be. It is a national issue of public health and public safety. Do my colleagues know what else? It is a business issue. So when I heard my colleague from Oklahoma talk about how somehow it was going to hurt the bottom line, I wish to know why the grocery stores of America support this bill. Does anyone think they are not worried about their bottom line?

I would like to know why companies such as General Mills support this bill, and why companies such as Schwan's in Marshall, MN, one of the biggest frozen producers in the country—the No. 1 issue they raised with me was passing this bill. Do you think Schwan's is a company that doesn't care about the bottom line?

You haven't met their business executive, I say to my friend from Oklahoma. Their focus is on jobs, making money, and producing a good product.

So why do these businesses that are so clearly concerned about their bottom line care about passing this bill? Guess what. These bad actors—whether it is the peanut butter factory in Georgia or whether it is the egg place that had rats in it—these bad actors hurt all the good actors out there, the good food producers and good farmers and all of the companies that put in safety measures. That is why the companies, the grocery stores, SuperValue, and these kinds of companies want to get this bill passed. They think having bad food out there is not only bad for consumers when they get sick or die, but it is bad for their bottom line. That is why there is industry support for the bill.

Finally, this legislation addresses a very serious issue—and this was the most difficult thing to hear from my friend from Oklahoma. You all know in our State about the case of Shirley Ahlmer, a grandmother. She fought cancer and survived it. She was ready to go home for Christmas, and she ate a little piece of peanut butter toast. That grandmother died because of that peanut butter toast.

I don't want to hear about how it is not worth it for the people of America, that it is going to cost the people of America, until you talk to Shirley's son Jeff and find out what it cost his family because there wasn't an adequate food inspection system in this country. That is what this is about.

One other thing that was not true was when my colleague from Oklahoma talked about the tomato recall. That was true, and it was misdiagnosed. They said the wrong thing. It was actually jalapeno peppers. They said it was tomatoes.

Why should we keep the same food system in place now if people are out there calling the wrong card and saying tomatoes caused this and tomato prices go down and people who produce them get hurt and instead it is jalapeno peppers? Meanwhile people are getting sick across the country. Why would the answer be that we have a great system and let's not change it? The answer is we have to change the system.

The other thing is, both the peanut butter contamination and the jalapeno peppers, do you know who called it right? The State of Minnesota. It was the University of Minnesota and the Minnesota Health Department. None of it got identified until people got sick in the State of Minnesota. That makes us proud of our State. But we would have rather not lost three people in the peanut butter crisis and said: Guess what, we got it right.

What we can do is take the system we have in Minnesota, which is common sense, and instead of just having this problem sit on a county nurse's desk, we have graduate students who can work together and make calls and figure out what caused this when people got sick, and ask: What did you eat yesterday? It is that simple.

The part of the bill which Senator CHAMBLISS and I sponsored is to use that model—not make every State do it but say, let's look at the best practices in four regions of the country and see if we can improve the system so we can catch these illnesses quicker and respond better and have less people die or get sick.

When I look at all of the issues raised by my colleague, the bottom line for businesses is this: Businesses in this industry support this bill. When I look at the issue of consumer safety, all you have to do is go and look at what happened to Shirley Ahlmer.

When I look at the issue of what is better for the consumers of this country, I don't think anybody wants to get sick from eggs that have Salmonella. It is unacceptable, Mr. President.

I hope anybody who was listening to my colleague from Oklahoma has also listened to this because it is very easy to make these claims. Let me tell you, one, the people who do this work say they need more authority to do recalls and to do it right. The businesses that are affected by the food safety outbreaks need a better system. They don't want to get stuck in one from back in 1938. The people hurt by this, or family members killed by this, say we need improvement. That is why this bill has bipartisan support and why three-fourths of the Senate supported moving forward on the debate.

I hope this delay will end and that we will get this done so that when families sit down for Thanksgiving dinner, they will at least know there is hope in the future that we are not set back in the inspection system that we had in 1938.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as in morning business for such time as I shall consume.

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

#### GLOBAL WARMING

Mr. INHOFE. Mr. President, as Mark Twain might have characterized where we were a short while ago, reports of the death of cap and trade have been greatly exaggerated.

It is true we defeated all the bills. This was after the Kyoto Treaty, which failed to even get recognized for discussion, let alone ratified. We had all the bills—the McCain-Lieberman bill, the Lieberman-Warner bill, the Waxman-Markey bill, and all of the others, and they were all killed.

I can remember way back 8 years ago when I was the only bad guy, the one everybody hated. That is when I made an honest statement at the time that perhaps what they were trying to do with the global warming was the "greatest hoax ever perpetrated on the American people."

As time went by, more and more people agreed. A lot of things have happened. Just in the past year, we have had the revelation of Climategate, the

failure in Copenhagen, the admission of the futility of unilateral climate action, the year of the skeptic, and the vindication at the ballot box that took place November 2.

With all this, one might be tempted to declare victory, and I have to admit that for a short while I did. It was a year ago today that I gave a speech right here on the Senate floor, at this same podium, noting that the tide turned decisively against global warming alarmism. The year of the skeptic took place.

Just 2 days later, Climategate exploded into view as thousands of e-mails were released that showed, at a minimum, the very scientific spokesmen for alarmism were scheming to block open and honest assessments of their work. Behind the veil of e-mail, they showed their true colors: They weren't acting as scientists but as political hacks. They were scientists defending a political agenda. The agenda would virtually shut down America.

A lot of people realize and recognize that fossil fuels are necessary to run this machine called America. Right now, 53 percent of our energy is generated from coal. Coal is necessary. We have clean coal technology, and the releases are much less than they used to be. Oil and gas are both fossil fuels. It is necessary. You cannot run this machine called America without them.

The damage has been done in terms of what was going on at Copenhagen. I think the chapter on the climate science wars has closed. Climategate scientists and the allies want to keep fighting. They are particularly begging us to bring them before committees to question their work. But we will not because they are now irrelevant. The time to talk about this science is over.

I will say this: Five years before Climategate, I gave a speech in the Senate and talked about what they were trying to do to cook the science. Instead of talking about science, we are talking about the economics of what is happening now. We are talking about jobs, about competitiveness, and manufacturing and small businesses and real people who have to pay more for electricity, food, and gasoline. What do I mean? Even with all of the progress we have made—and while cap and trade is dead, bureaucratic cap and trade is alive and well—what is happening in this country is that we have an administration with a majority in Congress who tried to pass this legislatively, tried to pass cap and trade. The cost of cap and trade, we were finally able to convince the American people—if you look at it not from what Senator JIM INHOFE says but what the economists say, what they said at MIT and what they said at Wharton, if you pass any of these cap-and-trade schemes, the cost to the American people will be in the range of \$300 billion to \$400 billion a year. That is what they decided they were able to do legislatively. They thought we will do this—because we control EPA, we will do it through the regulations.

What Senator REID said may be true for the massive 1,000-page bills filled with mandates, taxes, regulations, bureaucracy, and not much else. But it is not true for the more subtle strain of cap and trade now moving through the EPA.

That is right; this backdoor cap and trade hidden behind an administrative curtain. I can hear already what my friend, the EPA Administrator, Lisa Jackson, would say: Senator INHOFE, you know we are regulating in broad daylight, and we are inviting public comment and we are providing guidance. It is all aboveboard and out in the open.

That may be true, and I trust that Administrator Jackson wants the EPA to be transparent. Unfortunately, this bureaucracy has gotten to the point where transparency is virtually impossible.

The reality is that backdoor cap and trade is hidden behind acronyms such as PSD, BACT, SIPs, FIPs, BAMB, GHGRP, and the like and arcane legal provisions in the Clean Air Act. It is all a great muddle for bureaucrats and lawyers, but it is a profound disaster for jobs and small businesses in America.

Make no mistake, the intent and ultimately the effect is no different than Waxman-Markey, which is to eliminate fossil fuels and impose centralized bureaucratic control over America's industrial manufacturing base. Unless we stop them, that is what they will achieve.

Of course, President Obama would say we could have avoided all this if we passed cap and trade. That is true. If we had done that, we also know it would not have preempted what EPA would be doing.

That is wrong on two counts. First, what kind of a deal involves accepting a bad bill in place of bad EPA regulations? That is no deal at all. Secondly, the supposed deal wasn't an either/or proposition. Waxman-Markey didn't fully eliminate EPA's ability to regulate under the Clean Air Act. President Obama and cap-and-trade supporters wanted both options—cap and trade including regulation under the Clean Air Act.

Keep in mind we are talking about something that is very massive—the largest single tax increase on the American people. When you talk about \$300 billion or \$400 billion a year, you have to bring that down and say: What does that mean to me?

To the taxpayers in Oklahoma, it would mean over \$3,000 a year. What do they get for it? Nothing. One thing I like about Administrator Lisa Jackson, the Administrator of the EPA, is she is honest in her answers. I asked her the question: If we were to pass something like this, pass Waxman-Markey and do something legislatively, how would it affect worldwide emissions of CO<sub>2</sub>. She said it wouldn't have much of an effect at all. The reason is we can't do that in the United

States: This isn't where the problem is. It is in China, India, Mexico, and other places around the world. As we tighten our availability of power, they have to go someplace—our manufacturing base—to find power. Well, now they would be going into areas where we have less controls. So that could very well have—by banning it here, it would have an increase in the effect of CO<sub>2</sub> emissions. Most people understand and agree with that.

We have a long, difficult fight ahead. It goes back to December of 2009 when EPA promulgated the endangerment finding that CO<sub>2</sub> endangers public health and welfare. We know that finding is wrong and based on flawed science.

Before I went to Copenhagen last December—first of all, what Copenhagen is, that is the annual big party that the U.N. puts together—and they have done it for 15 years now—and they always have it at exotic places. Next month it will be in Cancun. Last year, before I went there, I asked Administrator Jackson the very question: What does your endangerment finding—the way it happened, I say to you, was that we had a hearing, a public hearing, live on TV, and Administrator Jackson was in our hearing room.

I said: I am getting ready to be the one-man truth squad in Copenhagen. I have a feeling when I leave, you are going to have an endangerment finding. What would that be based on? The IPCC.

To make sure everybody understands, that is the U.N. That is what started this thing way back in the 1980s. And so now that is established and we know the science on which an endangerment finding is based, we go to Copenhagen. It was almost the next day that climategate broke. Oddly enough, the timing couldn't have been better—I had nothing to do with it; I was as surprised as anyone—because they came out and talked about the flawed science that was there and the fact they were cooking the science.

I have to say this. Five years ago this week, in 2005, I gave a speech on the Senate floor talking about how they were cooking the science at the United Nations—the IPCC—to make people believe that greenhouse gases—anthropogenic gases, CO<sub>2</sub>, methane—were causing catastrophic global warming. That was their mission. They started with that conclusion and they tried to get science to support it. Well, all that was exposed.

The list of IPCC errors is so long I won't repeat it here, because I did so in my speeches before. We know the claim that the Himalayan glaciers would melt by 2035 was off by about 300 years. What is important now is that the endangerment finding triggered regulations that will eventually reach out into every corner of the American economy. This will be the greatest bureaucratic intrusion into American life we have ever seen.

Let us put some specifics on that. We are talking 6.1 million sources subject

to EPA control and regulations. With regard to EPA control and regulations, I don't think I have to tell you how onerous that would be, what that would be doing to all these institutions that would be affected. The U.S. Chamber of Commerce has put together a list as to who would be affected by these new regulations and that thousands and thousands and thousands of new bureaucrats would be crawling all over in America. The list includes 260,000 office buildings, 150,000 warehouses, 92,000 health care facilities—that is hospitals and so forth—71,000 hotels and motels, 51,000 food service facilities, 37,000 churches and other places of worship, and 17,000 farms.

The EPA understands the political peril of regulating all these sources so they decided to change the law without congressional authorization to exempt many of the sources I have mentioned, but that is a front. It sounds good, and they will stand up and say, no, we are not talking about 250 tons of CO<sub>2</sub>. But the Clean Air Act specifically says that the major sources are those that have the potential to emit 250 tons or more of given pollutants. All the farms, all the churches, as I mentioned, are going to be in that category.

Two hundred fifty tons of, say, sulfur dioxide or nitrogen oxide is a good deal of pollution. But when it comes to CO<sub>2</sub>, it is not. Lots of facilities emit that amount and more. We are talking schools, nursing homes, restaurants, even individual residential sources, mind you, that were never contemplated to be regulated when Congress passed the Clean Air Act.

So what did EPA do? Well, they promulgated something called the tailoring rule. This gets in the weeds here, but it is something they created to say, well, no, we are not going to use 250 tons of emissions, we are going to use 75,000 tons. That means we are talking only the giants—the refineries and some of these groups. Well, the problem with that is that is not what the Clean Air Act says.

Sources emitting above those amounts have to get permits that require so-called best available control technology to reduce CO<sub>2</sub>. Of course, we don't know what that is. It has never been defined. The EPA issued draft guidance on what they call the BACT—best available control technology—last week, but it provided no help, just more confusion and uncertainty on what the requirements would be.

Of course, they talk about the EPA has a law in front of it that says clearly the major sources are those that have the potential to emit 250 tons or more. Yet it says the new number is 75,000 tons or more. So now the EPA can conveniently say that schools, hospitals, and the like won't be regulated, at least not until 2016, when the agency says it will consider whether to regulate such sources.

There is the catch. This supposed exemption through the tailoring rule only lasts for a few years, not to men-

tion the fact that it blatantly violates the Clean Air Act, which subjects it to litigation. On that last point, the tailoring rule, along with the endangerment finding and other greenhouse gas rules, is being litigated, so we will know eventually whether the tailoring rule survives. I think it will be thrown out, but the fact it can be thrown out should be enough for us to be honest with the American people and say we are going to regulate everything that falls within the 250 tons—all the residences, the churches, and the farms I mentioned before.

Again, I want everyone to understand: The regulation of global warming by EPA, backdoor cap and trade, begins on January 2. It is here, a month away. I am not the only one concerned about it. On February 19, Senator ROCKEFELLER, joined by seven of his other Democratic colleagues, wrote Administrator Jackson. Keep in mind, this is coming from the Democrats here in this Chamber. He wrote:

We write with serious economic and energy security concerns relating to the potential regulation of greenhouse gases from stationary sources under the Clean Air Act. We remain concerned about the possible impacts on American workers and businesses in a number of industrial sectors, along with the farmers, miners and small business owners who could be affected as your agency moves beyond regulations for vehicle greenhouse gas emissions.

We need to address this, because employers and small businesses are afraid to hire and expand right now, in large part because of the EPA's global warming regulations. They do not know what to expect. They are looking at the Clean Air Act, that has a very small threshold. Yet statements are being made that this is going to affect everyone and they don't know what to do.

I want my colleagues and the American people in general to know that EPA is moving in all directions, beyond just implementing job-killing global warming regulations. EPA is threatening jobs on a host of fronts. A few months ago, I released an oversight report examining the thousands of jobs at risk. And by the way, this is a good report. It talks about four major areas of concern, and they are all on my Web site at [inohfe.senate.gov](http://inohfe.senate.gov). Read them over, if you want to be scared. But here is what I found:

The new standards for commercial industrial boilers, for example, put up to 798,000 jobs at risk. The revised National Ambient Air Quality Standard for ozone puts severe restrictions on job creation and business expansion in hundreds of counties nationwide. New standards for Portland cement plants put up to 18 cement plants at risk of shutting down, threatening nearly 1,800 direct jobs and 9,000 indirect jobs.

I think we should be concerned enough about the unemployment rate that we have right now without exacerbating that problem, which is what we do with these rules. I think everyone knows that. Where are these rules

going to hurt the most? In the heartland. By that I mean Pennsylvania, Ohio, Michigan, Indiana, Illinois, Missouri, Wisconsin, Nebraska, Minnesota, and Montana. Of course, my own State of Oklahoma is feeling the brunt, and others will as well.

Here is the bottom line. Backdoor cap and trade is alive and well. It is moving forward. The fight over the future of America's industrial base is under way. I want to put the administration on friendly notice that I will investigate these rules vigorously in my capacity as the ranking member of the Environment and Public Works Committee. I do this to expose their impact on jobs, energy prices, competitiveness, small businesses, energy security, and the true extent of their environmental benefits.

It is my sincere hope the EPA will pull back, revise, reform, and balance its regulatory agenda to protect jobs as well as the environment. If the EPA persists on moving down a more extreme path, then our 9.6 unemployment rate will be even worse in 2012.

In an attempt to stem the impending economic harm facing thousands of small businesses, the EPA has developed its so-called tailoring rule. I don't want to elaborate on this. I will only say that the tailoring rule is to make people think we are only going to be regulating those entities that emit 75,000 tons or more, when the law clearly says 250 tons or more.

In some cases, these rules will have no meaningful environmental benefits. Consider EPA's rules to regulate greenhouse gases. They would reduce global temperatures by 15 one-hundredths of 1 degree by 2100. That same figure goes all the way back to the consideration of Kyoto. This is back in the 1990s. I remember at that time it was Vice President Al Gore's own scientist—Tom Prigley, I believe his name was—who came out and the question was if all of the developed nations were to comply with Kyoto's emission requirements, how much would it reduce the temperatures in 50 years. The answer was 7 one-hundredths of 1 degree Celsius. So you can talk about all the sacrifice we are making and nothing good can come from it.

I want to conclude, because there are a lot of people here wanting to speak, saying that the Administrator of the EPA, Lisa Jackson, talks about the fact that what we do unilaterally, here in the United States, is not going to have a major impact on emissions nationwide, yet we know what it is going to cost. I want to say we are going to quit talking about the science. We understand how the science is not on their side; that the things we said on the floor of the Senate 5 years ago were verified with climategate. They have been cooking the science, and it is very convenient.

Lastly, I went to Copenhagen, as I mentioned earlier. That is the big U.N. party each year. That was probably the most productive 2½ hours of my life,

the 2½ hours I was on the ground in Copenhagen. I was preceded by Senator KERRY, Hillary Clinton, President Obama, and several others—NANCY PELOSI—and they were all assuring the other 191 countries present that we were going to do something about cap and trade. I went there to make sure they knew we were not. I will always remember that, because we had 400 people and the 120 cameras were zeroing in on me. I say to my good friend from Virginia, they all had one thing in common: They all hated me.

That is behind us now and we have to now look at the regulators. This regulation would put America out of business.

With that, I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Virginia.

Mr. WARNER. Before I get to my remarks, Madam President, I want to commend my friend, the Senator from Oklahoma, for his comments. I don't always agree with him, but I have had the opportunity to sit in the Presiding Officer chair and listen to his views over the last 2 years, and let me make sure I make clear that his characterization of some of those folks with those cameras, I would not fall into that category.

I also want to wish the Senator a very happy birthday. I understand it was yesterday, and I wish him all the best. Our offices are next to each other and we are good neighbors.

#### TRIBUTE TO FEDERAL EMPLOYEES

Madam President, I rise today to continue a recent tradition of the Senate—the tradition of honoring exemplary Federal employees—my friend Senator Ted Kaufman began last year. Senator Kaufman believes, as I do, that our Federal employees deserve recognition for their admirable patriotism which drives them in their daily work as civil servants.

Senator Kaufman highlighted 100 Federal employees in his close to 2 years of service—100 Federal employees with significant accomplishments in the fields of medicine, science, technology, diplomacy, and defense. Today I will start to continue that tradition. I am very proud that the first Federal employee I am going to have a chance to honor is currently a resident of Virginia who combined his engineering expertise with his past experiences in the Navy to help save 33 Chilean miners after they had been trapped 2000 feet underground for 69 days. This was an incident that captured the attention of the world, as we all watched the rescue of those miners. Again, I will only take a couple of moments to describe this employee and how he contributed to that remarkable worldwide success story.

Clint Cragg served in the Navy for 26 years. He, as I mentioned, is currently a resident of Virginia. His lifetime of service to our country led him to many exciting opportunities, including serving as the Chief of Current Operations, U.S. European Command. While in Eu-

rope, he participated in a number of operations, including the wars in Kosovo, Afghanistan, and Iraq. Today, Cragg is principal engineer for NASA's Engineering and Safety Center, a center which NASA established after the 2003 *Columbia* Space Shuttle tragedy. Clint has given a lifetime of service to his country since his graduation from the Naval Academy in 1978, and his service was never more important than it was when he took part in the worldwide effort to save the Chilean miners.

Clint and his colleagues were asked by the Chilean Government to assist in rescuing their 33 countrymen trapped underground in a collapsed copper and gold mine. Clint rose to the challenge and flew to Chile with three fellow NASA employees to examine the scene. Using his experience as a commanding officer of a submarine in the Navy, Clint provided valuable insight to the miners on how to cope with the underground existence they were in for a sustained period of time. Clint and his team also met with Chilean officials to discuss the development of a rescue squad capsule that at that time was a completely untested idea.

Upon his arrival home, Clint received a message from the Chilean Health Minister in which the Minister asked for NASA's help in thinking of specific features that would make the rescue capsule idea a reality. Clint assembled a team of 20 engineers, 10 from NASA Langley and 10 from around the country. They commenced brainstorming innovative ideas for a capsule design. This was thinking whole cloth. The only information the team had available was the capsule's maximum length and the diameter of the rescue shaft through which the capsule was required to fit. Seventy-two hours later, the team had a written, comprehensive report that included 75 proposals for the rescue capsule. The paper concluded that the rescue capsule should include a harness inside the capsule that can hold a miner in case the miner fell unconscious during ascent.

I think we all remember those images on CNN as they kind of drew up the capsule. I didn't know, but that capsule was designed by a Federal employee and his team we honor today.

As the 33 men rose from beneath the Earth, Clint could take pride in his work for NASA and in the knowledge that he and his colleagues had made the reunion between these men and their families possible.

I was privileged to meet Clint Cragg and his family and other members of the rescue team during a visit to NASA Langley last week and present them with a framed American flag that had flown at the U.S. Capitol in honor of their contributions. The successful rescue of the miners was a testament to the American spirit of cooperation and ingenuity, a spirit exemplified by the NASA team.

I hope my colleagues will join me in honoring Clint for his service and his leadership team at NASA as this

week's example of a great Federal employee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that immediately following my and Senator GRASSLEY's colloquy, the distinguished Senator from North Dakota be recognized for 30 minutes.

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

#### MAJOR TAX ISSUES

Mr. HATCH. Madam President, my colleague, Senator GRASSLEY, and I come to the floor to discuss very urgent business for the American people that has been put off for far too long. I am talking about the outstanding tax issues this Congress has so far failed to address. As I count them, there are five major tax issues that collectively represent a looming crisis for the economy. These are, first, the set of tax provisions that expired almost a year ago on December 31, 2009, and have yet to be extended. Second is another set of important tax provisions due to expire at the end of this year, which is only 44 days from now. The third item is the need to once again address the threshold of the alternative minimum tax so that about 25 million more American families are not caught in its clutches for the tax year about to end. Fourth is the estate tax issue which has been haunting us and the American people all year long. I submit it is way past the crisis stage and is about to enter into even a worse stage. Finally, and certainly not least, is the looming expiration of the tax relief provisions we passed in 2001 and 2003 which are swinging over the future of our economy like a hangman's noose. It is this situation that I particularly would like to address the bulk of my remarks to, but before doing so, let me turn to my colleague for his initial comments, the ranking member on the Finance Committee and a great friend, Senator GRASSLEY.

Mr. GRASSLEY. Madam President, Senator HATCH has long been a leader on a lot of these tax provisions, particularly in research and development. I thank him for his leadership.

I think Senator HATCH has clearly outlined the gravity of the economic consequences of a continuing failure to finish time-sensitive legislative tax business.

There is a chart I will put up that shows where we are on these categories of expiring tax provisions. Said another way, here are the categories of tax hikes that congressional inaction will put in place. I have used this chart before, so I think Members will be familiar. In fact, several months ago, I used it. The congressional Democratic leadership paid no attention to the seriousness of these issues then. Unfortunately, the to-do list is exactly the same today as it was several months ago.

If we go down through the chart, Members can see that we have had par-

tisan votes on extender packages negotiated between the bicameral Democratic leadership but no effort to reach out to the Republican side to find bipartisan common ground.

On this year's alternative minimum tax patch, as Senator HATCH noted, inaction on the AMT will force a "gotcha" tax hike on millions of middle-income families when they start to file their tax returns 6 weeks from now.

On death tax reform, the House passed a permanent reform almost 1 year ago, but it has languished in the Senate during that period. On our side, we would like to improve that bill to protect more small businesses and farm families from the death tax.

On the 2001-2003 tax relief packages, there is no bill from the other side that would serve as a starting point on preventing this massive tax hike. On our side, if the Democratic leadership permitted us, we would like to start with Senator McCONNELL's bill. Senator HATCH and I are cosponsors of that legislation.

Mr. HATCH. Senator GRASSLEY has been the ranking Republican or chairman of the Finance Committee for a long time now. We have seen times when the expiring tax provisions have been dealt with in as timely a manner as they should have been, but have we ever seen a state of affairs like we have now with the extenders? What has this meant for job creation and economic growth?

Mr. GRASSLEY. First of all, my colleagues probably know that my friend from Utah is going to advance as the incoming ranking member of the Senate Finance Committee, and I congratulate him on that. I know he is going to do a very good job.

One needs only to look to the nonpartisan Congressional Budget Office to assess the harm that could be done to the economy if we don't get this tax legislation passed. According to the Congressional Budget Office, not addressing these very time-sensitive tax issues will reduce economic growth by as much as 1.7 percent on average for the years 2011 and 2012. If Members didn't hear that, it is not some political leader saying that economic growth will be harmed by 1.7 percent; it is the nonpartisan experts in the Congressional Budget Office saying that if we don't pass these tax bills, economic growth is going to get hit 1.7 percent. Some private forecasters put that hit even higher—at 2 percent. When we consider that the last report has the economy growing at an annualized rate of 2 percent, then it is quite obvious.

We can see that this single failure to prevent these great big tax increases could wipe out what little economic growth is currently occurring. I don't know how policymakers can sleep at night, let alone be so casual when we haven't dealt with these time-sensitive tax issues at a time when coming back here we heard nothing from our constituents other than concern about the

economy, about jobs, and about the legacy of debt we are leaving.

Mr. HATCH. We ought to listen to Senator GRASSLEY. He is one of the leaders in this body and somebody we all look up to as totally honest and sensitive on these issues. He has done a wonderful job on the Finance Committee.

According to the Commissioner of Internal Revenue, perhaps the most time-sensitive problem waiting for congressional action is the so-called patch for the alternative minimum tax. I understand that if we do not take care of this very soon, we could see major delays in the tax filing season that will start on January 1. Is that the understanding of Senator GRASSLEY?

Mr. GRASSLEY. Absolutely. We have a track record on that. Just a few years ago, it didn't get done on time, and people had to wait for their tax refunds. That is the biggest thing. But it also created a terrible bureaucratic problem for IRS to get the forms out.

My friend from Utah is correct. Fortunately, the chairs and ranking members of the tax writing committees wrote to the Commissioner of IRS last week indicating our intention to pass an AMT patch. The letter specified what the AMT patch would look like. But as helpful as the letter was, we still need to change the law. As a matter of fact, the filing season could become very complicated if we don't act. During our years in the majority, we never let the AMT patch legislation slip past May of any tax year that it applied to. That only happened once.

The death tax is another overdue tax legislative item that has been referred to. Maybe the Senator from Utah could bring up the issue of the estate tax.

Mr. HATCH. That is the third item on the to-do list. If we do not act, 6 weeks from now the reach of the death tax will greatly expand. According to the nonpartisan Joint Committee on Taxation, 10 times the number of estates will be taxable versus the number that would be taxable in the bipartisan Lincoln-Kyl compromise. In the case of farm-heavy estates, 13 times the number of those farm families would be hit by the death tax. That would be unfair because the families would have to either borrow the money or sell the farm in order to pay the death taxes. That is just crazy.

The issue of extending the expiring tax relief provisions enacted in 2001 and 2003 has been a central question all this year, but we are just now beginning to discuss this in earnest. This lack of action on this vital topic has been a major factor in the low performance of our economy.

The outcome of this debate is exceptionally important to the future of this Nation. Its implications go well beyond what many on the other side of this issue might want Americans to believe. This is not merely a question of how well the rich in our society will live if we raise their taxes.

Rather, this debate goes to the heart of the burning questions facing American families of all income levels today: Will I keep my job? How and when can I get a new or better job? Will the economy grow enough to allow my family to pay its bills and make progress toward our dreams? Can we afford to educate our children? Will America continue to prosper in the years ahead, or are we in a permanent decline?

The President and most of my colleagues on the other side of the aisle have decided that the answer to the question of fully extending the tax relief provisions that are set to expire in just about 44 days is no. While they are willing to extend them for those Americans earning less than \$200,000 per year if a single individual or \$250,000 per year if a family, their position is that anyone above these thresholds should get a tax increase.

However, the right answer for our country's future is that all the tax relief provisions should be extended.

The reasons the President and his allies give for their position largely boil down to the general supposition that the well-off among us can afford to see their taxes go up, and that the Nation cannot afford to forego the revenue lost to the Treasury from these taxpayers continuing to have their taxes as low as they are.

Ironically, this second point implies that we can afford the revenue loss from extending the tax relief to those making under the \$200,000 and \$250,000 thresholds, even though this loss is upwards of 80 percent of the total amount of lost revenue from extending the tax relief for everyone.

In other words, the President and his congressional supporters would have us believe that this debate is solely about whether the so-called wealthy among us deserve continued tax relief. They either fail to see an economic connection between the finances of those at the top of the income scale and the rest of us, or they refuse to admit that such a link exists.

This may sound somewhat counter-intuitive, but it is, nonetheless, true. The essential element to this conundrum is that good permanent jobs, which are the heart and soul of the American dream, are inextricably linked to those in our economy who have wealth. When the income of the wealthy is taxed, particularly in a way that reduces the incentives for saving, investment, and entrepreneurship, that tax is not just paid by those who write the check to the government. Indeed, even those Americans who pay no income tax at all, which is now upwards of half of all adults, can be badly hurt by tax increases on the so-called rich. This is through the loss of opportunities, the lack of jobs or better jobs, and slow or nonexistent economic growth.

One vital fact that many citizens do not realize is that a high percentage of this Nation's business enterprises pay their taxes through the tax returns of

their individual owners. Taxes on sole proprietorships, partnerships, S corporations, and limited liability companies are all passed through these entities and assessed on their individual owners. Higher taxes on these entities results in less money for investment and expansion, which translates into fewer jobs created and fewer opportunities for those who want to move up the economic ladder.

Tragically, especially in this time of economic stress and high unemployment, the real cost of taxation is paid by a group of unintended victims. These are the men and women and their families who do not get a chance to have a job or a higher paying job because the tax destroys the economic growth that might have provided for such an opportunity.

A study recently released by the non-partisan Heritage Center for Data Analysis highlights these facts. This study, which utilizes an economic model owned by the leading economic forecasting firm in the country, concludes that the President's tax plan to allow the tax relief provisions to expire for the so-called well-off would have very serious consequences for millions earning far less than those targeted.

Here are just a few of the highlights of these conclusions. First, the President's tax plan would reduce economic growth for at least the next 10 years. Over the 10-year period, our gross domestic product would fall by a total of \$1.1 trillion compared to where it would be otherwise if all the tax provisions were extended.

This slower economic growth would directly translate into fewer jobs created. In fact, the study projects that 238,000 fewer jobs would be created next year and as many as 876,000 lost jobs in 2016. For the 10-year period, the average would be 693,000 jobs each year that would not be created had we extended the tax relief for everyone. This projection alone should be enough to give anyone pause. In this critical time of job shortage, do we want to purposefully choose a course that would lead to even fewer jobs for Americans?

Other economic indicators would also turn negative compared to extending the tax rates as they currently stand. Business investment, personal savings, disposable income, and consumer spending would all be lower. This is exactly the wrong direction we need as the U.S. struggles to recover from this nasty recession.

My home State of Utah will not be spared, despite the fact that the downturn has been less pronounced there than in many other States. The Beehive State would lose an average of 6,200 jobs each year, and household disposable income would drop by \$2,200. For a relatively small population State, this is nothing but bad news.

Another recent study highlights the effect on the economy of increases to the capital gains tax rate as is called for under the President's tax plan. This one was prepared by the respected

economist Allen Sinai. In this study, Dr. Sinai concludes that increasing the capital gains tax rates to 20 percent from the current 15 percent, as is called for in the President's plan, would cut the number of jobs available by 231,000 per year. Again, this is exactly the wrong direction for a Congress that is supposed to be focused on job creation.

If we were really serious about creating jobs, we should be doing just the opposite; that is, lowering the capital gains tax rate. The Sinai study concludes that a reduction from the current 15-percent tax rate on capital gains to a 5-percent rate would increase the number of jobs by 711,000 per year. That is the kind of job growth we need right now. By lowering the rate down to zero percent, Dr. Sinai says we could turbocharge this rate of job growth to 1.3 million new jobs per year.

Of course, this capital gains tax reduction would not be free since the Treasury would lose some revenue. The Sinai study indicates that this loss would be about \$23 billion per year after the effects of stronger economic growth are taken into account. While this is not an insignificant number, it works out to a cost of about \$18,000 per job. I call this a bargain, particularly when it is compared with the cost per job from the so-called stimulus bill we passed last year. The Congressional Budget Office projected last year that the cost of each job saved or created from the stimulus bill would be between \$414,000 and \$1.3 million. And most or all of these jobs are temporary, not permanent. Last year, the CBO also projected that the net increase in the number of jobs from the stimulus bill by 2015 would be zero. In other words, we would get no permanent job increase from this gargantuan stimulus bill. I do not believe the contrast between the two approaches to job creation and economic growth could be any more striking.

Let me refer back to Senator GRASSLEY.

Mr. GRASSLEY. Well, I say to Senator HATCH, the only thing I would add to the good work you put out there is maybe to say a little bit more about the estate tax; that is, if we do not do anything—as you see from this chart, you can see the House passed death tax reform but not the Senate. Obviously, we do not have a final bill. If we do not get a final bill by the end of this year, instead of having no estate tax like this year or a \$3.5 million exemption like last year, we are going to have only a million-dollar exemption and a 55-percent tax rate. That is going to be catastrophic on small business. It is going to be catastrophic in the rural areas. So I hope that emphasizes the importance of getting something done on the estate tax ahead of time.

The only other thing I would add, because the Senator did such a good job of saying what the economic consequences are, if we let the biggest tax increase in the history of the country happen by sunset December 31, and

then that means you go back to the tax rates and tax policy of the year 2000, it is going to be very destructive on job creation for small businesses and very destructive as far as bringing the certainty that businesses, particularly small businesses, need if they are going to hire people.

I had a news conference last month in my State, and I brought in some small businesspeople. One of the small businesspeople testifying for me said to the media of Iowa that they would like to hire five or six people, but as long as there is all this uncertainty about what the tax policy is, they are not going to move forward.

So what we have to do—and I say to Senator HATCH, I think you have said it several times—and particularly for small business, we have to bring certainty to the Tax Code. You cannot have this uncertainty of what is going to happen after December 31, particularly when you are certain you are going to have the biggest tax increase in the history of the country without even a vote of Congress.

So I compliment Senator HATCH. I will not have anything more to say on this subject until we get one of these pieces of legislation before the Senate. But I thank the Senator very much for his leadership.

Mr. HATCH. Madam President, I thank my leader on the Finance Committee on the Republican side. I appreciate all the work he has done to try to keep this economy going, and we ought to listen to him.

Let me just say that the President and congressional Democrats and Republicans agree that small business is the key to a job-based recovery. As the President himself says, small business creates about 70 percent of all of our new jobs.

If we fail to prevent the marginal rate hikes, small businesses will be especially hard hit. The Joint Committee on Taxation concluded that half of the flowthrough small business income would be hit by the reimposition of the top two brackets. Ironically, this is what all the resistance from the other side is about. They insist on raising the top marginal rates on small businesses by up to 17 to 24 percent—all of this during a time when we ought to be going the other way and assuring small businesses that they should take steps to grow without paying a tax penalty.

There is a bipartisan group that recognizes the merits of preventing these tax hikes on small businesses. But I think the President and the Democratic leadership need to see the light. We are talking about somewhere between 750,000 and 800,000 small businesses, where 70 percent of the jobs are created. If we do not handle this right, we are going to have a pretty long time of an economic system that really does not work in this country. So it is important that we get going here in this lameduck session and resolve this issue.

There are people all over the map on this issue, but I think the smartest

thing to do would be to keep the tax relief the way it is. I would move it at least 2 years and hopefully 3 years. I would like to make it permanent for everybody in our society because we are a high-taxed society under the current circumstances, but apparently we do not have the votes to make it permanent. But we should have the votes to be able to put it over at least until we can get out of the rough politics of a lameduck session, and hopefully we will be able to resolve these problems in the future in a way that both sides can feel good.

Having said all this, let me just say that I have really appreciated serving under the distinguished Senator from Iowa. He is a hard-nosed, practical leader in this body. Everybody knows he is totally honest and totally effective in so many ways. He is a dear friend of mine. I want him to know how much I appreciated serving next to him on the Finance Committee. And we will be serving next to each other on the Judiciary Committee in this upcoming year. I look forward to seeing him, as a nonlawyer, take over the controls from the Republican standpoint on the Judiciary Committee because even though the distinguished Senator from Iowa is a nonlawyer, he brings a practical balance to the Judiciary Committee—and to the Finance Committee up until now—that is sorely needed. He is one of the most respected people, by me, in this whole body of very, very strong minds and people. So I am grateful to him. I am grateful he is my friend, and I am grateful we can work together side by side in both of these committees.

I thank the Senator for all the hard work he has done in the Finance Committee all these years. I have watched him, I have sat beside him, and I have seen the products he has done, and the Senator has worked in good faith with both sides, and certainly with total honesty, and that is a high accolade right there.

Madam President, these are important issues. I know that not just the distinguished Senator from Iowa and myself feel deeply about them, but I hope we can get our colleagues together on both sides, and the President, who has indicated he is willing to compromise on this issue, and get this put over. If we could do that, I think the President will be better off, jobs will be better off, and in the end, our country—which is the ultimate goal—there is no doubt in my mind would be much better off.

With that, I thank my distinguished friend from North Dakota and yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

#### TAXES

Mr. DORGAN. Madam President, I decided some long while ago that I was going to leave the Congress after serving 30 years. So at the end of this year, I will conclude my work here in the U.S. Congress. But I was thinking—sit-

ting in the Chamber, listening to my two colleagues, for whom I have great respect and profound disagreements with—I was thinking about how interesting it is that people of good faith—and they are two Senators of good faith—can feel very strongly about an issue. I feel differently about some of the issues they just described, and I sat here and resisted the urge to jump up every 5 or 10 minutes and engage in that discussion.

It is not a difference of opinion about whether we would like the American people to pay the lowest rate of taxes possible; it is, rather, in my judgment, about the rearview mirror of history, when historians gather 50 and 100 years from now and look back at this moment and say: All right, where was America then?

Well, America had a \$13 trillion debt, a \$1.3 trillion deficit. We are sending men and women off to war by the hundreds of thousands, strapping on body armor in the morning, getting shot at in the afternoon. About 20 million people are either unemployed or not working up to their potential because they could not find the job that fits them. There are record numbers of people on food stamps. So that is where America was then. And what was the debate on the floor of the Congress? How can you further cut revenue? How can you borrow money from the Chinese in order to give those who make \$1 million a year a \$100,000 a year tax cut? They are going to say: Are you kidding me? That is what the discussion was? Wasn't there discussion about whether it was wise to borrow \$4 trillion more to extend tax cuts that came in 2001 because the President—then-President George W. Bush—felt we were going to have surpluses forever? The first surplus was the year before he took office, the last year of Bill Clinton, the first budget surplus in 30 years. Then they said: OK, we predict we are going to have surpluses for the next 10. President Bush said: Well, let's give them back, with very big tax cuts, the bulk of which go to upper income folks. I didn't vote for that. I thought: Why don't we be a little conservative? What if something happens? Well, it did—a terrorist attack, a recession, wars in Iraq and Afghanistan, debt as far as the eye can see, soldiers at war—and the discussion is how to further cut taxes, especially for upper income Americans. I am telling my colleagues, it is going to confound and confuse some future economists, how on Earth that could have been the major debate of the day in the Congress at this moment.

There is no preordained destiny for this country that this country will always be the dominant world power. That is not preordained. That will happen if this country begins again to make good decisions and tough decisions. People think times are tough now. They have been tougher in this country. Our parents and grandparents and those who came before them, those who homesteaded in sod huts, those

who traveled and populated this country out of wagon trains under the Homestead Act to go and buy a place and build a farm and raise a family, they had it tough, but they built communities and built a country and they did the right things. They made tough decisions. It is not a tough decision for us to say all 100 of us want tax cuts—well, I would like it if nobody paid taxes, if nobody had to pay taxes. But who is going to pay for the cost of things we do together, such as build schools to educate kids, build roads to travel, pay for defense so we can protect this country and on and on and on?

So I didn't come to talk about that, but I couldn't resist at least the urge to say our requirement for this country is to look well ahead and to ask: How do we retain the capability in this country so we will still remain a world economic power? This country needs jobs. This country needs the resurrection of a manufacturing base. We will not long remain as a country, a world economic power, if we don't have world-class manufacturing capability—making stuff—making things that say "Made in America." That ought to be the discussion: how to put America back to work. There is no social program as important as a good job that pays well, and too many Americans are out of work at this point with a sick economy. The solution is not a tax cut for everybody. That is akin to going to a quack doctor who has only one recipe. He has a jug of thick brown liquid, and no matter what you have—the hiccups, gout, liver trouble—he ladles out some thick brown liquid, and he says: There it is. Take that and it will make you better.

We have people who have that vision here. Any urge, any itch, give them a tax cut. How about the Federal budget deficit? How about controlling spending? Yes, we have to control some spending and cut the deficit. Let's cut some spending and let's ask people who should be paying taxes and aren't now to pay their fair share of taxes. That is what we ought to do.

All right. I have that at least a little bit out of my system today.

#### ENERGY

I came to talk about something else. I came to talk about unfinished business toward the end of this year. There is still the ability to reclaim some success in an area that I think is very important. It is true, as I have just described, that jobs are very important in this country. It is also true that the economy, fiscal policy, debt, and deficits are very important and we need to get a hold on them and deal with them and respond to them and fix this country's economy. But it is also important that we need to address the subject of energy, and we have tried; we have tried so hard. We can decide it doesn't matter much. We can act as though it is irrelevant. But then tomorrow morning, just for a moment, what if all the American people couldn't turn on or off

the alarm clock or turn on the light or turn on the hot water heater to take a hot shower or turn on the toaster or the coffee maker? What if they couldn't turn on the ignition to get to work? What if they didn't have lights at work? We use energy 100 ways before we start work and never, ever think about it. What if the switch didn't work? What if the tank wasn't full?

Let me describe the danger because this is not irrelevant. It is not an idle issue that this country could very well find itself belly side up with an economy that couldn't work because we couldn't find the energy we need. About 60 percent of the oil we need and use in this country comes from other countries. I have described hundreds of times on the floor that we stick little straws in the Earth and we suck out oil. About 85 million barrels a day is sucked out of this planet. On this little spot called the United States of America, we need to use one-fourth of it. One-fourth of everything we suck out of this Earth has to come to the U.S.A. We are prodigious users of oil. Much of that oil comes from areas of the world that are very troubled. There are some that don't like us very much. We send them over \$1 billion, in some cases \$1.5 billion a day, every single day to buy their oil. My colleagues know and I know that in some parts of the world enough money spills from that oil barrel to help fund terrorism. We know it. If we are that vulnerable, if our economy is in that much need of oil from others, particularly troubled parts of the world, if tomorrow that supply were interrupted or shut off and if that meant that this country's economy would be belly up just like that, do we then decide to do nothing about it or do we do something about it to address it in the context of national security?

We have armies. We commit armies to trouble spots around the world to protect our interests. Those armies can only operate if they have food and fuel. They need both. Energy security is the same as national security, and we have ignored for so long this issue of vulnerability that exists with respect to our energy future.

I wish to talk about what we need to do, and I wish to talk about my disappointment that we come now to November, almost December, 3 weeks left perhaps in December, and last June a year ago we passed an energy bill out of the Energy Committee that was bipartisan. It did a lot to address our energy security. Yet we will likely end this year with unfinished business, leaving behind that progress.

I wish to talk a little about the unbelievable progress in this country. In 1830, it took 3 weeks to travel from Chicago to New York—3 weeks from Chicago to New York City. Twenty-five years later, you could do it in 3 days: the transcontinental railroad. The transcontinental railroad changed everything. Then the automobile, the automobile came along, first with an electric engine and then the internal

combustion engine and then it needed a substantial amount of oil. Then our government said: We understand that, so anybody who is going to look for oil or gas, we want to give you a big, permanent tax benefit. It was in the public interest to do that. So for a century we have said to people: Go find oil and gas because we need it. We have incentivized that drilling here in this country.

If we think of what has happened over this period I have described in travel and technology, including the automobile, the light bulb—I mean, think of the impact both those innovations have had in our lives; pretty unbelievable.

One day on a Saturday I was in Grand Forks, ND, and I met with our oldest resident, Mary Schumacher, 111 years old. She was spry—I shouldn't say "spry" because she wasn't moving very well, but she had a very keen mind and we were able to have a very good visit—111 years old. She talked to me about her memories of when she was 6 and watched the barn burn. She has a great memory. We talked about how things have changed in 100 years of her lifetime. By the way, I stopped at that nursing home to see Mary because I wasn't able to be there some months before when I was invited to go to her birthday party, and I was invited by her niece who showed up when I showed up that Saturday to visit Mary. Her niece put on the birthday party and her niece was 103 years old, in even better shape than Mary, moving around and fussing and making sure this visit with Mary was going well.

So we talked about the big changes in her life. I thought after I left there: Here is a person who has now lived over a century and she has seen everything. So let me think about her life.

In 1909—and she would have been nearly 10 years old then—in 1909, President Howard Taft, 5 foot 11 inches tall and 300 pounds, decided to get rid of the horse and buggy at the White House as the mode of transportation. He was the first President to decide he was going to buy an automobile. He bought a Baker electric car. President Taft might not have fit into a Mini Cooper had there been one back then, but he bought a Baker electric car, which goes to show batteries have a lot of power. There has been a lot of discussion about that these days. But isn't it interesting that an electric car for the White House in 1909—that is 100 years ago—that electric car, now a century later, 100 years later, is the subject of legislation I have on the floor of the Senate, along with Senator LAMAR ALEXANDER of Tennessee and Senator MERKLEY of Oregon; the Electric Vehicle Deployment Act, 100 years later. It is the new new thing. It is what we knew 100 years ago worked.

I wish to talk a little about these things and all the changes we have seen and why this issue is critical and why I feel so disappointed if we don't, in the final 3 weeks, at least take a

portion of that which we know needs to be done and do it because there is bipartisan agreement on a couple of these issues.

Let me mention them quickly. One, a renewable electricity standard so we try to induce more renewable energy production in this country. That is bipartisan. We have cosponsors in the Senate, including Senator BROWNBACK, who is a very strong supporter of that, a renewable electric standard. The Electric Vehicle Deployment Act, which I have described, Senator ALEXANDER and I and others, bipartisan; and the natural gas provision that Senator REID and Senator MENENDEZ have sponsored, that is also bipartisan. Those are things we can do and should do at the end of the year that is bipartisan that will advance our interests.

Why is it that energy is important? Well, one, the vulnerability to our economy if we were to see the supply of energy that is necessary shut off to this country at any point. So it is national security. No. 1, national security. No. 2, it is the issue of the domestic energy use and the conversion as a part of this national and energy security to conservation, No. 1, and the production of different kinds of energy, No. 2, and then, finally, the issue of environmental benefits of some of the changes that are necessary. We are coming to an intersection for the first time when we debate energy in which energy production and national security resulting from that comes to the same intersection as the issue of climate change. So everything is going to change. The question isn't whether, it is how. So I wish to talk just a bit about some of the things we can do, it seems to me, to address these matters.

Let me talk about electricity. We produce a lot of electricity from different sources, including coal and natural gas, and so on. Coal is our most abundant resource. Fifty percent of the electricity in this country comes from coal, but we have to use it differently because when we burn coal, we throw carbon into the air and we understand we can't continue to do that. So we need to find innovative ways to extract the carbon from coal to continue to use that resource. We can and we will, in my judgment. I chair the appropriations subcommittee that funds carbon capture technology. There are all kinds of people around this country doing innovative, wonderful, breathtaking things to find a way to decarbonize coal. It is going to happen, if we decide to make the investment in order to allow it to happen.

So electricity that comes from coal or natural gas and electric plants, one of the problems we have dealing with the electricity is the delivery from where it is produced to where it is needed. Back in the early days of moving electricity around, we would build a plant to produce the electricity and then a spiderweb network of transmission wires in a circle largely around the planet and that became the service

area and they were not connected one to another. That is the way it was. Then, finally, we decided we needed to move electricity from one area to another, so we connected the grids, barely, but we never did go back and build a modern transmission system. The result is we have a system now that is not very reliable and can't effectively move power from where it is produced to where it is needed, particularly in the area of renewable power, where the wind blows and the Sun shines. Where you can produce wind energy and solar energy, we can't at this point have full effective capability to where you can move it to where you can produce it and where you need it.

So we need to build an interstate transmission system. We can't do that now. We need legislation to do that. We can't do it now as demonstrated by the fact that in the last 9 years, we have built 11,000 miles of natural gas pipeline to move natural gas around this country, and we have been able to build only 668 miles of interstate high-voltage transmission lines. Why? Because we have all kinds of jurisdictions that can say no and will say no, so you can't build transmission. So the legislation we passed out of the Energy Committee a year and a half ago now solved that problem, put us on the path to be able to build an interstate transmission system, a modern, rich system. We shouldn't lose that. We should proceed to get that opportunity in that legislation.

Let me talk a bit about oil and gas. We are actually producing more oil, for the first time—it has been a long while since we have been on the decline in production. Part of it is from my State. The Bakken formation is the largest formation of oil ever assessed in the history of the lower 48 States. There are up to 4.3 billion barrels of recoverable oil, according to the U.S. Geological Survey. With that, plus the role shale plays in much of the country, we are beginning to produce a bit more oil and gas at this point. That will stop quickly if we can't continue what is called hydraulic fracturing. We have to deal with that big problem. Most of us in this Senate, who come from areas where we produce fossil energy, believe this has been done for 50 years without a problem, and now it is under some siege. If we can't do hydraulic fracturing, that promise of natural gas supplies and new oil will evaporate. We need to continue—and we will—with the production of oil and natural gas in this country.

I also am a supporter of the production of ethanol and the biofuels. I think it makes sense to extend our energy supply, if we can do it every single year, using biomass, corn-based ethanol. That makes a lot of sense to me. The other issue I mentioned is coal. We are going to have to find a way to use coal by extracting the carbon. I believe we can do that. We need to make a much greater effort. We have tried to do that in legislation in the last year or two.

Then we have nuclear energy. We will build some nuclear plants. We are going to do that. I believe we ought to do everything, and do it well, including wind, solar, geothermal. All of the renewables have great promise. I understand that in this country, for a long while, it was that real men dig and drill, and if you are somebody who supports wind or solar energy, go smoke your pipe, read a few books, and have a leather patch on your jacket. Real men dig and drill, and the rest of you are a bunch of nuisances. That was the thought that existed for a long time. It is not true anymore. We are going to dig and drill and do it differently and protect this country's environment. We are also going to incentivize and see the production of substantial amounts of additional energy from the wind and the Sun. It makes sense to do that, in order to expand our energy supply, protect our environment, produce additional jobs. All of these issues I have talked about are very job creating.

Yet, in many ways, the legislation we have worked on languishes because we are told we don't have time. This is urgent. It is about the vulnerability of our economy, about our national security, and it is about jobs. We ought to get about the business of deciding this is a priority.

If I can describe, in summary, here is how we address energy issues: Produce more, yes, in every area. Produce more wind and solar energy, incentivize it. Produce more oil—and we are doing that—and natural gas. Expand ethanol capabilities and geothermal. We can do all of these things. We are building nuclear plants now. We will see some new ones come online. As a country, we ought to do what the French are doing with respect to reprocessing and recycling and reduce that 100-percent body of waste down to 5 percent. That is what they have been doing for some while. We ought to do that—the renewables are so important—and then move toward the electric vehicle deployment, so we can take advantage of all of this. I mentioned to you that we produce about 85 million barrels a day of oil—about 21 million barrels here in the United States, about one-fourth of the oil, and 77 percent of the oil we use in this country is used in vehicles.

If you are going to reduce the use of oil and reduce our vulnerability from too many exports of oil, then you have to do something about transportation. That is why this electric vehicle issue is so very important. It is the same with respect to natural gas vehicles and long-haul trucking across a network in this country. Electric vehicles are important. I have always been a fan, as well, of hydrogen and fuel cells. I think it is probably just beyond electric vehicles. Also, a fuel cell vehicle runs on electricity. It is interesting to get in and drive a hydrogen fuel cell vehicle and find that you can put your nose right down at the exhaust pipe, because it is just water vapor. It doesn't have a sound. It puts water

vapor out the back and has twice the power at the wheel. I think that is what our grandchildren and great-grandchildren are going to drive. All of these issues are so important to this country's future.

Again, I end as I started, by saying how profoundly disappointing it is that at the end of the session we understand how important this issue is and how little has been able to be done. There is still time. We could pass legislation called the Electric Vehicle Deployment Act. We could do that. We could pass legislation calling for a renewable energy standard, renewable electricity standard. This isn't rocket science. These are not complex issues that people can't understand. They understand them. Both political parties have strong supporters for these things. As we turn to December, it seems to me that as we contemplate probably 3 weeks in December on the floor of the Senate, we ought to at least consider what portion of an energy system and energy future can we embrace that came out of the Energy Committee in the Senate. The Electric Vehicle Deployment Act is the legislation that came out most recently and passed 19 to 3 by the Energy Committee—strongly bipartisan. Why wouldn't we take that up? Why would we not complete work on that and advance this country's future?

The other day I talked about the two dune-buggy-size vehicles on the surface of Mars. I did it because I was talking to some people in North Dakota, who said nothing is going right, everything is going to hell in a hand basket, and nothing the government touches works for sure. They were down. I told them the story about the two dune-buggy-size vehicles we are driving on the surface of Mars. Five years ago, 1 week apart, we ignited rockets, and they lifted off on the west coast of the United States, and they were on their journey to Mars—1 week apart. The first rocket transported its payload to the surface of Mars, which landed on Mars with a thump and a bounce. It was in a shroud. When it stopped bouncing and stayed still, the shroud opened, and out of the shroud drove a dune-buggy-size vehicle on the surface of Mars. One week later, the second payload was deposited on the surface of Mars. The shroud bounced, opened, and the second vehicle drove off to the surface of Mars. That was 5 years ago. One's name is Spirit and one is Opportunity—two little vehicles, Spirit and Opportunity. They were supposed to last 90 days on the surface of Mars, giving us information about what we could learn about this strange planet.

Five years later, Spirit and Opportunity are still moving. It takes us 9 minutes to communicate with Spirit or Opportunity, to send them a message. At one point, Spirit fell dead asleep, and we communicated with a satellite orbiting Mars and had the satellite communicate with Spirit, and Spirit woke up. Spirit, they say, has an arm

that was used to sample the soil of Mars. That arm has become just like old men become, rheumatoid and arthritic, and now hangs at a strange angle because of that machine arthritis it has, apparently. Also a wheel broke, among the five wheels, but it didn't fall off; it is hanging. As Spirit traverses the surface of Mars, it drags one wheel that digs a slightly deeper 2-inch hole in the surface of Mars, and the arthritic arm reaches back and tells us what is happening on Mars.

How is all of this happening? First of all, it is unbelievable engineering, right? Can you imagine the people who put this together, to send dune buggies we could drive on the surface of Mars, and then they last 5 years when they were supposed to last 90 days? How are they powered? Do they have a Briggs and Stratton engine and somebody pulls it and gets them started? No. They are powered by the Sun. They have solar cells that allow us to have the power to drive dune buggies on the surface of Mars. Is it beyond our reach to believe that if we can power dune buggies with solar cells on Mars, we can fix a few of these things here on planet Earth? Of course that is not beyond our reach. Of course we can do that. In fact, the very names of these dune buggies—Spirit and Opportunity—ought to be the names on these desks in this Chamber: Spirit and Opportunity.

I started by saying there is no pre-ordained destiny for this country to do well. It always has done well. When I grew up, I knew we were the biggest, the strongest, the best, and had the most. We could beat anybody with one hand tied behind our back. That will not always be the case. We will not remain a world economic power, unless we make smart decisions. Our parents and grandparents did. Every parent in this country has sacrificed for their kids. I don't know what is in second, third, or fourth place to most people, but first place is their kids. The question is whether it is on fiscal policy or energy policy. The question is, what are we willing to do for our kids? What kind of future do we want to leave our kids? Do we want to leave them deep in debt or vulnerable on energy production, which may leave us in the dark one day? I don't think so. This country can do much better than that.

Neither party has been much of a political bargain recently. Both parties need to do better. I have strong feelings about which has better ideas at the moment, and I will not be partisan on the floor, except to say that this country deserves more. It is not just coming out here talking about how can we cut taxes for everybody; it is how do we tighten our belts and ask those who are supposed to pay taxes to pay them, getting deficits under control, and getting people back on payrolls, and incentivizing businesses to create jobs.

How do we address energy issues? It is time for this country to be serious—this Congress—about doing things that

are necessary, which may require sacrifice from all of us. If young men and women are willing to leave their homes to go to Afghanistan today for a year because their country asks them to, we can do no less than make sacrifices that are thoughtful on behalf of our future, so they won't come home and find a bigger deficit and more unemployment, but instead that we made the tough decisions to fix these things. We are going to fix this because it is important for the country's future.

As I said when I started, this issue of energy is so very important and is unfinished business. In my judgment, we ought not to include at the end of this year an energy bill, or components of one, that I think could be very important to this country's future, to jobs, and to our national security.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, in a very short while here—literally, in about 40 minutes—the time will be expired and we will be voting on the motion to proceed to the Food Safety Modernization Act. The Food Safety Modernization Act. One can wonder why did we have to go through a closure motion and a vote on that the other day. We got 74 votes on it. But it looks as though now we are going to have to have another vote on the motion to proceed after we have had 74 votes.

A lot of effort has gone into this bill by a lot of people—Republicans and Democrats—and, Lord knows, our staff. This bill has been germinating and being put together over the course of at least the last 3 or 4 years anyway, and probably a little before that when we started. I know Senator DURBIN has been working on this for several years, as have Senator GREGG, Senator DODD, and others. So this has all been put together over a period of several years. But I would say over the last 4 years, diligent work has gone into this bill, and certainly again in the last year.

It was 1 year ago, November 18—1 year ago today—that this bill was reported out of our HELP Committee, which I chair. It was reported out without one dissenting vote. It is a bill that is supported by so many different groups and so many different people. Here is a list of the people supporting this bill. We worked hard to get a broad base of support from both industry and consumers. As I have said, this may be one of the only bills I have seen around here that has the support not only of the Food Marketing Institute and the Grocery Manufacturers Institute and the Center for Science in the Public Interest. So we have both consumer groups and the business groups

supporting this—the U.S. Chamber of Commerce and the U.S. Public Interest Research Group. When have those two ever been together on a bill? And the Snack Food Association and the Pew Charitable Trusts. I mean, we have wide support for this.

The industry wants this. They want it because they know our food safety laws have not been upgraded in seven decades—since 1938, before I was born. Think about how our food has changed in our society and how we produce it and how we process it and how we ship it, not to mention the amount of foreign foods coming into this country. Consumers want it because we know a lot of people are getting sick.

I will hasten to add that we do have one of the safest food supplies in the world. But that is not good enough, because we know how many people get ill every year. Thousands of people are contaminated by food poisoning every year—E. coli, salmonella. I have met with families here from Safe Tables Our Priority. I have met with families of kids who are damaged for life because they happened to eat the wrong thing—they ate some spinach or a tomato or fish, shellfish, or something such as that. These kids are maimed for life.

We have worked very hard to put this bill together. As I said, 1 year ago it came out of our committee without one dissenting vote. But there were still some problems out there, and so we worked very hard since last November to try to reach an agreement on this bill. And we have a broad agreement. As I said, we had 74 votes on the floor of the Senate the other day.

One of my colleagues has raised a lot of issues on this bill. My good friend from Oklahoma, Senator COBURN, is on our committee, and he has raised a lot of concerns about this bill. I have met with him several times and we have had good discussions. I know he said some nice things about me on the floor earlier, and I appreciate that, and I would repay those in kind; that Senator COBURN is a very thoughtful person and he focuses on these things. He reads these bills and he gets involved. This is not something off the seat of his pants. He has focused on this. Some of the suggestions he made I thought were valid. We looked through them and we incorporated a lot of the suggestions made by my friend from Oklahoma into this bill.

We were also willing to go to the consumers and say, look, this is okay. None of us—not any one Senator around here—has infinite wisdom. Only one person has infinite wisdom. No Senators have infinite wisdom. I can't say I have ever written a bill in its entirety that got through here without having anything changed, because we don't know everything. So we rely upon one another in good faith to suggest changes, to point out things maybe we didn't see due to our blinders. We help each other put together bills that have broad support and broad

consensus so that we move ahead as a society. To me, that is the way I think we ought to operate.

So when other people were making suggestions—and I didn't mean to single out Senator COBURN, because others too had made suggestions—we tried to work with them to incorporate certain provisions in the bill. Senator TESTER, for example, on our side had suggestions about exempting certain small producers. That raised the consternation of many on the consumer side. It also raised the consternation of many on the business side. A lot of the bigger businesses said: Well, if we have to do this, you can get just as sick from eating things from small producers too. So we had to work through that. But we did work through it. It took us several months but we worked through and we got an agreement.

Quite frankly, we had good input from the Republican side—from Senator GREGG, Senator ENZI, and Senator BURR. I mention those individuals because they have been very integral to this process on our committee. We have worked through that and we got an amendment that satisfies the small producers and the consumers and the business community and the large producers. Not easy. Not easy. But compromises a lot of times aren't very easy. It is a compromise that we worked through. We worked through Senator TESTER's amendment too. That took a long time.

We were not able to reach an agreement on Senator FEINSTEIN's amendment. We agreed not to incorporate it because we could not reach an agreement on it—on the BPA amendment, even though it is very important to her and very important to a lot of people.

We have tried to get something together that would have this broad consensus and yet move us forward in making our food safer, and I believe this bill does that. This bill does this in four ways:

It improves the prevention of food safety problems. That is key. For many years, I served as chair or ranking member on the Agriculture Committee—35 years, both here and in the House. Many years ago, we came up with a program of prevention. Rather than solving the problem later, the question was: How do we prevent pathogens from entering the meat supply? We came up with this proposal of finding the access points. Where are the points in the process where contaminants and pathogens can come in? Let us have the industry come up with plans on how to prevent that on their own. That has worked. Does it work 100 percent every single time? No. But nothing is ever perfect.

I would hasten to add that even if we pass this bill, will it prevent every single foodborne illness forever and ever? Probably not. Probably not. But it is going to be a lot better than what we have right now, a lot better, because we are going to look at prevention—preventing the pathogens from en-

trance in the first place. So that is one way we do it.

Secondly, it improves the response to detection of foodborne illness outbreaks when they do occur. In other words, we will be able to detect it earlier and respond earlier than we have been able to do in the past.

It enhances our Nation's food defense capabilities. Every year, 76 million Americans get sick from foodborne illnesses—76 million. So the stakes are too high not to act.

These are the critical ways in which we have moved the ball forward. Again, I know my friend from Oklahoma has said to me many times that it will not solve all your problems. I understand that. It is not perfect. But there is an old saying: Don't let the perfect be the enemy of the good. This is a good bill. It is going to help keep our people from getting sick. Everyone? No. I would never stand here and say this is going to solve every single foodborne illness problem in America. But it is sure going to do a lot more than we have been doing.

Again, I want to make it clear that if anyone says we are trampling on the rights of the minority, I ask you to consider all we have done. We have a bipartisan team in place, we have modified the bill dozens of times to get the right balance, we have all made tremendous compromises—Democrats and Republicans, consumers and business. As I said, we agreed to compromises just lately. The mandatory inspection schedule, which is so important to the public health community, has been reduced tenfold—tenfold—since that bill was reported out of our committee unanimously 1 year ago. We accepted language, as I said, which exempted the small facilities from these new requirements—the Tester amendment. We agreed to changes in the section on traceback, which limits the application of the new rule to farms and restaurants. There is no registration fee to help pay for the bill. The routine access to records the FDA wanted, we don't do that either.

That is a short list. I can go on and on. I think one of my friends on the other side said we have bent over backward, and we have. We wanted to reach a point where we could move ahead with the bill, even offering to let some amendments be offered and we would vote on those amendments. But what has happened now, I understand, is that the Senator from Oklahoma, my friend, has now said he wanted to offer an amendment dealing with earmarks.

Look, earmarks is an issue. It is an issue that the next Congress, I would say—probably the next Congress—is going to have to address. But it should be done in the spirit of debate. It should be done in the spirit so committees that have relevant jurisdiction can look at this, make recommendations. We should not do it in the heat of passion, right now. We just came off of a very heated election. There have been a lot of changes made. I understand that.

We live with that. That is fine. But now is not the time to start throwing up red-hot issues that were in the campaign. Let's let things cool down a little bit and approach an issue such as earmarks thoughtfully, with due diligence and with due debate.

This bill that is going to protect our people from getting sick and our kids from being injured for lifetimes because they eat contaminated peanut butter—this is not the bill to deal with something dealing with earmarks. I hope my friend from Oklahoma will relent. There will be plenty of time and plenty of opportunities when we come back in January with a new Congress, I say to my colleague from Oklahoma, to bring up the matter of earmarks and have it debated fully and have some kind of resolution by both the Senate and the House on that issue—but not right now. This is not the time to do it, not in the heat of coming off the campaign.

Let's keep our eye on the ball. This is a food safety bill. We have come so close. We have an agreement from the House that what we pass here, the bill we have put together, that we reached all these compromises on—we have an agreement from the House, if we pass it and we do get significant—we get bipartisan support, that the House would take it and pass it and send it right to the President. What more could you ask for than that? We get to decide what the President actually signs into law.

Without going into every little thing we have done here, let me just mention a few.

Senator COBURN was concerned about the authorization level, so we offered in good faith to reduce it by 50 percent. That is kind of a compromise—we just reduced the authorization by 50 percent on the grants. We offered to modify the sections on performance standards and surveillance. It is completely done. We completely struck section 510. We called for increasing the hiring of FDA staff. In our bill, we called for increasing staff to conduct certain inspections. My friend objected to that. In the spirit of compromise, we struck it. We said no, we are not going to call for increasing hiring of field staff. Mr. COBURN had some concerns—rightfully so, by the way—about improving coordination between FDA and USDA, so we offered to add his language that would force them to get together and not duplicate efforts, and on the customs side, too, so we would eliminate any kind of duplication of inspections. We put that in the bill.

We offered to do all this and to put it in the bill, and we did, and that will be in our amendment that we offer. We will in good faith put those things in our bill. But then I am told that now we are probably going to have to file cloture, fill the tree, and do all that stuff which I was hoping we would not have to do. That is not the way to do business here. I don't like doing it that way. That is why we worked so hard to

try to reach these agreements. But I guess we are going to be forced to do that. I hope that is not so.

I also heard that maybe someone might want to read the bill. That is 4 hours of reading the bill. That bill has been out here for a year. If anybody wanted to read it, they could have read it by now. But that is just another delaying tactic we really do not need.

Again, on this issue of saying we cannot vote on this bill unless we will vote on earmarks, I say earmarks is an important issue. I am happy to have the debate and to have a vote on that but not now. This is a food safety bill. We have it ready to go. We have all our compromises in place. This is not the time and this is not the bill on which to debate the whole issue of earmarks.

You might say, why are we so willing to compromise, why am I so passionate on this bill? Because people are dying. We have Thanksgiving coming up. People will be gathered around with their families—except for all those people in homeless shelters. Mr. President, 950,000 children in America who go to elementary, middle, and high school will not have a home to go to this Thanksgiving because they are living in homeless shelters. Think about that. They are living in cars and homeless shelters. They are being shunted around—950,000. Am I going to stand here and say that if we pass this bill and get it to the President, that is going to keep any one of them from getting sick on what they might eat on Thanksgiving Day? I am not here to say that. But what this bill will do is send a strong signal that we are going to take the steps necessary in the coming months and years to upgrade our food safety system so that the chance, the likelihood of them ever getting sick from eating contaminated food is going to be greatly decreased. Surely we can at least send that hopeful message out to our families before Thanksgiving. Surely we could do that and not get bollixed up around here in politics and political debate.

I know of no politics on this bill. I know of no politics. I mean Democrat, Republican, left, right, liberal, conservative—I don't know of anything like that. There is not. I do know that this issue of earmarks, regardless of the substantive issue, is a political issue too. They may have substantive reasons, but there is also a lot of politics hanging around that.

Let's take the bill that has no politics, knows neither left nor right, conservative, liberal, Democrat, or Republican. It has nothing to do with earmarks or what we ever do with earmarks or anything else. It has to do with the safety and welfare of our American families, of our kids. I am just asking people to be reasonable.

There is a time and place for political debate, even here on the Senate floor. We may say it does not happen, but we know it does. There is a time and place for that. That will happen—not now, not on this bill. We have come

too far. We are too close. We have too many compromises that we made that are so widely supported. I am afraid that if we lose this, all the good work that has gone in in the last year, the last 2 years, the last 4 years putting this together, it is going to be very hard to put it back together again. So people will continue to roll the dice when they buy food. Maybe it is safe and maybe it is not.

We will continue to see more things happen like what happened to Kayla Boner, Monroe, IA, age 14. On October 22, 2007, she turned 14 and passed her learner's permit. The next day, she stayed home. She had a foodborne illness due to E. coli contamination. She was admitted to the Paella, IA, Community Hospital. Her symptoms worsened. She didn't respond to antibiotics, and within a week her kidneys began to fail. Kayla was transferred to Blank Children's Hospital for dialysis, but her condition continued to deteriorate. She suffered a seizure and began to have heart problems. A few days later, Kayla's brain activity stopped, and her parents made the painful decision to take their beautiful daughter off life support.

For Kyle Allgood—spinach. His family is going to have an empty seat at their Thanksgiving table this year. Kyle, a playful 2-year-old, fell ill after eating bagged spinach contaminated by a deadly strain of E. coli. They thought it was flu. He began to cry from excruciating abdominal pain. He was flown all the way to a Salt Lake City hospital. His kidneys failed, he had a heart attack, and he died—from eating bagged spinach.

Stephanie Bartilucci's family is also going to have an empty seat at their Thanksgiving table this year—killed by listeria, eating lettuce. She was 30 weeks pregnant, Stephanie was. She felt that something was wrong. When she went for an ultrasound, it showed that the baby was not moving. She had contractions, and eventually her heart began to beat dangerously fast and she had to undergo an emergency C-section. When she awoke, she found that her baby boy had bleeding in his brain and couldn't breathe on his own. He was intubated and brain dead. Stephanie soon discovered she had been suffering from a bacterial infection from eating contaminated lettuce. The bacteria was so deadly that she became septic and almost lost her own life. Her newborn baby, Michael, died in her arms that night.

There are also families who have had loved ones survive foodborne illnesses, but their lives will never be the same, such as Rylee Gustafson and her family. On Rylee's ninth birthday, she began to complain of stomach pain after eating E. coli-contaminated spinach. Within 72 hours, she had been admitted to UCSF Children's Hospital. Her kidneys began to fail, and dialysis treatments were started. In addition to kidney failure, she experienced hallucinations and temporary loss of vision,

developed high blood pressure and diabetes, and had fluid buildup in her lungs and around her heart. On the 10th day of hospitalization, Rylee's condition had deteriorated to the point where the doctors believed it necessary to prepare her family that she might not pull through. Rylee spent 35 days in the hospital and will have to endure the memories of that traumatic time for the rest of her life. The long-term effects of her illness are currently unknown.

How many Americans will have to die, how many of these kids will become sick before we fulfill our responsibility to modernize our woefully outdated food safety system?

How many families will have to endure a tragic loss before we pass this legislation? One more tragedy is one too many. I urge my colleagues, as they think about their holiday plans and their preparations, to take a moment to think about families who have had their holidays disrupted by contaminated food. Five thousand people die every year in this country because of contaminated food. Among them are many children. As they spend the day with their loved ones preparing Thanksgiving banquets, the last thing people want is to be jeopardized by the threat of food contamination. Yet many families are haunted by this. It is unacceptable. It is past time we do something. We have come too far. We have reached compromises. We have the support of many sectors of society.

Again, if we pass this bill, will it ensure that no kid like Rylee will ever get sick again? I can't make that promise. Or that no one will ever die? I can't make that promise. But I can promise this: With the passage of this bill, putting it into law, the chances there will be another Rylee Gustafson will be diminished greatly.

Let's not get this caught up in politics. Let's get the politics out of this. Let's vote on the bill. Let's get it through. Let's go home. Let Senators go home for Thanksgiving grateful that we have done a good thing, that we have done something good for our country, and that we didn't let it get all boxed up in politics. Isn't that the least we can do for the country on this Thanksgiving week?

I yield the floor.

Mr. SPECTER. Madam President, I have sought recognition to speak in favor of my amendment No. 4693 to the FDA Food Safety Modernization Act S.510 to permit emergency scheduling of designer anabolic steroids.

Anabolic steroids—masquerading as body building dietary supplements—are sold to millions of Americans in shopping malls and over the Internet even though these products put at grave risk the health and safety of Americans who use them. The harm from these steroid-tainted supplements is real. In its July 28, 2009, public health advisory, the FDA described the health risk of these types of products to include serious liver injury, stroke, kid-

ney failure and pulmonary embolism. The FDA also warned:

[A]nabolic steroids may cause other serious long-term adverse health consequences in men, women, and children. These include shrinkage of the testes and male infertility, masculinization of women, breast enlargement in males, short stature in children, adverse effects on blood lipid levels, and increased risk of heart attack and stroke.

New anabolic steroids—often called designer steroids—are coming on the market every day, and FDA and DEA are unable to keep pace and effectively stop these products from reaching consumers.

At the Senate Judiciary Subcommittee on Crime and Drugs hearing I chaired on September 29, 2009, representatives from FDA and DEA, as well as the U.S. Anti-Doping Agency, testified that there is a cat and mouse game going on between unscrupulous supplement makers and law enforcement—with the bad actors engineering more and more new anabolic steroids by taking the known chemical formulas of anabolic steroids listed as controlled substances in schedule III and then changing the chemical composition just slightly, perhaps by a molecule or two. These products are rapidly put on the market—in stores and over the Internet—without testing and proving the safety and efficacy of these new products. There is no prenotification to, or premarket approval by, Federal agencies occurring here. These bad actors are able to sell and make millions in profits from their designer steroids because while it takes them only weeks to design a new steroid by tweaking a formula for a banned anabolic steroid, it takes literally years for DEA to have the new anabolic steroid classified as a controlled substance so DEA can police it.

The FDA witness at the hearing, Mike Levy, Director of the Division of New Drugs and Labeling Compliance, acknowledged that this is a “challenging area” for FDA. He testified that for FDA it is “difficult to find the violative products and difficult to act on these problems.” The DEA witness, Joseph T. Rannazzisi, Deputy Assistant Administrator for DEA, was even blunter. When I questioned him at the hearing, Mr. Rannazzisi admitted that “at the present time I don't think we are being effective at controlling these drugs.” He described the process as “extremely frustrating” because “by the time we get something to the point where it will be administratively scheduled [as a controlled substance], there's two to three [new] substances out there.”

The failure of enforcement is caused by the complexity of the regulations, statutes and science. Either the Food Drug and Cosmetic Act, which provides jurisdiction for FDA, or the Controlled Substances Act, which provides jurisdiction for DEA, or both, can be applicable depending on the ingredients of the substance. Under a 1994 amendment to the Food Drug and Cosmetic Act,

called the Dietary Supplement Health and Education Act, DSHEA, dietary supplements, unlike new drug applications, are not closely scrutinized and do not require premarket approval by the FDA before the products can be sold. Premarket notification for dietary supplements is required only if the product contains new dietary ingredients, meaning products that were not on the U.S. market before DSHEA passed in 1994.

If the FDA determines that a dietary supplement is a steroid, it has several enforcement measures available to use. FDA may treat the product as an unapproved new drug or as an adulterated dietary supplement under the Food Drug and Cosmetic Act. Misdemeanor violations of the Food Drug and Cosmetic Act may apply, unless there is evidence of intent to defraud or mislead, a requirement for a felony charge. However, given the large number of dietary supplement products on the market, it is far beyond the manpower of the FDA to inspect every product to find, and take action against, those that violate the law—as the FDA itself has acknowledged.

The better enforcement route is a criminal prosecution under the Controlled Substances Act. However, the process to classify a new anabolic steroid as a controlled substance under schedule III is difficult, costly and time consuming, requiring years to complete. Current law requires that to classify a substance as an anabolic steroid, DEA must demonstrate that the substance is both chemically and pharmacologically related to testosterone. The chemical analysis is the more straightforward procedure, as it requires the agency to conduct an analysis to determine the chemical structure of the new substance to see if it is related to testosterone. The pharmacological analysis, which must be outsourced, is more costly, difficult, and can take years to complete. It requires both in vitro and in vivo analyses—the latter is an animal study. DEA must then perform a comprehensive review of existing peer-reviewed literature.

Even after DEA has completed the multiyear scientific evaluation process, the agency must embark on a lengthy regulatory review and public-comment process, which typically delays by another year or two the time it takes to bring a newly emerged anabolic steroid under control. As part of this latter process, DEA must conduct interagency reviews, which means sending the studies and reports to the Department of Justice, DOJ, the Office of Management and Budget, OMB, and the Department of Health and Human Services, HHS—provide public notification of the proposed rule, allow for a period of public comment, review and comment on all public comments, write a final rule explaining why the agency agreed or did not agree with the public comments, send the final rule and agency comments back to DOJ,

OMB and HHS, and then publish the final rule, all in accordance with the Administrative Procedures Act. To date, under these cumbersome procedures, DEA has only been able to classify three new anabolic steroids as controlled substances and that process—completed only after the September 29, 2010, Senate Judiciary subcommittee hearing—took more than 5 years to finish.

It is clear that the current complex and cumbersome regulatory system has failed to protect consumers from underground chemists who easily and rapidly produce designer anabolic steroids by slightly changing the chemical composition of the anabolic steroids already included on schedule III as controlled substances. The story of Jareem Gunter, a young college athlete who testified at the hearing, illustrates the system's failure. To improve his athletic performance 4 years ago, Jareem purchased in a nutrition store a dietary supplement called Superdrol, a product he researched extensively on the Internet and believed was safe. Unfortunately it was not. Superdrol contained an anabolic steroid which to this day is still not included in the list of controlled substances. After using Superdrol for just several weeks, Jareem came close to dying because this product—which he thought would make him stronger and healthier—seriously and permanently injured his liver. He spent 4 weeks in the hospital and has never been able to return to complete his college education.

To close the loopholes in the present laws that allow the creation and easy distribution of deadly new anabolic steroids masquerading as dietary supplements, I filed amendment No. 4693 to the FDA Food Safety Modernization Act S.510 to permit emergency scheduling of designer anabolic steroids. The amendment simplifies the definition of anabolic steroid to more effectively target designer anabolic steroids, and permits the Attorney General to issue faster temporary and permanent orders adding recently emerged anabolic steroids to the list of anabolic steroids in schedule III of the Controlled Substances Act.

Under the amendment, if a substance is not listed in schedule III of the Controlled Substances Act but has a chemical structure substantially similar to one of the already listed and banned anabolic steroids, the new substance will be considered to be an anabolic steroid if it was intended to affect the structure or function of the body like the banned anabolic steroids do. In other words, DEA will not have to perform the complex and time consuming pharmacological analysis to determine how the substance will affect the structure and function of the body, as long as the agency can demonstrate that the new steroid was created or manufactured for the purpose of promoting muscle growth or causing the same pharmacological effects as testosterone.

Utilizing the same criteria, the amendment permits the Attorney General to issue a permanent order adding such substances to the list of anabolic steroids in schedule III of the Controlled Substances Act.

The amendment also includes new criminal and civil penalties for falsely labeling substances that are actually anabolic steroids. The penalties arise where a supplement maker fails to truthfully indicate on the label—using internationally accepted and understandable terminology—that the product contains an anabolic steroid. These penalties are intended to be substantial enough to take away the financial incentive of unscrupulous manufacturers, distributors, and retailers who might otherwise be willing to package these products in a way that hides the true contents from law enforcement and consumers.

Finally, the amendment adds to schedule III 33 new anabolic steroids that have emerged in the marketplace in the 6 years since Congress passed the Anabolic Steroid Control Act of 2004. It also instructs the U.S. Sentencing Commission to review and revise the Federal sentencing guidelines to ensure that where an anabolic steroid product is illegally manufactured or distributed, and that product is in a tablet, capsule, liquid or other form that makes it difficult to determine the actual amount of anabolic steroid in the product, the sentence will be based on the total weight of the product.

Amendment No. 4693 simplifies and expedites the process for scheduling anabolic steroids as controlled substances. By making this simple procedural change, we can protect the health and lives of countless Americans and provide an effective enforcement mechanism to hold accountable those individuals and their companies which purposefully exploit the current regulatory system for their selfish gain. I urge my colleagues to pass amendment No. 4693 to the FDA Food Safety Modernization Act S. 510.

Mr. CONRAD. Madam President, section 311(c) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, aggregates, and other appropriate levels and limits in the resolution for legislation that would improve the safety of the food supply in the United States. This adjustment to S. Con. Res. 13 is contingent on the legislation not increasing the deficit over either the period of the total of fiscal years 2009 through 2014 or the period of the total of fiscal years 2009 through 2019.

I find that S. 510, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply, fulfills the conditions of the deficit-neutral reserve fund for food safety. Therefore, pursuant to section 311(c), I am adjusting the aggregates in the 2010 budget resolution, as well as

the allocation to the Senate Health, Labor, Education, and Pensions Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311(c) DEFICIT-NEUTRAL RESERVE FUND FOR FOOD SAFETY

[In billions of dollars]

<i>Section 101</i>	
(1)(A) Federal Revenues:	
FY 2009 .....	1,532.579
FY 2010 .....	1,612.278
FY 2011 .....	1,939.131
FY 2012 .....	2,142.415
FY 2013 .....	2,325.527
FY 2014 .....	2,575.718
(1)(B) Change in Federal Revenues:	
FY 2009 .....	0.008
FY 2010 .....	-53.708
FY 2011 .....	-149.500
FY 2012 .....	-217.978
FY 2013 .....	-189.810
FY 2014 .....	-57.940
(2) New Budget Authority:	
FY 2009 .....	3,675.736
FY 2010 .....	2,907.837
FY 2011 .....	2,858.866
FY 2012 .....	2,831.668
FY 2013 .....	2,991.128
FY 2014 .....	3,204.977
(3) Budget Outlays:	
FY 2009 .....	3,358.952
FY 2010 .....	3,015.541
FY 2011 .....	2,976.251
FY 2012 .....	2,878.305
FY 2013 .....	2,992.352
FY 2014 .....	3,181.417

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 311(c) DEFICIT-NEUTRAL RESERVE FUND FOR FOOD SAFETY

[In millions of dollars]

Current Allocation to Senate Health, Education, Labor, and Pensions Committee:	
FY 2009 Budget Authority .....	-22,612
FY 2009 Outlays .....	-19,258
FY 2010 Budget Authority .....	4,159
FY 2010 Outlays .....	1,295
FY 2010-2014 Budget Authority .....	43,782
FY 2010-2014 Outlays .....	43,026
Adjustments:*	
FY 2009 Budget Authority .....	0
FY 2009 Outlays .....	0
FY 2010 Budget Authority .....	0
FY 2010 Outlays .....	0
FY 2010-2014 Budget Authority .....	0
FY 2010-2014 Outlays .....	0
Revised Allocation to Senate Health, Education, Labor, and Pensions Committee:*	
FY 2009 Budget Authority .....	-22,612
FY 2009 Outlays .....	-19,258
FY 2010 Budget Authority .....	4,159
FY 2010 Outlays .....	1,295
FY 2010-2014 Budget Authority .....	43,782
FY 2010-2014 Outlays .....	43,026

\*\*According to CBO, the amendment in a nature of a substitute would increase revenues from civil and criminal penalties and related spending by less than \$500,000. The reserve fund adjustment accommodates this negligible increase in revenues and spending.

Ms. MIKULSKI. Madam President, I rise to address one of the most important issues facing our Nation, the safety of America's food supply. I support the FDA Food Safety Modernization Act that will help reduce the rash of contaminated foods that have recently entered our food supply. Every person should have confidence that their food is fit to eat.

While the FDA has always been the gold standard in maintaining the safety and efficacy of our food and drugs, the salmonella outbreak in eggs over the summer made it painfully clear that we need to do more—and that the law needs updating. The outbreak resulted in as many as 79,000 illnesses, 30 deaths, and the recall of roughly one half billion eggs. Beyond that, the Centers for Disease Control informs us that 76 million people get sick, and 5,000 die, each year from foodborne illnesses. Just last week the FDA warned Marylanders about a potential outbreak of E. coli in apple cider sold in the State.

I applaud the quick action by the FDA in responding to these food outbreaks, but we can do better. FDA Commissioner Margaret Hamburg has told us that she needs more resources and more authority to oversee the way our food is produced and monitored. That is why, as a committed advocate of food safety nationwide, I support the FDA Food Safety Modernization Act.

This bipartisan bill would give the FDA authority to order mandatory food recalls for unsafe foods if companies don't do it themselves. It sets FDA safety standards for produce, creates stronger FDA regulations for sanitary food transportation from our producers to our grocery stores, and establishes FDA pilot projects to better track where fruits and vegetables come from.

This bill also emphasizes prevention and taking action to prevent food outbreaks from occurring in the first place. It ensures that facilities have food safety plans in place to identify, evaluate, and address food safety hazards. With the growing amount of food that is imported globally, this bill ensures imported food meets the same safety standards as domestic food by requiring importers to verify the safety of foreign suppliers and imported food. This bill would grant the FDA the authority it needs to protect the health of our families.

It is time we get serious about the safety of our Nation's food. The health of Americans is not something to take a chance with. It is important that we make food safety a top priority. We must pass the FDA Food Safety Modernization Act and empower the FDA to set safety standards and hold food producers accountable.

Mr. DURBIN. Madam President, I would like to say a few words on this legislation because it is something I have worked on for many years. I can't thank Senator HARKIN and Senator ENZI and others enough for their hard work in bringing this issue to this mo-

ment in time. Several things have been stated during the course of the debate which I would like to address. Most of them were stated by my friend from Oklahoma, Senator COBURN. At this point he is the only Senator holding up this bill from consideration, one Senator.

At this point 89 percent of the American people support food safety reform to make our food safer and to have more inspections of imported food so our children and family members don't get sick; 89 percent support it. The bill has substantial bipartisan support. Twenty Republican and Democratic Senators are committed to this bill. Seventy-four Senators, almost three-fourths of the Senate, voted to move forward on this bill, a strong bipartisan roll call. The House passed a companion bill with the support of 54 Republicans. We know it is a bipartisan issue. This should not be a partisan fight.

Senator COBURN objected to giving the Federal Government the authority to recall a dangerous food product. Most people believe if there is a dangerous food product in stores across America, the Federal Government sends out a notice, and it is brought in. That is not the case. The Federal Government does not have the legal authority to recall any food products. All it can do is publicize that the products are dangerous and hope that grocers and retailers and manufacturers will take them off the shelves. That is it. That is the existing state of law. We give the government that authority.

Senator COBURN said it is not necessary. He claims not one company has ever refused to recall contaminated food. He is just wrong. There are many instances of companies that just flatout refuse to recall their food or delay a recall, and many people get sick and die. That is a fact.

Last year Westco Fruit and Nut Company flatout refused FDA's request to recall contaminated peanut products. A few years ago, GAO released a report entitled "Actions Needed by FDA to Ensure Companies Carry Out Recalls" which highlighted six other companies that flatout refused to recall contaminated food when they were told it was dangerous. Even the Bush administration realized how important this was and formally requested mandatory recall authority in the 2007 food protection plan.

Senator COBURN has his facts wrong when he claims the FDA does not need the mandatory recall authority.

Senator COBURN also claims our bill does not address the real problem in our Nation's food safety system.

Once again, he is mistaken. The National Academy of Sciences disagrees. In June, the National Academy released a report entitled "Enhancing Food Safety, the Role of the FDA." The report contained seven critical recommendations for improving food safety. This is not a partisan group. Every single one of the key rec-

ommendations from that group is addressed in our bill, including increasing inspections and making them risk related, giving FDA mandatory recall authority, improving registration of food facilities, and giving the FDA the authority to ban contaminated imports. Our bill fills all of the critical gaps in the FDA's food safety authority that have been identified by the National Academy of Sciences.

For Senator COBURN to say it is unnecessary is to ignore science and fact and, I guess, the reality that if we are going to make food safer, we need to do our job better. That is why all the key consumer protection and public health groups support this bill—all of them.

He thinks this bill is not good for business. He says it hurts their profits and their productivity. He is just wrong. The number and diversity of the industry and business groups that support the bill speaks for itself. Listen to the groups that support the food safety bill and tell me they are acting against their best business interests: the Grocery Manufacturers Association, the U.S. Chamber of Commerce, the American Beverage Association, the American Frozen Food Institute, the Food Marketing Institute, the International Dairy Foods Association, National Restaurant Association, Snack Food Association, National Coffee Association, National Milk Producers Federation, National Confectioners Association, Organic Trade Association, the American Feed Industry Association.

If Senator COBURN is right, every one of these associations' leadership should be removed tomorrow because, under his analysis, they have decided to support a bill that hurts their business. They know better. Safe food is good business. Think about what it costs these companies when they have to recall a product, when it damages their reputation and all the things they will go through to try to clean up their act.

Senator COBURN says there are 10 or 20 deaths per year caused by foodborne illness. The Senator is just wrong. He uses this number to support his assertion that there are not enough victims to justify a bill. Here are the facts. According to the Center for Disease Control, there are not 10 or 20 deaths per year, there are 5,000 deaths in America every single year caused by foodborne illness—5,000. Senator REID can tell some stories about his State which was hit particularly hard by food illness.

Moreover, every year 76 million Americans contract a foodborne illness; 325,000 are hospitalized. A few weeks ago I told you about one of the victims, a young man named Richard Chatfield from Owasso, OK. At age 15, he was on a camping trip and was diagnosed with E. coli. For 8 years, he suffered pain, migraine headaches, dry heaves, and high blood pressure, and after going on dialysis, kidney failure. When we were last debating this bill, Richard was lying in the hospital and his mother Christine had rushed to be by his side. That hospital turned out to be the scene of Richard's death.

On Monday, October 18, while we were still holding up the food safety bill, Richard Chatfield died from foodborne illness. The complications from an E. coli infection he got 8 years ago proved to be too much for him.

When I hear Senator COBURN on the Senate floor saying there are not enough people dying for us to go to work here, he is just plain wrong. Richard Chatfield of his State is dramatic evidence of that fact.

As we stand here today, one Senator is blocking a bill to protect millions of Americans. Moms and dads across America making dinner tonight, if they happen to have missed the channel they were looking for and ended up on C-SPAN and are following this debate, we are talking about an issue that goes right into their refrigerator and stove and kitchen as to whether the food they are putting on the table is safe for their kids. One Senator from Oklahoma says it is not a big enough problem. It is. It is a problem that is a life-and-death issue.

I thank the Senator from Iowa for his leadership on this issue and Senator REID for bringing this up. If we save one life, it is worth the effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I thank my friend and colleague from Illinois, Senator DURBIN. He has been the leader on this issue for several years. We have been working on this bill for a number of years. It is Senator DURBIN who has led the charge on this going back literally several years. We have come so close. We have made all the compromises. We have consumer groups, the Chamber of Commerce, U.S. PIRG. We never get those people to agree on anything, and they all agree on this bill.

I thank Senator DURBIN for all his great leadership. Hope springs eternal, and I still hope we will get the votes to pass this and keep the politics out of it.

I wish to correct something I said earlier. Earlier today I had met with Senator COBURN, and we had a number of things he wanted that I said I would try to put in the amendment on which we will be voting. In good faith, I said I would do that. But then, of course, we had to send it out to various offices to get Senators to sign off on it. We couldn't get Republican Senators to sign off on it. So I wish to correct the record.

The changes I had mentioned earlier that I was willing to put in the bill for Senator COBURN were not objected to by anybody on our side. It was objected to by Republicans and not Democrats. It is not in the bill. These were changes I was willing to make to accommodate the Senator from Oklahoma.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, is the 30 hours postcloture gone?

The PRESIDING OFFICER. It is.

Mrs. BOXER. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. MENENDEZ), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Virginia (Mr. WEBB) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. GREGG), the Senator from Texas (Mrs. HUTCHISON), the Senator from Nebraska (Mr. JOHANNIS), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Idaho (Mr. RISCH), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "nay" and the Senator from Kentucky (Mr. BUNNING) would have voted "nay."

The PRESIDING OFFICER (Mr. FRANKEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 27, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—57

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Begich	Franken	Nelson (NE)
Bennet	Gillibrand	Nelson (FL)
Bingaman	Hagan	Pryor
Boxer	Harkin	Reed
Brown (MA)	Inouye	Reid
Brown (OH)	Johnson	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Coons	Lincoln	Voinovich
Dodd	Manchin	Warner
Dorgan	McCaskill	Whitehouse
Durbin	Merkley	Wyden

NAYS—27

Barrasso	Cornyn	LeMieux
Bennett	Crapo	Lugar
Bond	Enzi	McCain
Brownback	Graham	McConnell
Burr	Grassley	Roberts
Chambliss	Hatch	Sessions
Coburn	Inhofe	Shelby
Cochran	Isakson	Thune
Corker	Kyl	Wicker

NOT VOTING—16

Alexander	Hutchison	Rockefeller
Bayh	Johannis	Specter
Bunning	Kerry	Vitter
DeMint	Menendez	Webb
Ensign	Murkowski	
Gregg	Risch	

The motion was agreed to.

FDA FOOD SAFETY MODERNIZATION ACT

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 510) to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

The Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "FDA Food Safety Modernization Act".

(b) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

Sec. 1. Short title; references; table of contents.

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

- Sec. 101. Inspections of records.
- Sec. 102. Registration of food facilities.
- Sec. 103. Hazard analysis and risk-based preventive controls.
- Sec. 104. Performance standards.
- Sec. 105. Standards for produce safety.
- Sec. 106. Protection against intentional adulteration.
- Sec. 107. Authority to collect fees.
- Sec. 108. National agriculture and food defense strategy.
- Sec. 109. Food and Agriculture Coordinating Councils.
- Sec. 110. Building domestic capacity.
- Sec. 111. Sanitary transportation of food.
- Sec. 112. Food allergy and anaphylaxis management.

TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

- Sec. 201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.
- Sec. 202. Recognition of laboratory accreditation for analyses of foods.
- Sec. 203. Integrated consortium of laboratory networks.
- Sec. 204. Enhancing traceback and record-keeping.
- Sec. 205. Pilot project to enhance traceback and recordkeeping with respect to processed food.
- Sec. 206. Surveillance.
- Sec. 207. Mandatory recall authority.
- Sec. 208. Administrative detention of food.
- Sec. 209. Decontamination and disposal standards and plans.
- Sec. 210. Improving the training of State, local, territorial, and tribal food safety officials.
- Sec. 211. Grants to enhance food safety.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

- Sec. 301. Foreign supplier verification program.
- Sec. 302. Voluntary qualified importer program.
- Sec. 303. Authority to require import certifications for food.
- Sec. 304. Prior notice of imported food shipments.
- Sec. 305. Review of a regulatory authority of a foreign country.

Sec. 306. Building capacity of foreign governments with respect to food.

Sec. 307. Inspection of foreign food facilities.

Sec. 308. Accreditation of third-party auditors and audit agents.

Sec. 309. Foreign offices of the Food and Drug Administration.

Sec. 310. Smuggled food.

#### TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Funding for food safety.

Sec. 402. Whistleblower protections.

Sec. 403. Jurisdiction; authorities.

Sec. 404. Compliance with international agreements.

#### TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

##### SEC. 101. INSPECTIONS OF RECORDS.

(a) IN GENERAL.—Section 414(a) (21 U.S.C. 350c(a)) is amended—

(1) by striking the heading and all that follows through “of food is” and inserting the following: “RECORDS INSPECTION.—

“(1) ADULTERATED FOOD.—If the Secretary has a reasonable belief that an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, is”;

(2) by inserting “, and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner,” after “relating to such article”;

(3) by striking the last sentence; and

(4) by inserting at the end the following:

“(2) USE OF OR EXPOSURE TO FOOD OF CONCERN.—If the Secretary believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, that are needed to assist the Secretary in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals.

“(3) APPLICATION.—The requirement under paragraphs (1) and (2) applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.”.

(b) CONFORMING AMENDMENT.—Section 704(a)(1)(B) (21 U.S.C. 374(a)(1)(B)) is amended by striking “section 414 when” and all that follows through “subject to” and inserting “section 414, when the standard for records inspection under paragraph (1) or (2) of section 414(a) applies, subject to”.

##### SEC. 102. REGISTRATION OF FOOD FACILITIES.

(a) UPDATING OF FOOD CATEGORY REGULATIONS; BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(1) in paragraph (2), by—

(A) striking “conducts business and” and inserting “conducts business, the e-mail address for the contact person of the facility or, in the case of a foreign facility, the United States agent for the facility, and”; and

(B) inserting “, or any other food categories as determined appropriate by the Secretary, including by guidance” after “Code of Federal Regulations”;

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(3) by inserting after paragraph (2) the following:

“(3) BIENNIAL REGISTRATION RENEWAL.—During the period beginning on October 1 and ending on December 31 of each even-numbered year, a registrant that has submitted a registration under paragraph (1) shall submit to the Secretary a renewal registration containing the information described in paragraph (2). The Secretary shall provide for an abbreviated registration renewal process for any registrant that has not had any changes to such information since the registrant submitted the preceding registration or registration renewal for the facility involved.”.

(b) SUSPENSION OF REGISTRATION.—

(1) IN GENERAL.—Section 415 (21 U.S.C. 350d) is amended—

(A) in subsection (a)(2), by inserting after the first sentence the following: “The registration shall contain an assurance that the Secretary will be permitted to inspect such facility at the times and in the manner permitted by this Act.”;

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following:

“(b) SUSPENSION OF REGISTRATION.—

“(1) IN GENERAL.—If the Secretary determines that food manufactured, processed, packed, or held by a facility registered under this section has a reasonable probability of causing serious adverse health consequences or death to humans or animals, the Secretary may by order suspend the registration of the facility under this section in accordance with this subsection.

“(2) HEARING ON SUSPENSION.—The Secretary shall provide the registrant subject to an order under paragraph (1) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 business days after the issuance of the order or such other time period, as agreed upon by the Secretary and the registrant, on the actions required for reinstatement of registration and why the registration that is subject to suspension should be reinstated. The Secretary shall reinstate a registration if the Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

“(3) POST-HEARING CORRECTIVE ACTION PLAN; VACATING OF ORDER.—

“(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan in a timely manner.

“(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

“(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, such facility shall not import food or offer to import food into the United States, or otherwise introduce food into interstate or intrastate commerce in the United States.

“(5) REGULATIONS.—The Secretary shall promulgate regulations that describe the standards the Commissioner will use in making a determination to suspend a registration, and the format the Commissioner will use to explain to the registrant the conditions found at the facility. The Secretary may promulgate such regulations on an interim final basis.

“(6) APPLICATION DATE.—Facilities shall be subject to the requirements of this subsection beginning on the earlier of—

“(A) the date on which the Secretary issues regulations under paragraph (5); or

“(B) 180 days after the date of enactment of the FDA Food Safety Modernization Act.

“(7) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner.”.

(2) IMPORTED FOOD.—Section 801(l) (21 U.S.C. 381(l)) is amended by inserting “(or for which a registration has been suspended under such section)” after “section 415”.

(c) CONFORMING AMENDMENTS.—

(1) Section 301(d) (21 U.S.C. 331(d)) is amended by inserting “415,” after “404,”.

(2) Section 415(d), as redesignated by subsection (b), is amended by adding at the end before the period “for a facility to be registered, except with respect to the reinstatement of a registration that is suspended under subsection (b)”.

##### SEC. 103. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

##### “SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

“(a) IN GENERAL.—The owner, operator, or agent in charge of a facility shall, in accordance with this section, evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent the occurrence of such hazards and provide assurances that such food is not adulterated under section 402 or misbranded under section 403(w), monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

“(b) HAZARD ANALYSIS.—The owner, operator, or agent in charge of a facility shall—

“(1) identify and evaluate known or reasonably foreseeable hazards that may be associated with the facility, including—

“(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, allergens, and unapproved food and color additives; and

“(B) hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism; and

“(2) develop a written analysis of the hazards.

“(c) PREVENTIVE CONTROLS.—The owner, operator, or agent in charge of a facility shall identify and implement preventive controls, including at critical control points, if any, to provide assurances that—

“(1) hazards identified in the hazard analysis conducted under subsection (b) will be significantly minimized or prevented; and

“(2) the food manufactured, processed, packed, or held by such facility will not be adulterated under section 402 or misbranded under section 403(w).

“(d) MONITORING OF EFFECTIVENESS.—The owner, operator, or agent in charge of a facility shall monitor the effectiveness of the preventive controls implemented under subsection (c) to provide assurances that the outcomes described in subsection (c) shall be achieved.

“(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures that a facility will implement if the preventive controls implemented under subsection (c) are found to be ineffective through monitoring under subsection (d).

“(f) VERIFICATION.—The owner, operator, or agent in charge of a facility shall verify that—

“(1) the preventive controls implemented under subsection (c) are adequate to control the hazards identified under subsection (b);

“(2) the owner, operator, or agent is conducting monitoring in accordance with subsection (d);

“(3) the owner, operator, or agent is making appropriate decisions about corrective actions taken under subsection (e);

“(4) the preventive controls implemented under subsection (c) are effectively and significantly minimizing or preventing the occurrence of identified hazards, including through the use of environmental and product testing programs and other appropriate means; and

“(5) there is documented, periodic reanalysis of the plan under subsection (i) to ensure that the plan is still relevant to the raw materials, conditions and processes in the facility, and new and emerging threats.

“(g) RECORDKEEPING.—The owner, operator, or agent in charge of a facility shall maintain, for not less than 2 years, records documenting the monitoring of the preventive controls implemented under subsection (c), instances of non-conformance material to food safety, the results of testing and other appropriate means of verification under subsection (f)(4), instances when corrective actions were implemented, and the efficacy of preventive controls and corrective actions.

“(h) WRITTEN PLAN AND DOCUMENTATION.—The owner, operator, or agent in charge of a facility shall prepare a written plan that documents and describes the procedures used by the facility to comply with the requirements of this section, including analyzing the hazards under subsection (b) and identifying the preventive controls adopted under subsection (c) to address those hazards. Such written plan, together with the documentation described in subsection (g), shall be made promptly available to a duly authorized representative of the Secretary upon oral or written request.

“(i) REQUIREMENT TO REANALYZE.—The owner, operator, or agent in charge of a facility shall conduct a reanalysis under subsection (b) whenever a significant change is made in the activities conducted at a facility operated by such owner, operator, or agent if the change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard or not less frequently than once every 3 years, whichever is earlier. Such reanalysis shall be completed and additional preventive controls needed to address the hazard identified, if any, shall be implemented before the change in activities at the facility is operative. Such owner, operator, or agent shall revise the written plan required under subsection (h) if such a significant change is made or document the basis for the conclusion that no additional or revised preventive controls are needed. The Secretary may require a reanalysis under this section to respond to new hazards and developments in scientific understanding.

“(g) DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES SUBJECT TO HACCP.—The owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section, with respect to such facility:

“(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

“(k) EXCEPTION FOR FACILITIES SUBJECT TO SECTION 419.—This section shall not apply to a facility that is subject to section 419.

“(l) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the production of food for animals other than man, the storage of raw agricultural commodities (other than fruits

and vegetables) intended for further distribution or processing, or the storage of packaged foods that are not exposed to the environment.

“(m) DEFINITIONS.—For purposes of this section:

“(1) CRITICAL CONTROL POINT.—The term ‘critical control point’ means a point, step, or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce such hazard to an acceptable level.

“(2) FACILITY.—The term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.

“(3) PREVENTIVE CONTROLS.—The term ‘preventive controls’ means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would employ to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (a) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

“(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

“(B) Supervisor, manager, and employee hygiene training.

“(C) An environmental monitoring program to verify the effectiveness of pathogen controls in processes where a food is exposed to a potential contaminant in the environment.

“(D) A food allergen control program.

“(E) A recall plan.

“(F) Good Manufacturing Practices (GMPs).

“(G) Supplier verification activities.”

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this Act as the “Secretary”) shall promulgate regulations to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(2) CONTENT.—The regulations promulgated under paragraph (1) shall provide sufficient flexibility to be applicable in all situations, including in the operations of small businesses.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to apply specific technologies, practices, or critical controls to an individual facility.

(4) REVIEW.—In promulgating the regulations under paragraph (1), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of this Act to ensure that the program under such section 418 is consistent, to the extent practicable, with applicable domestic and internationally-recognized standards in existence on such date.

(c) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to hazard analysis and preventive controls related to the regulations promulgated under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

“(uu) The operation of a facility that manufacturers, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418.”

(e) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21

U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(f) DIETARY SUPPLEMENTS.—Nothing in the amendments made by this section shall apply to any dietary supplement that is in compliance with the requirements of sections 402(g)(2) and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(g)(2), 379aa-1).

(g) NO EFFECT ON ALCOHOL-RELATED FACILITIES.—

(1) IN GENERAL.—Nothing in the amendments made by this section shall apply to a facility that—

(A) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5291 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and

(B) is required to register as a facility under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) because such facility is engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages, with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages.

(2) LIMITED RECEIPT AND DISTRIBUTION OF NON-ALCOHOL FOOD.—Paragraph (1) shall not apply to a facility engaged in the receipt or distribution of any non-alcohol food, except that such paragraph shall apply to a facility described in such paragraph that receives and distributes non-alcohol food, provided such food is received and distributed—

(A) in a prepackaged form that prevents any direct human contact with such food; and

(B) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

(3) RULE OF CONSTRUCTION.—Except as provided in paragraphs (1) and (2), this subsection shall not be construed to exempt any food, other than distilled spirits, wine, and malt beverages, as defined in section 211 of the Federal Alcohol Administration Act (27 U.S.C. 211), from the requirements of this Act (including the amendments made by this Act).

(h) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

(2) EXCEPTIONS.—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined by the Secretary for purposes of this section, not later than 90 days after the date of enactment of this Act) after the date that is 2 years after the date of enactment of this Act; and

(B) the amendments made by this section shall apply to a very small business (as defined by the Secretary for purposes of this section, not later than 90 days after the date of enactment of this Act) after the date that is 3 years after the date of enactment of this Act.

#### SEC. 104. PERFORMANCE STANDARDS.

The Secretary shall, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, to determine the most significant foodborne contaminants. Based on such review and evaluation, and when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent adulteration of the food under section 402 of the Federal Food, Drug, or Cosmetic Act (21 U.S.C. 342) or to prevent the spread of communicable disease under section 361 of the Public Health Service Act (42

U.S.C. 264), the Secretary shall issue contaminant-specific and science-based guidance documents, action levels, or regulations. Such guidance, action levels, or regulations shall apply to products or product classes and shall not be written to be facility-specific.

**SEC. 105. STANDARDS FOR PRODUCE SAFETY.**

(a) *IN GENERAL.*—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

**“SEC. 419. STANDARDS FOR PRODUCE SAFETY.**

“(a) *PROPOSED RULEMAKING.*—

“(1) *IN GENERAL.*—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Agriculture and representatives of State departments of agriculture (including with regard to the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.)), shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

“(2) *PUBLIC INPUT.*—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

“(3) *CONTENT.*—The proposed rulemaking under paragraph (1) shall—

“(A) provide sufficient flexibility to be applicable to various types of entities engaged in the production and harvesting of raw agricultural commodities, including small businesses and entities that sell directly to consumers, and be appropriate to the scale and diversity of the production and harvesting of such commodities;

“(B) include, with respect to growing, harvesting, sorting, packing, and storage operations, minimum standards related to soil amendments, hygiene, packaging, temperature controls, animal encroachment, and water;

“(C) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism;

“(D) take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by Federal natural resource conservation, wildlife conservation, and environmental agencies; and

“(E) in the case of production that is certified organic, not include any requirements that conflict with or duplicate the requirements of the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.), while providing for public health protection consistent with the requirements of this Act.

“(4) *PRIORITIZATION.*—The Secretary shall prioritize the implementation of the regulations for specific fruits and vegetables that are raw agricultural commodities that have been associated with foodborne illness outbreaks.

“(b) *FINAL REGULATION.*—

“(1) *IN GENERAL.*—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum standards for those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

“(2) *FINAL REGULATION.*—The final regulation shall—

“(A) provide a reasonable period of time for compliance, taking into account the needs of small businesses for additional time to comply;

“(B) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States; and

“(C) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

“(c) *CRITERIA.*—

“(1) *IN GENERAL.*—The regulations adopted under subsection (b) shall—

“(A) set forth those procedures, processes, and practices as the Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402; and

“(B) permit States and foreign countries from which food is imported into the United States, subject to paragraph (2), to request from the Secretary variances from the requirements of the regulations, where upon approval of the Secretary, the variance is considered permissible under the requirements of the regulations adopted under subsection (b)(2)(C) and where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

“(2) *APPROVAL OF VARIANCES.*—A State or foreign country from which food is imported into the United States shall request a variance from the Secretary in writing. The Secretary may deny such a request as not reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

“(d) *ENFORCEMENT.*—The Secretary may coordinate with the Secretary of Agriculture and, as appropriate, shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

“(e) *GUIDANCE.*—

“(1) *IN GENERAL.*—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture, representatives of State departments of agriculture, farmer representatives, and various types of entities engaged in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including small businesses, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce.

“(2) *PUBLIC MEETINGS.*—The Secretary shall conduct not fewer than 3 public meetings in diverse geographical areas of the United States as part of an effort to conduct education and outreach regarding the guidance described in paragraph (1) for persons in different regions who are involved in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including persons that sell directly to consumers and farmer representatives.

“(f) *EXCEPTION FOR FACILITIES SUBJECT TO SECTION 418.*—This section shall not apply to a facility that is subject to section 418.”

(b) *PROHIBITED ACTS.*—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following:

“(vv) The failure to comply with the requirements under section 419.”

(c) *NO EFFECT ON HACCP AUTHORITIES.*—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21

U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

**SEC. 106. PROTECTION AGAINST INTENTIONAL ADULTERATION.**

(a) *IN GENERAL.*—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 105, is amended by adding at the end the following:

**“SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERATION.**

“(a) *IN GENERAL.*—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act.

“(b) *APPLICABILITY.*—Regulations under subsection (a) shall apply only to food—

“(1) for which the Secretary has identified clear vulnerabilities (including short shelf-life or susceptibility to intentional contamination at critical control points);

“(2) in bulk or batch form, prior to being packaged for the final consumer; and

“(3) for which there is a high risk of intentional contamination, as determined by the Secretary, that could cause serious adverse health consequences or death to humans or animals.

“(c) *DETERMINATIONS.*—In making the determination under subsection (b)(3), the Secretary shall—

“(1) conduct vulnerability assessments of the food system;

“(2) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration at vulnerable points; and

“(3) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

“(d) *CONTENT OF REGULATIONS.*—Regulations under subsection (a) shall—

“(1) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food; and

“(2) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate.

“(e) *EXCEPTION.*—This section shall not apply to farms, except for those that produce milk.

“(f) *DEFINITION.*—For purposes of this section, the term ‘farm’ has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).”

(b) *GUIDANCE DOCUMENTS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) *CONTENT.*—The guidance documents issued under paragraph (1) shall—

(A) include a model assessment for a person to use under subsection (d)(1) of section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a);

(B) include examples of mitigation strategies or measures described in subsection (d)(2) of such section; and

(C) specify situations in which the examples of mitigation strategies or measures described in

subsection (d)(2) of such section are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, may determine the time and manner in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

(c) PERIODIC REVIEW.—The Secretary of Health and Human Services shall periodically review and, as appropriate, update the regulations under subsection (a) and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 105, is amended by adding at the end the following:

“(uvv) The failure to comply with section 420.”

#### SEC. 107. AUTHORITY TO COLLECT FEES.

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by adding at the end the following:

##### “PART 6—FEES RELATED TO FOOD

#### “SEC. 743. AUTHORITY TO COLLECT AND USE FEES.

“(a) IN GENERAL.—

“(1) PURPOSE AND AUTHORITY.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

“(A) the responsible party for each domestic facility (as defined in section 415(b)) and the United States agent for each foreign facility subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year;

“(B) the responsible party for a domestic facility (as defined in section 415(b)) and an importer who does not comply with a recall order under section 423 or under section 412(f) in such fiscal year, to cover food recall activities associated with such order performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for such year;

“(C) each importer participating in the voluntary qualified importer program under section 806 in such year, to cover the administrative costs of such program for such year; and

“(D) each importer subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year.

“(2) DEFINITIONS.—For purposes of this section—

“(A) the term ‘reinspection’ means—

“(i) with respect to domestic facilities (as defined in section 415(b)), 1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction; and

“(ii) with respect to importers, 1 or more examinations conducted under section 801 subsequent to an examination conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction;

“(B) the term ‘reinspection-related costs’ means all expenses, including administrative expenses, incurred in connection with—

“(i) arranging, conducting, and evaluating the results of reinspections; and

“(ii) assessing and collecting reinspection fees under this section; and

“(C) the term ‘responsible party’ has the meaning given such term in section 417(a)(1).

“(b) ESTABLISHMENT OF FEES.—

“(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal

year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

“(2) FEE METHODOLOGY.—

“(A) FEES.—Fees amounts established for collection—

“(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

“(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

“(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

“(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

“(B) OTHER CONSIDERATIONS.—

“(i) VOLUNTARY QUALIFIED IMPORTER PROGRAM.—

“(I) PARTICIPATION.—In establishing the fee amounts under subparagraph (A)(iii) for a fiscal year, the Secretary shall provide for the number of importers who have submitted to the Secretary a notice under section 806(e) informing the Secretary of the intent of such importer to participate in the program under section 806 in such fiscal year.

“(II) RECOUPMENT.—In establishing the fee amounts under subparagraph (A)(iii) for the first 5 fiscal years after the date of enactment of this section, the Secretary shall include in such fee a reasonable surcharge that provides a recoupment of the costs expended by the Secretary to establish and implement the first year of the program under section 806.

“(ii) CREDITING OF FEES.—In establishing the fee amounts under subparagraph (A) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

“(iii) PUBLISHED GUIDELINES.—Not later than June 30, 2010, the Secretary shall publish in the Federal Register a proposed set of guidelines in consideration of the burden of fee amounts on small business. Such consideration may include reduced fee amounts for small businesses. The Secretary shall provide for a period of public comment on such guidelines. The Secretary shall adjust the fee schedule for small businesses subject to such fees only through notice and comment rulemaking.

“(3) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clause (i), (ii), (iii), and (iv) of paragraph (2)(A) available solely to pay for the costs referred to in such clause (i), (ii), (iii), and (iv) of paragraph (2)(A), respectively.

“(c) LIMITATIONS.—

“(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless the amount of the total appropriations for food safety activities at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) is equal to or greater than the amount of appropriations for food safety activities at the Food and Drug Administration for fiscal year 2009 (excluding the amount of fees appropriated for such fiscal year), multiplied by the adjustment factor under paragraph (3).

“(2) AUTHORITY.—If—

“(A) the Secretary does not assess fees under subsection (a) for a portion of a fiscal year because paragraph (1) applies; and

“(B) at a later date in such fiscal year, such paragraph (1) ceases to apply, the Secretary may assess and collect such fees under subsection (a), without any modification to the rate of such fees, notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

“(3) ADJUSTMENT FACTOR.—

“(A) IN GENERAL.—The adjustment factor described in paragraph (1) shall be the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year, but in no case shall such adjustment factor be negative.

“(B) COMPOUNDED BASIS.—The adjustment under subparagraph (A) made each fiscal year shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2009.

“(4) LIMITATION ON AMOUNT OF CERTAIN FEES.—

“(A) IN GENERAL.—Notwithstanding any other provision of this section and subject to subparagraph (B), the Secretary may not collect fees in a fiscal year such that the amount collected—

“(i) under subparagraph (B) of subsection (a)(1) exceeds \$20,000,000; and

“(ii) under subparagraphs (A) and (D) of subsection (a)(1) exceeds \$25,000,000 combined.

“(B) EXCEPTION.—If a domestic facility (as defined in section 415(b)) or an importer becomes subject to a fee described in subparagraph (A), (B), or (D) of subsection (a)(1) after the maximum amount of fees has been collected by the Secretary under subparagraph (A), the Secretary may collect a fee from such facility or importer.

“(d) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

“(e) COLLECTION OF FEES.—

“(1) IN GENERAL.—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time and manner in which fees assessed under this section shall be collected.

“(2) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

“(f) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

“(g) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2010 and each fiscal year thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or

otherwise affected under the other provisions of this section.”.

(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—

(1) AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking “a drug” and inserting “a food, drug”;

(B) in clause (i) by striking “exported drug” and inserting “exported food, drug”; and

(C) in clause (ii) by striking “the drug” each place it appears and inserting “the food, drug”.

(2) CLARIFICATION OF CERTIFICATION.—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

“(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.”.

**SEC. 108. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.**

(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and submit to the relevant committees of Congress, and make publicly available on the Internet Web sites of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) IMPLEMENTATION PLAN.—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) RESEARCH.—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) REVISIONS.—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) CONSISTENCY WITH EXISTING PLANS.—The strategy described in paragraph (1) shall be consistent with—

(A) the National Incident Management System;

(B) the National Response Framework;

(C) the National Infrastructure Protection Plan;

(D) the National Preparedness Goals; and

(E) other relevant national strategies.

(b) COMPONENTS.—

(1) IN GENERAL.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) GOALS.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) PREPAREDNESS GOAL.—Enhance the preparedness of the agriculture and food system by—

(i) conducting vulnerability assessments of the agriculture and food system;

(ii) mitigating vulnerabilities of the system;

(iii) improving communication and training relating to the system;

(iv) developing and conducting exercises to test decontamination and disposal plans;

(v) developing modeling tools to improve event consequence assessment and decision support; and

(vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) DETECTION GOAL.—Improve agriculture and food system detection capabilities by—

(i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) EMERGENCY RESPONSE GOAL.—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) RECOVERY GOAL.—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture, food production, and international trade;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

(c) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, may determine the manner and format in which the National Agriculture and Food Defense Strategy established under this section is made publicly available on the Internet Web sites of the Department of Health and Human Services, the Department of Homeland Security, and the Department of Agriculture, as described in subsection (a)(1).

**SEC. 109. FOOD AND AGRICULTURE COORDINATING COUNCILS.**

The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help coordinate and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

**SEC. 110. BUILDING DOMESTIC CAPACITY.**

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and supply chain security of food and to prevent outbreaks of foodborne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for further regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 109, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to foodborne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 108 and 206.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(H) The impact of requirements under this Act (including amendments made by this Act) on certified organic farms and facilities (as defined in section 415 (21 U.S.C. 350d).

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (H) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to

identify new and rapid analytical techniques, including commercially-available techniques that can be employed at ports of entry and by Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities.

(d) **INFORMATION TECHNOLOGY.**—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) **AUTOMATED RISK ASSESSMENT.**—The report developed under subsection (a)(1) shall include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) **TRACEBACK AND SURVEILLANCE REPORT.**—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in foodborne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, as such communication and coordination relates to outbreak identification and traceback.

(g) **BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.**—The Secretary and the Secretary of Agriculture shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of foodborne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the subsequent 2-year period.

### SEC. 111. SANITARY TRANSPORTATION OF FOOD.

Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

### SEC. 112. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.

(a) **DEFINITIONS.**—In this section:

(1) **EARLY CHILDHOOD EDUCATION PROGRAM.**—The term “early childhood education program” means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) **ESEA DEFINITIONS.**—The terms “local educational agency”, “secondary school”, “elementary school”, and “parent” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) **SCHOOL.**—The term “school” includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Health and Human Services.

(b) **ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.**—

(1) **ESTABLISHMENT.**—

(A) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) **APPLICABILITY OF FERPA.**—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of section 444 of the General Education Provisions Act (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g).

(2) **CONTENTS.**—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child's physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child's readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program

personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early child education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) **RELATION TO STATE LAW.**—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) **SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.**—

(1) **IN GENERAL.**—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) **APPLICATION.**—

(A) **IN GENERAL.**—To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) **CONTENTS.**—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

(IV) any other activities that the Secretary determines appropriate;

(iii) an itemization of how grant funds received under this subsection will be expended;

(iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

(v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) **USE OF FUNDS.**—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) DURATION OF AWARDS.—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A grant awarded under this subsection may not be made in an amount that is more than \$50,000 annually.

(7) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) MATCHING FUNDS.—

(A) IN GENERAL.—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$30,000,000 for fiscal year 2010 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

## TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

### SEC. 201. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

(a) TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

#### “SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

“(a) IDENTIFICATION AND INSPECTION OF FACILITIES.—

“(1) IDENTIFICATION.—The Secretary shall allocate resources to inspect facilities according to the risk profile of the facilities, which shall be based on the following factors:

“(A) The risk profile of the food manufactured, processed, packed, or held at the facility.

“(B) The facility’s compliance history, including with regard to food recalls, outbreaks, and violations of food safety standards.

“(C) The rigor and effectiveness of the facility’s hazard analysis and risk-based preventive controls.

“(D) Whether the food manufactured, processed, packed, handled, prepared, treated, distributed, or stored at the facility meets the criteria for priority under section 801(h)(1).

“(E) Whether the facility has received a certificate as described in section 809(b).

“(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(2) INSPECTIONS.—

“(A) IN GENERAL.—Beginning on the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall increase the frequency of inspection of all facilities.

“(B) HIGH-RISK FACILITIES.—The Secretary shall increase the frequency of inspection of facilities identified under paragraph (1) as high-risk facilities such that—

“(i) for the first 2 years after the date of enactment of the FDA Food Safety Modernization Act, each high-risk facility is inspected not less often than once every 2 years; and

“(ii) for each succeeding year, each high-risk facility is inspected not less often than once every year.

“(C) NON-HIGH-RISK FACILITIES.—The Secretary shall ensure that each facility that is not identified under paragraph (1) as a high-risk facility is inspected not less often than once every 4 years.

“(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect articles of food imported into the United States according to the risk profile of the article of food, which shall be based on the following factors:

“(1) The risk profile of the food imported.

“(2) The risk profile of the countries or regions of origin and countries of transport of the food imported.

“(3) The compliance history of the importer, including with regard to food recalls, outbreaks, and violations of food safety standards.

“(4) The rigor and effectiveness of the foreign supplier verification program under section 805.

“(5) Whether the food importer participates in the voluntary qualified importer program under section 806.

“(6) Whether the food meets the criteria for priority under section 801(h)(1).

“(7) Whether the food is from a facility that has received a certificate as described in section 809(b).

“(8) Any other criteria deemed appropriate by the Secretary for purposes of allocating inspection resources.

“(c) COORDINATION.—The Secretary shall improve coordination and cooperation with the

Secretary of Agriculture to target food inspection resources.

“(d) FACILITY.—For purposes of this section, the term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.”

(b) ANNUAL REPORT.—Section 1003 (21 U.S.C. 393) is amended by adding at the end the following:

“(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report regarding—

“(1) information about food facilities including—

“(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

“(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

“(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

“(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year;

“(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

“(F) the number of high-risk facilities identified pursuant to section 421 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year.

“(2) information about food imports including—

“(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

“(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

“(C) the average cost of physically inspecting or sampling a food line subject to this Act that is imported or offered for import into the United States; and

“(3) information on the foreign offices of the Food and Drug Administration including—

“(A) the number of foreign offices established; and

“(B) the number of personnel permanently stationed in each foreign office.

“(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.”

### SEC. 202. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 201, is amended by adding at the end the following:

#### “SEC. 422. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

“(a) RECOGNITION OF LABORATORY ACCREDITATION.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

“(A) provide for the recognition of accreditation bodies that accredit laboratories, including laboratories run and operated by a State or locality, with a demonstrated capability to conduct sampling and analytical testing of food products; and

“(B) establish a publicly available registry of accreditation bodies, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies.

“(2) **FOREIGN LABORATORIES.**—Accreditation bodies recognized by the Secretary under paragraph (1) may accredit laboratories that operate outside the United States, so long as such laboratories meet the accreditation standards applicable to domestic laboratories accredited under this section.

“(3) **MODEL ACCREDITATION STANDARDS.**—The Secretary shall develop model standards that an accreditation body shall require laboratories to meet in order to be included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall look to existing standards for guidance. The model standards shall include methods to ensure that—

“(A) appropriate sampling and rapid analytical procedures and commercially available techniques are followed and reports of analyses are certified as true and accurate;

“(B) internal quality systems are established and maintained;

“(C) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is recognized;

“(D) individuals who conduct the sampling and analyses are qualified by training and experience to do so; and

“(E) any other criteria determined appropriate by the Secretary.

“(4) **REVIEW OF ACCREDITATION.**—To ensure compliance with the requirements of this section, the Secretary shall—

“(A) periodically, or at least every 5 years, re-evaluate accreditation bodies recognized under paragraph (1); and

“(B) promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section, specifying, as appropriate, any terms and conditions necessary for laboratories accredited by such body to continue to perform testing as described in this section.

“(b) **TESTING PROCEDURES.**—

“(1) **IN GENERAL.**—Food testing shall be conducted by Federal laboratories or non-Federal laboratories that have been accredited by an accreditation body on the registry established by the Secretary under subsection (a)(1)(B) whenever such testing is conducted—

“(A) by or on behalf of an owner or consignee—

“(i) in response to a specific testing requirement under this Act or implementing regulations, when applied to address an identified or suspected food safety problem; and

“(ii) as required by the Secretary, as the Secretary deems appropriate, to address an identified or suspected food safety problem; and

“(B) on behalf of an owner or consignee—

“(i) in support of admission of an article of food under section 801(a); and

“(ii) under an Import Alert that requires successive consecutive tests.

“(2) **RESULTS OF TESTING.**—The results of any such testing shall be sent directly to the Food and Drug Administration, except the Secretary may by regulation exempt test results that do not have to be so submitted if the Secretary determines that such results do not contribute to the protection of public health. Test results required to be submitted may be submitted to the Food and Drug Administration through electronic means.

“(c) **REVIEW BY SECRETARY.**—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by an accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing results for the purpose of determining the need for a national recall or other compliance and enforcement activities.

“(d) **NO LIMIT ON SECRETARIAL AUTHORITY.**—Nothing in this section shall be construed to limit the ability of the Secretary to review and act upon information from food testing, includ-

ing determining the sufficiency of such information and testing.”

(b) **FOOD EMERGENCY RESPONSE NETWORK.**—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State, local, and private food laboratories, including the sharing of data between State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

**SEC. 203. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.**

(a) **IN GENERAL.**—The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify means by which each laboratory network member could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) **REPORTING REQUIREMENT.**—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

**SEC. 204. ENHANCING TRACEBACK AND RECORD-KEEPING.**

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of Agriculture and representatives of State departments of health and agriculture, shall improve the capacity of the Secretary to effectively and rapidly track and trace, in the event of an outbreak, fruits and vegetables that are raw agricultural commodities.

(b) **PILOT PROJECTS.**—

(1) **IN GENERAL.**—Not later than 9 months after the date of enactment of this Act, the Secretary shall establish at least 3 pilot projects in coordination with the produce industry to explore and evaluate methods for rapidly and effectively tracking and tracing fruits and vegetables that are raw agricultural commodities so that, if an outbreak occurs involving such a fruit or vegetable, the Secretary may quickly identify, as soon as practicable, the source of the outbreak and the recipients of the contaminated food.

(2) **CONTENT.**—The Secretary shall select participants from the produce industry to run projects which overall shall include at least 3 different types of fruits or vegetables that have been the subject of outbreaks during the 5-year period preceding the date of enactment of this Act, and shall be selected in order to develop and demonstrate—

(A) methods that are applicable and appropriate for small businesses; and

(B) technologies, including existing technologies, that enhance traceback and trace forward.

(c) **REPORT.**—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot projects under subsection (b) together with recommendations for establishing more effective traceback and trace forward procedures for fruits and vegetables that are raw agricultural commodities.

(d) **TRACEBACK PERFORMANCE REQUIREMENTS.**—

(1) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish standards for the type of information, format, and timeframe for persons to submit records to aid the Secretary in effectively and rapidly tracking and tracing, in the event of a foodborne illness outbreak, fruits and vegetables that are raw agricultural commodities. In promulgating the regulations under this paragraph, the Secretary shall consider—

(A) the impact of such regulations on farms and small businesses;

(B) the findings in the report submitted under subsection (c); and

(C) existing international trade obligations.

(2) **LIMITATIONS.**—

(A) **TYPE OF RECORDS.**—The Secretary shall not require an entity that is subject to the requirements of section 419 of the Federal Food, Drug, and Cosmetic Act (as added by section 105), but which is not a facility (as such term is defined by section 415 of such Act), to submit to the Secretary distribution records under this section other than distribution records that are kept in the normal course of business and that show the immediate subsequent recipient, other than a consumer.

(B) **MAINTENANCE OF RECORDS.**—Nothing in this section shall be construed as giving the Secretary the authority to prescribe specific technologies for the maintenance of records.

(e) **PUBLIC INPUT.**—During the comment period in the notice of proposed rulemaking under subsection (d), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(f) **RAW AGRICULTURAL COMMODITY.**—In this section, the term “raw agricultural commodity” has the meaning given that term in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)).

**SEC. 205. PILOT PROJECT TO ENHANCE TRACEBACK AND RECORDKEEPING WITH RESPECT TO PROCESSED FOOD.**

(a) **IN GENERAL.**—As soon as practicable after the date of enactment of this Act, the Secretary shall establish a pilot project to explore and evaluate methods for rapidly and effectively tracking and tracing processed food so that, if an outbreak occurs involving such a processed food, the Secretary may quickly identify the source of the outbreak and the recipients of the contaminated food.

(b) **CONSULTATION.**—In establishing the pilot project under subsection (a), the Secretary shall consult with food processors and relevant businesses of varying size.

(c) **CONTENT.**—The Secretary shall select participants from the processed food industry to run a project which overall shall include 1 or more different types of processed food that have

been the subject of outbreaks during the 5-year period preceding the date of enactment of this Act and shall be selected in order to develop and demonstrate—

(1) methods that are applicable and appropriate for small businesses; and

(2) technologies, including existing technologies, that enhance traceback and trace forward.

(d) **REPORT.**—The Secretary shall report to Congress on the findings of the pilot project under this section, together with recommendations for establishing more effective traceback and trace forward procedures for processed food.

(e) **PROCESSED FOOD.**—In this section, the term “processed food” has the meaning given such term in section 201(gg) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(gg)).

#### SEC. 206. SURVEILLANCE.

(a) **DEFINITION OF FOODBORNE ILLNESS OUTBREAK.**—In this section, the term “foodborne illness outbreak” means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a food.

(b) **FOODBORNE ILLNESS SURVEILLANCE SYSTEMS.**—

(1) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses by—

(A) coordinating Federal, State and local foodborne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of findings on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a foodborne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of identification practices, including fingerprinting strategies, for foodborne infectious agents, in order to identify new or rarely documented causes of foodborne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating foodborne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels; and

(J) other activities as determined appropriate by the Secretary.

(2) **PARTNERSHIPS.**—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food and food testing industries, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of foodborne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on foodborne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to foodborne illness aggregated, de-identified surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers to improvement in foodborne illness surveillance and its utility for preventing foodborne illness at Federal, State, and local levels;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group’s recommendations, and achieve the purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(c) **IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.**—

(1) **IN GENERAL.**—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve foodborne illness outbreak response and containment.

(B) Accelerate foodborne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of foodborne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 108.

(2) **REVIEW.**—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) **FOOD SAFETY CAPACITY BUILDING GRANTS.**—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b–20(b)) is amended—

(1) by striking “2002” and inserting “2010”; and

(2) by striking “2003 through 2006” and inserting “2011 through 2014”.

#### SEC. 207. MANDATORY RECALL AUTHORITY.

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 202, is amended by adding at the end the following:

##### “SEC. 423. MANDATORY RECALL AUTHORITY.

“(a) **VOLUNTARY PROCEDURES.**—If the Secretary determines, based on information gath-

ered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

“(b) **PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.**—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order require, as the Secretary deems necessary, such person to—

“(1) immediately cease distribution of such article; and

“(2) as applicable, immediately notify all persons—

“(A) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

“(B) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

“(c) **HEARING ON ORDER.**—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible, but not later than 2 days after the issuance of the order, on the actions required by the order and on why the article that is the subject of the order should not be recalled.

“(d) **POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.**—

“(1) **AMENDMENT OF ORDER.**—If, after providing opportunity for an informal hearing under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

“(A) amend the order to require recall of such article or other appropriate action;

“(B) specify a timetable in which the recall shall occur;

“(C) require periodic reports to the Secretary describing the progress of the recall; and

“(D) provide notice to consumers to whom such article was, or may have been, distributed.

“(2) **VACATING OF ORDER.**—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

“(e) **COOPERATION AND CONSULTATION.**—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

“(f) **PUBLIC NOTIFICATION.**—In conducting a recall under this section, the Secretary shall—

“(1) ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification—

“(A) of the recall to consumers and retailers to whom such article was, or may have been, distributed; and

“(B) that includes, at a minimum—

“(i) the name of the article of food subject to the recall; and

“(ii) a description of the risk associated with such article;

“(2) consult the policies of the Department of Agriculture regarding providing to the public a list of retail consignees receiving products involved in a Class I recall and shall consider providing such a list to the public, as determined appropriate by the Secretary; and

“(3) if available, publish on the Internet Web site of the Food and Drug Administration an image of the article that is the subject of the press release described in (1).

“(g) **NO DELEGATION.**—The authority conferred by this section to order a recall or vacate

a recall order shall not be delegated to any officer or employee other than the Commissioner.

“(h) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall.”.

(b) SEARCH ENGINE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall modify the Internet Web site of the Food and Drug Administration to include a search engine that—

(1) is consumer-friendly, as determined by the Secretary; and

(2) provides a means by which an individual may locate relevant information regarding each article of food subject to a recall under section 420 of the Federal Food, Drug, and Cosmetic Act and the status of such recall (such as whether a recall is ongoing or has been completed).

(c) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting “or any person who does not comply with a recall order under section 423” after “section 402(a)(2)(B)”.

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

“(xx) The refusal or failure to follow an order under section 423.”.

**SEC. 208. ADMINISTRATIVE DETENTION OF FOOD.**

(a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking “credible evidence or information indicating” and inserting “reason to believe”; and

(2) striking “presents a threat of serious adverse health consequences or death to humans or animals” and inserting “is adulterated or misbranded”.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 209. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.**

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this section as the “Administrator”), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

(b) DEVELOPMENT OF STANDARDS.—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) DEVELOPMENT OF MODEL PLANS.—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) EXERCISES.—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination

and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

(e) MODIFICATIONS.—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) PRIORITIZATION.—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

**SEC. 210. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.**

Chapter X (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

**“SEC. 1011. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.**

“(a) TRAINING.—The Secretary shall set standards and administer training and education programs for the employees of State, local, territorial, and tribal food safety officials relating to the regulatory responsibilities and policies established by this Act, including programs for—

“(1) scientific training;

“(2) training to improve the skill of officers and employees authorized to conduct inspections under sections 702 and 704;

“(3) training to achieve advanced product or process specialization in such inspections;

“(4) training that addresses best practices;

“(5) training in administrative process and procedure and integrity issues;

“(6) training in appropriate sampling and laboratory analysis methodology; and

“(7) training in building enforcement actions following inspections, examinations, testing, and investigations.

“(b) PARTNERSHIPS WITH STATE AND LOCAL OFFICIALS.—

“(1) IN GENERAL.—The Secretary, pursuant to a contract or memorandum of understanding between the Secretary and the head of a State, local, territorial, or tribal department or agency, is authorized and encouraged to conduct examinations, testing, and investigations for the purposes of determining compliance with the food safety provisions of this Act through the officers and employees of such State, local, territorial, or tribal department or agency.

“(2) CONTENT.—A contract or memorandum described under paragraph (1) shall include provisions to ensure adequate training of such officers and employees to conduct such examinations, testing, and investigations. The contract or memorandum shall contain provisions regarding reimbursement. Such provisions may, at the sole discretion of the head of the other department or agency, require reimbursement, in whole or in part, from the Secretary for the examinations, testing, or investigations performed pursuant to this section by the officers or employees of the State, territorial, or tribal department or agency.

“(3) EFFECT.—Nothing in this subsection shall be construed to limit the authority of the Secretary under section 702.

“(c) EXTENSION SERVICE.—The Secretary shall ensure coordination with the extension activities of the National Institute of Food and Agriculture of the Department of Agriculture in advising producers and small processors transitioning into new practices required as a

result of the enactment of the FDA Food Safety Modernization Act and assisting regulated industry with compliance with such Act.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2011 through 2015.”.

**SEC. 211. GRANTS TO ENHANCE FOOD SAFETY.**

Section 1009 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399) is amended to read as follows:

**“SEC. 1009. GRANTS TO ENHANCE FOOD SAFETY.**

“(a) IN GENERAL.—The Secretary is authorized to make grants to States, localities, territories, and Indian tribes (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))) to—

“(1) undertake examinations, inspections, and investigations, and related food safety activities under section 702;

“(2) train to the standards of the Secretary for the examination, inspection, and investigation of food manufacturing, processing, packing, holding, distribution, and importation, including as such examination, inspection, and investigation relate to retail food establishments;

“(3) build the capacity of the laboratories of such State, locality, territory, or Indian tribe for food safety;

“(4) build the infrastructure and capacity of the food safety programs of such State, locality, territory, or Indian tribe to meet the standards as outlined in the grant application; and

“(5) take appropriate action to protect the public health in response to—

“(A) a notification under section 1008, including planning and otherwise preparing to take such action; or

“(B) a recall of food under this Act.

“(b) APPLICATION.—

“(1) IN GENERAL.—To be eligible to receive a grant under this section, a State, locality, territory, or Indian tribe shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

“(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

“(A) an assurance that the State, locality, territory, or Indian tribe has developed plans to engage in the types of activities described in subsection (a);

“(B) a description of the types of activities to be funded by the grant;

“(C) an itemization of how grant funds received under this section will be expended;

“(D) a description of how grant activities will be monitored; and

“(E) an agreement by the State, locality, territory, or Indian tribe to report information required by the Secretary to conduct evaluations under this section.

“(c) LIMITATIONS.—The funds provided under subsection (a) shall be available to a State, locality, territory, or Indian tribe only to the extent such State, locality, territory, or Indian tribe funds its food safety programs independently of any grant under this section in each year of the grant at a level equal to the level of such funding in the previous year, increased by the Consumer Price Index.

“(d) ADDITIONAL AUTHORITY.—The Secretary may—

“(1) award a grant under this section in each subsequent fiscal year without reapplication for a period of not more than 3 years, provided the requirements of subsection (c) are met for the previous fiscal year; and

“(2) award a grant under this section in a fiscal year for which the requirement of subsection (c) has not been met only if such requirement was not met because such funding was diverted for response to 1 or more natural disasters or in other extenuating circumstances that the Secretary may determine appropriate.

“(e) DURATION OF AWARDS.—The Secretary may award grants to an individual grant recipient under this section for a period of not more

than 3 years. In the event the Secretary conducts a program evaluation, funding in the second year or third year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

“(f) **PROGRESS AND EVALUATION.**—A grant recipient shall at the end of each year provide the Secretary with information on how grant funds were spent and the status of the efforts by such recipient to enhance food safety.

“(g) **SUPPLEMENT NOT SUPPLANT.**—Grant funds received under this section shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this section.

“(h) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.”

### TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

#### SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.

(a) **IN GENERAL.**—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

##### “SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.

“(a) **IN GENERAL.**—

“(1) **VERIFICATION REQUIREMENT.**—Each importer shall perform risk-based foreign supplier verification activities for the purpose of verifying that the food imported by the importer or its agent is—

“(A) produced in compliance with the requirements of section 418 or 419, as appropriate; and

“(B) is not adulterated under section 402 or misbranded under section 403(w).

“(2) **IMPORTER DEFINED.**—For purposes of this section, the term ‘importer’ means, with respect to an article of food—

“(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

“(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

“(b) **GUIDANCE.**—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist importers in developing foreign supplier verification programs.

“(c) **REGULATIONS.**—

“(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a). Such regulations shall, as appropriate, include a process for verification by an importer, with respect to each foreign supplier from which it obtains food, that the imported food is produced in compliance with the requirements of section 418 or 419, as appropriate, and is not adulterated under section 402 or misbranded under section 403(w).

“(2) **VERIFICATION.**—The regulations under paragraph (1) shall require that the foreign supplier verification program of each importer be adequate to provide assurances that each foreign supplier to the importer produces the imported food employing processes and procedures, including risk-based reasonably appropriate preventive controls, equivalent in preventing adulteration and reducing hazards to those required by section 418 or section 419, as appropriate.

“(3) **ACTIVITIES.**—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard

analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

“(d) **RECORD MAINTENANCE AND ACCESS.**—Records of an importer related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

“(e) **DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.**—The owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section with respect to such facility:

“(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

“(f) **PUBLICATION OF LIST OF PARTICIPANTS.**—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.”

(b) **PROHIBITED ACT.**—Section 301 (21 U.S.C. 331), as amended by section 207, is amended by adding at the end the following:

“(yy) The importation or offering for importation of a food if the importer (as defined in section 805) does not have in place a foreign supplier verification program in compliance with such section 805.”

(c) **IMPORTS.**—Section 801(a) (21 U.S.C. 381(a)) is amended by adding “or the importer (as defined in section 805) is in violation of such section 805” after “or in violation of section 505”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

#### SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

##### “SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

“(a) **IN GENERAL.**—Beginning not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

“(1) establish a program, in consultation with the Secretary of Homeland Security, to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program; and

“(2) issue a guidance document related to participation and compliance with such program.

“(b) **VOLUNTARY PARTICIPATION.**—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program procedures established by the Secretary.

“(c) **ELIGIBILITY.**—Eligibility shall be limited to an importer offering food for importation from a facility that has a certification described in section 809(b). In reviewing the applications and making determinations on such requests, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

“(1) The nature of the food to be imported.

“(2) The compliance history of the foreign supplier.

“(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards.

“(4) The compliance of the importer with the requirements of section 805.

“(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

“(6) The potential risk for intentional adulteration of the food.

“(7) Any other factor that the Secretary determines appropriate.

“(d) **REVIEW AND REVOCATION.**—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

“(e) **NOTICE OF INTENT TO PARTICIPATE.**—An importer that intends to participate in the program under this section in a fiscal year shall submit a notice to the Secretary of such intent at time and in a manner established by the Secretary.

“(f) **FALSE STATEMENTS.**—Any statement or representation made by an importer to the Secretary shall be subject to section 1001 of title 18, United States Code.

“(g) **DEFINITION.**—For purposes of this section, the term ‘importer’ means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.”

#### SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.

(a) **IN GENERAL.**—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: “With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets some or all applicable requirements of this Act, then such article shall be refused admission.”

(b) **ADDITION OF CERTIFICATION REQUIREMENT.**—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

“(q) **CERTIFICATIONS CONCERNING IMPORTED FOODS.**—

“(1) **IN GENERAL.**—The Secretary, based on public health considerations, including risks associated with the food or its place of origin, may require as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity specified in paragraph (2) provide a certification or such other assurances as the Secretary determines appropriate that the article of food complies with some or all applicable requirements of this Act, as specified by the Secretary. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of certified entities, or in such other form as the Secretary may specify. Such certification shall be used for designated food imported from countries with which the Food and Drug Administration has an agreement to establish a certification program.

“(2) **CERTIFYING ENTITIES.**—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

“(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by such government or the Secretary; or

“(B) such other persons or entities accredited pursuant to section 809 to provide such certification or assurance.

“(3) **RENEWAL AND REFUSAL OF CERTIFICATIONS.**—The Secretary may—

“(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

“(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is not valid or reliable.

“(4) **ELECTRONIC SUBMISSION.**—The Secretary shall provide for the electronic submission of certifications under this subsection.

“(5) **FALSE STATEMENTS.**—Any statement or representation made by an entity described in paragraph (2) to the Secretary shall be subject to section 1001 of title 18, United States Code.”.

(c) **CONFORMING TECHNICAL AMENDMENT.**—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking “with respect to an article included within the provision of the fourth sentence of subsection (a)” and inserting “with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761.”.

(d) **NO LIMIT ON AUTHORITY.**—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

**SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.**

(a) **IN GENERAL.**—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting “any country to which the article has been refused entry;” after “the country from which the article is shipped.”.

(b) **REGULATIONS.**—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart 1 of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 305. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by adding at the end the following:

**“SEC. 807. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.**

“The Secretary may review information from a country outlining the statutes, regulations, standards, and controls of such country, and conduct on-site audits in such country to verify the implementation of those statutes, regulations, standards, and controls. Based on such review, the Secretary shall determine whether such country can provide reasonable assurances that the food supply of the country meets or exceeds the safety of food manufactured, processed, packed, or held in the United States.”.

**SEC. 306. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD.**

(a) **IN GENERAL.**—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) **CONSULTATION.**—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, the United States Trade Representative, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) **PLAN.**—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for secure electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations on whether and how to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and detection techniques.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect the regulation of dietary supplements under the Dietary Supplement Health and Education Act of 1994 (Public Law 103-417).

**SEC. 307. INSPECTION OF FOREIGN FOOD FACILITIES.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 305, is amended by inserting at the end the following:

**“SEC. 808. INSPECTION OF FOREIGN FOOD FACILITIES.**

“(a) **INSPECTION.**—The Secretary—

“(1) may enter into arrangements and agreements with foreign governments and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

“(2) shall direct resources to inspections of foreign facilities, suppliers, and food types, especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

“(b) **EFFECT OF INABILITY TO INSPECT.**—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign facility registered under section 415 of which the owner, operator, or agent in charge of the facility, or the government of the foreign country, refuses to permit entry of United States inspectors, upon request, to inspect such facility. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge refuses such a request to inspect a facility more than 2 business days after such request is submitted.”.

**SEC. 308. ACCREDITATION OF THIRD-PARTY AUDITORS AND AUDIT AGENTS.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 307, is amended by adding at the end the following:

**“SEC. 809. ACCREDITATION OF THIRD-PARTY AUDITORS AND AUDIT AGENTS.**

“(a) **DEFINITIONS.**—In this section:

“(1) **ACCREDITED AUDIT AGENT.**—The term ‘accredited audit agent’ means an audit agent accredited by an accreditation body under this section.

“(2) **AUDIT AGENT.**—The term ‘audit agent’ means an individual who is qualified to conduct food safety audits, and who may be an employee or an agent of a third-party auditor.

“(3) **ACCREDITATION BODY.**—The term ‘accreditation body’ means a recognized authority that performs accreditation of third-party auditors and audit agents.

“(4) **ACCREDITED THIRD-PARTY AUDITOR.**—The term ‘accredited third-party auditor’ means a third-party auditor accredited by an accreditation body under this section.

“(5) **CONSULTATIVE AUDIT.**—The term ‘consultative audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act and with applicable industry standards and practices; and

“(B) the results of which are for internal facility purposes only.

“(6) **ELIGIBLE ENTITY.**—The term ‘eligible entity’ means a foreign entity, including a foreign facility registered under section 415, in the food import supply chain that chooses to be audited by an accredited third-party auditor or audit agent.

“(7) **REGULATORY AUDIT.**—The term ‘regulatory audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act; and

“(B) the results of which determine—

“(i) whether an entity is eligible to receive a certification under section 801(q); and

“(ii) whether the entity is eligible to participate in the voluntary qualified importer program under section 806.

“(8) **THIRD-PARTY AUDITOR.**—The term ‘third-party auditor’ means a foreign government, foreign cooperative, or any other qualified third party, as the Secretary determines appropriate, that conducts audits of eligible entities to certify that such eligible entities meet the applicable requirements of this section.

“(b) **ACCREDITATION SYSTEM.**—

“(1) **ACCREDITATION BODIES.**—

“(A) **RECOGNITION OF ACCREDITATION BODIES.**—

“(i) **IN GENERAL.**—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors and audit agents to certify that eligible entities meet the applicable requirements of this Act.

“(ii) **DIRECT ACCREDITATION.**—If, by the date that is 1 year after the date of establishment of the system described in clause (i), the Secretary has not identified and recognized an accreditation body to meet the requirements of this section, the Secretary may directly accredit third-party auditors and audit agents.

“(B) **NOTIFICATION.**—Each accreditation body recognized by the Secretary shall submit to the Secretary a list of all accredited third-party auditors and audit agents accredited by such body.

“(C) **REVOCACTION OF RECOGNITION AS AN ACCREDITATION BODY.**—The Secretary shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

“(2) **MODEL ACCREDITATION STANDARDS.**—The Secretary shall develop model standards, including audit report requirements, and each recognized accreditation body shall ensure that third-party auditors and audit agents meet such standards in order to qualify as an accredited third-party auditor or audit agent under this section. In developing the model standards, the Secretary shall look to standards in place on the date of the enactment of this section for guidance, to avoid unnecessary duplication of efforts and costs.

“(c) **THIRD-PARTY AUDITORS AND AUDIT AGENCIES.**—

“(1) **REQUIREMENTS FOR ACCREDITATION AS A THIRD-PARTY AUDITOR OR AUDIT AGENT.**—

“(A) **FOREIGN GOVERNMENTS.**—Prior to accrediting a foreign government as an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of food safety programs, systems, and standards of the government as the Secretary deems necessary to determine that the foreign government is capable of adequately ensuring that eligible entities certified by such government meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import into the United States.

“(B) **FOREIGN COOPERATIVES AND OTHER THIRD PARTIES.**—Prior to accrediting a foreign cooperative that aggregates the products of growers or processors, or any other third party that the Secretary determines appropriate to be an accredited third-party auditor or audit agent, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of the training and qualifications of auditors used by that cooperative or party and conduct such reviews of internal systems and such

other investigation of the cooperative or party as the Secretary deems necessary to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity meets the requirements of this Act.

**“(2) REQUIREMENT TO ISSUE CERTIFICATION OF ELIGIBLE ENTITIES.—**

**“(A) IN GENERAL.—**An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) may not accredit a third-party auditor or audit agent unless such third-party auditor or audit agent agrees to issue a written and electronic certification to accompany each food shipment for import into the United States from an eligible entity certified by the third-party auditor or audit agent, subject to requirements set forth by the Secretary. Such written certification may be included with other documentation regarding such food shipment. The Secretary shall consider such certificates when targeting inspection resources under section 421.

**“(B) PURPOSE OF CERTIFICATION.—**The Secretary shall use evidence of certification provided by accredited third-party auditors and audit agents to—

“(i) determine the eligibility of an importer to receive a certification under section 801(q); and  
“(ii) determine the eligibility of an importer to participate in the voluntary qualified importer program under section 806.

**“(3) AUDIT REPORT REQUIREMENTS.—**

**“(A) REQUIREMENTS IN GENERAL.—**As a condition of accreditation, an accredited third-party auditor or audit agent shall prepare the audit report for an audit, in a form and manner designated by the Secretary, which shall include—

“(i) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

“(ii) the dates of the audit;

“(iii) the scope of the audit; and

“(iv) any other information required by the Secretary that relate to or may influence an assessment of compliance with this Act.

**“(B) SUBMISSION OF REPORTS TO THE SECRETARY.—**

**“(i) IN GENERAL.—**Following any accreditation of a third-party auditor or audit agent, the Secretary may, at any time, require the accredited third-party auditor or audit agent to submit to the Secretary an onsite audit report and such other reports or documents required as part of the audit process, for any eligible entity certified by the third-party auditor or audit agent. Such report may include documentation that the eligible entity is in compliance with any applicable registration requirements.

**“(ii) LIMITATION.—**The requirement under clause (i) shall not include any report or other documents resulting from a consultative audit by the accredited third-party auditor or audit agent, except that the Secretary may access the results of a consultative audit in accordance with section 414.

**“(4) REQUIREMENTS OF AUDIT AGENTS.—**

**“(A) RISKS TO PUBLIC HEALTH.—**If, at any time during an audit, an accredited audit agent discovers a condition that could cause or contribute to a serious risk to the public health, the audit agent shall immediately notify the Secretary of—

“(i) the identification of the eligible entity subject to the audit; and

“(ii) such condition.

**“(B) TYPES OF AUDITS.—**An accredited audit agent may perform consultative and regulatory audits of eligible entities.

**“(C) LIMITATIONS.—**An accredited audit agent may not perform a regulatory audit of an eligible entity if such agent has performed a consultative audit or a regulatory audit of such eligible entity during the previous 24-month period.

**“(5) CONFLICTS OF INTEREST.—**

**“(A) THIRD-PARTY AUDITORS.—**An accredited third-party auditor shall—

“(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

“(iii) annually make available to the Secretary disclosures of the extent to which such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

**“(B) AUDIT AGENTS.—**An accredited audit agent shall—

“(i) not own or operate an eligible entity to be certified by such agent;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be certified by such agent; and

“(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

**“(C) REGULATIONS.—**The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to ensure that there are protections against conflicts of interest between an accredited third-party auditor or audit agent and the eligible entity to be certified by such auditor or audit agent. Such regulations shall include—

“(i) requiring that audits performed under this section be unannounced;

“(ii) a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors or audit agents; and

“(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agent and any person that owns or operates an eligible entity to be certified by such auditor or audit agent.

**“(6) WITHDRAWAL OF ACCREDITATION.—**The Secretary shall withdraw accreditation from an accredited third-party auditor or audit agent—

“(A) if food from an eligible entity certified by such third-party auditor or audit agent is linked to an outbreak of human or animal illness;

“(B) following a performance audit and finding by the Secretary that the third-party auditor or audit agent no longer meets the requirements for accreditation; or

“(C) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.

**“(7) NEUTRALIZING COSTS.—**The Secretary shall establish a method, similar to the method used by the Department of Agriculture, by which accredited third-party auditors and audit agents reimburse the Food and Drug Administration for the work performed to establish and administer the accreditation system under this section. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism.

**“(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—**An eligible entity shall apply for annual recertification by an accredited third-party auditor or audit agent if such entity—

“(1) intends to participate in voluntary qualified importer program under section 806; or

“(2) must provide to the Secretary a certification under section 801(q) for any food from such entity.

**“(e) FALSE STATEMENTS.—**Any statement or representation made—

“(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

“(2) by an accredited third-party auditor or an audit agent to the Secretary,

shall be subject to section 1001 of title 18, United States Code.

**“(f) MONITORING.—**To ensure compliance with the requirements of this section, the Secretary shall—

“(1) periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

“(2) periodically, or at least once every 4 years, audit the performance of each accredited third-party auditor and audit agent, through the review of audit reports by such auditors and audit agents, the compliance history as available of eligible entities certified by such auditors and audit agents, and any other measures deemed necessary by the Secretary;

“(3) at any time, conduct an onsite audit of any eligible entity certified by an accredited third-party auditor or audit agent, with or without the auditor or audit agent present; and

“(4) take any other measures deemed necessary by the Secretary.

**“(g) PUBLICLY AVAILABLE REGISTRY.—**The Secretary shall establish a publicly available registry of accreditation bodies and of accredited third-party auditors and audit agents, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies, auditors, and agents.

**“(h) LIMITATIONS.—**

**“(1) NO EFFECT ON SECTION 704 INSPECTIONS.—**The audits performed under this section shall not be considered inspections under section 704.

**“(2) NO EFFECT ON INSPECTION AUTHORITY.—**Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.”.

**SEC. 309. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.**

**(a) IN GENERAL.—**The Secretary shall establish offices of the Food and Drug Administration in foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

**(b) CONSULTATION.—**In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State and the United States Trade Representative.

**(c) REPORT.—**Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices, the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

**SEC. 310. SMUGGLED FOOD.**

**(a) IN GENERAL.—**Not later than 180 days after the enactment of this Act, the Secretary shall, in consultation with the Secretary of Homeland Security, the Commissioner of Customs and Border Patrol, and the Assistant Secretary for Immigration and Customs Enforcement, develop and implement a strategy to better identify smuggled food and prevent entry of such food into the United States.

**(b) NOTIFICATION TO HOMELAND SECURITY.—**Not later than 10 days after the Secretary identifies a smuggled food that the Secretary believes would cause serious adverse health consequences or death to humans or animals, the Secretary shall provide to the Secretary of Homeland Security a notification under section 417(k) of the Federal Food, Drug, and Cosmetic

Act (21 U.S.C. 350f(k)) describing the smuggled food and, if available, the names of the individuals or entities that attempted to import such food into the United States.

(c) PUBLIC NOTIFICATION.—If the Secretary—

(1) identifies a smuggled food;

(2) reasonably believes exposure to the food would cause serious adverse health consequences or death to humans or animals; and

(3) reasonably believes that the food has entered domestic commerce and is likely to be consumed,

the Secretary shall promptly issue a press release describing that food and shall use other emergency communication or recall networks, as appropriate, to warn consumers and vendors about the potential threat.

(d) DEFINITION.—In this subsection, the term “smuggled food” means any food that a person introduces into the United States through fraudulent means or with the intent to defraud or mislead.

#### TITLE IV—MISCELLANEOUS PROVISIONS

##### SEC. 401. FUNDING FOR FOOD SAFETY.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration—

(1) \$825,000,000 for fiscal year 2010; and

(2) such sums as may be necessary for fiscal years 2011 through 2014.

(b) INCREASED NUMBER OF FIELD STAFF.—

(1) IN GENERAL.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(A) 3,800 staff members in fiscal year 2010;

(B) 4,000 staff members in fiscal year 2011;

(C) 4,200 staff members in fiscal year 2012;

(D) 4,600 staff members in fiscal year 2013; and

(E) 5,000 staff members in fiscal year 2014.

(2) FIELD STAFF FOR FOOD DEFENSE.—The goal under paragraph (1) shall include an increase of 150 employees by fiscal year 2011 to—

(A) provide additional detection of and response to food defense threats; and

(B) detect, track, and remove smuggled food (as defined in section 310) from commerce.

##### SEC. 402. WHISTLEBLOWER PROTECTIONS.

Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.), as amended by section 210, is further amended by adding at the end the following:

###### “SEC. 1012. WHISTLEBLOWER PROTECTIONS.

“(a) IN GENERAL.—No entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee’s initiative or in the ordinary course of the employee’s duties (or any person acting pursuant to a request of the employee)—

“(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any order, rule, regulation, standard, or ban under this Act, or any order, rule, regulation, standard, or ban under this Act;

“(2) testified or is about to testify in a proceeding concerning such violation;

“(3) assisted or participated or is about to assist or participate in such a proceeding; or

“(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task

that the employee (or other such person) reasonably believed to be in violation of any provision of this Act, or any order, rule, regulation, standard, or ban under this Act.

“(b) PROCESS.—

“(1) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the ‘Secretary’) alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

“(2) INVESTIGATION.—

“(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary’s findings.

“(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

“(C) DISMISSAL OF COMPLAINT.—

“(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(3) FINAL ORDER.—

“(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

“(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

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

“(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

“(iii) to provide compensatory damages to the complainant.

“(C) PENALTY.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys’ fee, not exceeding \$1,000, to be paid by the complainant.

“(4) ACTION IN COURT.—

“(A) IN GENERAL.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

“(B) RELIEF.—The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

“(ii) the amount of back pay, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(5) REVIEW.—

“(A) IN GENERAL.—Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

“(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could

have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—“(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(c) EFFECT OF SECTION.—

“(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”

#### SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding products eligible for voluntary inspection under the Agricultural Marketing Act (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Administration of the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(4) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency or foodborne illness outbreak involving products regulated under the Federal Meat Inspection Act, the Poultry Prod-

ucts Inspection Act, the Egg Products Inspection Act, or agreements regarding voluntary inspection under the Agricultural Marketing Act (7 U.S.C. 1621 et seq.).

#### SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

#### SEC. 405. UPDATING GUIDANCE RELATING TO FISH AND FISHERIES PRODUCTS HAZARDS AND CONTROLS.

The Secretary shall, not later than 180 days after the date of enactment of this Act, update the Fish and Fisheries Products Hazards and Control Guidance to take into account advances in technology that have occurred since the previous publication of such Guidance by the Secretary.

#### SEC. 406. FOOD TRANSPORTATION STUDY.

The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall conduct a study of the transportation of food for consumption in the United States, including transportation by air, that includes an examination of the unique needs of rural and frontier areas with regard to the delivery of safe food.

Mr. REID. Mr. President, are we on the bill now?

The PRESIDING OFFICER. Yes, we are.

#### THE VETERANS’, SENIORS’, AND CHILDREN’S HEALTH TECHNICAL CORRECTIONS ACT OF 2010

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 465, H.R. 5712.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5712) to provide for certain clarifications and extensions under Medicare, Medicaid, and the Children’s Health Insurance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment, which is at the desk, be considered and that it be agreed to; that the bill, as amended, be read three times and then passed and the motion to reconsider be laid upon the table; that the title amendment, which is also at the desk, be considered and agreed to, and the motion to reconsider be laid upon the table.

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

The amendment (No. 4711) in the nature of a substitute, was agreed to, as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “The Physician Payment and Therapy Relief Act of 2010”.

#### SEC. 2. PHYSICIAN PAYMENT UPDATE.

Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w-4(d)(11)) is amended—

(1) in the heading, by striking “NOVEMBER” and inserting “DECEMBER”;

(2) in subparagraph (A), by striking “November 30” and inserting “December 31”; and

(3) in subparagraph (B)—

(A) in the heading, by striking “REMAINING PORTION OF 2010” and inserting “2011”; and

(B) by striking “the period beginning on December 1, 2010, and ending on December 31, 2010, and for”.

#### SEC. 3. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.

(a) SMALLER PAYMENT DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

“(7) ADJUSTMENT IN DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.—In the case of therapy services furnished on or after January 1, 2011, and for which payment is made under fee schedules established under this section, instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 20 percent.”.

(b) EXEMPTION OF PAYMENT REDUCTION FROM BUDGET-NEUTRALITY.—Section 1848(c)(2)(B)(v) of the Social Security Act (42 U.S.C. 1395w-4(c)(2)(B)(v)) is amended by adding at the end the following new subclause:

“(VII) REDUCED EXPENDITURES FOR MULTIPLE THERAPY SERVICES.—Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the multiple procedure payment reduction for therapy services (as described in subsection (b)(7)).”.

#### SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

The amendment (No. 4712) was agreed to, as follows:

Amend the file so as to read: An act entitled “The Physician Payment and Therapy Relief Act of 2010.”

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 5712) was read the third time and passed.

Mr. REID. Mr. President, I appreciate everyone’s cooperation. This is the SGR extension for 30 days to allow us to spend more time on this and make sure the doctors are able to be compensated. These Medicare patients are extremely important, as are the doctors.

#### FDA FOOD SAFETY MODERNIZATION ACT—Continued

Mr. REID. Mr. President, I ask unanimous consent that there now be a time for debate only for a period of 20 minutes, with Senator BROWBACK being recognized for a period of up to 10 minutes and that I be recognized when he completes his statement.

For the benefit of all Members, Senator MCCONNELL and I are trying to work through some procedural issues we have here to give more definition to what we are doing. We are trying to work something out on food safety and

on the Lew nomination. We don't have that done yet, but we have made progress. So we hope everyone will be patient and stay around so they will know what we are going to wind up doing. It is a delicate time here. Everyone has to be calm and cool. We have a lot to do in the next few weeks and we would like to be able to expedite some of this tonight.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Kansas.

FAREWELL TO THE SENATE

Mr. BROWNBACK. Mr. President, I thank the majority leader for setting up this period of time. This will be my last speech, probably, to the body. It is a speech I wish to give in talking about leaving the Senate of the United States.

I was just elected to be Governor of Kansas, and I am very excited about that post. I have served here a period of 14 years, which has been a wonderful chance to be able to serve the people of Kansas—the people of the United States. I love this body and I love this country.

A lot of folks, when they leave, talk about partisanship and the bickering. I like to think about the beauty of the country and the ability to come together because it does happen. The predecessor of the person sitting in the Presiding Officer's seat and I worked on one of the flagship pieces of legislation on human rights protection. It was on human trafficking, the initial bill. That was with Senator Paul Wellstone, who was from Minnesota. He was a delightful individual. It was a great chance for us to work together on something, and we couldn't have been further apart. I think he was ranked the second most liberal Member of the Senate. He aspired to be No. 1, but he was second. But he was a delightful man and he dealt from the heart and we got things done.

I say that because I think that is how we work in this place; that we fight on about 20 percent of the issues—and they are important, big issues—and then we cooperate and work together on a whole host of broad bipartisan issues, such as dealing with things like human trafficking. You do that primarily with people who deal from the heart—people such as Paul Wellstone, Ted Kennedy, and Jesse Helms. There are a lot of others, and many people get many things done in this body, but I think it is best when people deal from the heart. When they do that, then there is a chance for us to come together around key and heartfelt things. This has been a great body to serve in and I have delighted in being able to do that.

There is much to be done, much to be done for the country. We have to deal with the creation of jobs in America. We have to deal with our debt and our deficit. We have many issues to deal with. My hope for here, and my hope for our country, is that we go back to

the virtues of the “greatest generation” and look to them for ways to move forward. It is looking back at the old path of what worked in tough times and moving it forward on the new path.

I came into this seat after Bob Dole served in this body. He served in this seat. Senator Dole from Kansas is the iconic figure of the World War II generation, of that “greatest generation.” He just got out of Walter Reed Hospital. He has been very sick and ill this year. He is coming back, recuperating. I think he is 87 years old this year.

Most everybody in America would agree about the “greatest generation.” They would say that World War II generation hit the mark of what it is to be an American, what it is to sacrifice, what it is to fight for a good cause. They did it with a set of virtues that are timeless, that are known, and I think we have to emulate this time for us to deal with the problems we have now. They were courageous; they were selfless; they were courteous; they were people who would fight for a cause. They were the ones who exhibited charity, thrift. That was certainly known in that generation. I think these are things we have to bring back—hard work, compassion.

It seems to me, when I think of that generation—and nobody is perfect and that generation is not perfect—those are ideals I saw in practice, whether it was them on the battlefield in World War II or if it was them raising their families at home or if it was their educating of their families, if it was saving for future generations; that is what they did.

I don't know, if you ask people of that generation, did you do this on purpose, they might say we did or didn't. Most of them would say this was the right thing to do and it is the thing we needed to do. I think it is what we need to do now. I think we need to emulate those virtues of the “greatest generation” and apply them to our problems.

Their problems were more foreign than ours. Ours I believe are more domestic, dealing with our own debt and deficit as a country and as a society and as individuals and individual households; us creating and saving for that next generation in the country and investing to do that, and being selfless and sacrificial in doing that. Building family structure and doing that which is for the good of our families is what we need to do, and that virtue and that old, ancient path they followed, that they said we did because it was a thing we needed to do, I think we have to do the same thing. I hope we will as a country.

There has been a debate that started in America that I do not agree with, and it is whether this is a special country and whether America is an exceptional land. I for one fully embrace the notion that this is a special place. I believe in American exceptionalism and I have been in many places over the world where you see this in action. I have been in many places in America

where you see this in action, where somebody selflessly takes care of other individuals.

Last night I was at the Korean Embassy and we were talking about what is taking place in North Korea, and one of the people working there at the South Korean Embassy was amazed that people in the United States would care what happens to people in North Korea. I said one of the people with me was saying that is how we look at the world. If somebody else is in bondage, if somebody else is in difficulty, we feel that and we want to help to deal with it. That, to me, is part of what American exceptionalism is all about.

This is a special place and has a special calling. If it is not us doing it, in many cases around the world it does not get done. I have been in the Sudan and they are not calling on the Chinese to lead Sudan into a freer time period. I have been in other places—in Africa, on the North Korean border. If you are looking for somebody to solve the problem, it is the Americans who go in and do it.

Our task now is to not only do that around the world, but it is to do it domestically. I think we have to look more and more at ourselves and say we are a special place and I think we have to look at ourselves as the baby boomer generation that I am a part of and say you have to prove and earn your exceptionalism. I think we have to step up to the mark as the “greatest generation” did and be willing to serve in a tough way, in a sacrificial way, in the best interests of the future of our country. We have to do it and now is the time to do it.

I am appreciative that the President had a deficit task force he appointed and that they came up with some ideas, with some of which I agree, with some of which I disagree. But I am glad they started the discussion and the debate. If the figures I have seen are accurate, half the American households receive an entitlement check from the Federal Government—half of the American households. We have a deficit and debt that is structural. It is not based upon one-time war funding, although war funding has contributed to it, but it is structural in that we have more going out than we have coming in. It is time this is dealt with. I think that is part of the message from this last election cycle. The American people are ready to have an intelligent discussion, a difficult discussion of what we are going to do to be able to save ourselves fiscally. Now is the time to do it.

We actually have the structure set up to do it. With a Republican House, Democratic Senate, Democratic Presidency. This would be the time and the structure to talk about this sort of difficult issue. Our generation should step up and deal with it. I am not going to be here for that discussion and debate, but it is time we have it and it is time we bring back these timeless virtues to deal with our domestic problems the way we have dealt with international problems in the “greatest generation.”

As I leave this body, one of the rites of passage is to sign your desk, and I just did that. I did it in pencil. I figure that all of us will fade with time and that signature will fade with time as well. But the things you remember are what you touched and that touched you and the souls that are touched. It is people who deal from the heart who are the ones who touch your life and the ones who touch your soul. I want to express my deep appreciation to my colleagues who have touched my heart. I hope I have been a positive statement to many of them.

The psalm that comes to mind is one that says: "And his place knew him no more."

The psalmist wrote: "His place knew him no more." After a period of time you sign the desk, you move on, and then you look back and see the signatures in the desk and you don't recognize many of them. The place will know us no more. But the hearts that we touch, the hearts that touch ours, we will remember forever, and I certainly will.

I thank you and my colleagues in the Senate for letting me serve with you. It has been a great joy. It is a fabulous nation, the greatest Nation on the face of the Earth, and it was an honor to serve here.

God bless America.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 1118, the nomination of Jack Lew to be Director of the Office of Management and Budget, and that the nomination be confirmed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

#### EXECUTIVE OFFICE OF THE PRESIDENT

Jacob J. Lew, of New York, to be Director of the Office of Management and Budget.

Mr. REID. Mr. President, we have been working for several days—actually longer—trying to work things out on the situation involving the State of Louisiana. The State of Louisiana has struggled. They had the hurricane. The economic situation in Louisiana was going very well when the BP oil spill occurred. As a result, action taken by the administration, and other situations that developed, have hurt signifi-

cantly the economic viability of the State of Louisiana.

The Senator from Louisiana has worked tirelessly to get the work going again in the shallow water off the coast of Louisiana. She will be able to speak on the record better than I can—and I have been in some of the negotiations—the progress she has made regarding that. Not only has the administration stepped forward but industries have stepped forward.

I ask unanimous consent that the Senator from Louisiana be recognized to make a statement on the matter regarding Jack Lew.

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

Ms. LANDRIEU. Mr. President, I thank the majority leader. His day has been much busier than mine, but both of our days have been filled with quite a few matters before us.

The vote that will take place in the Senate would not have taken place without my acquiescence. I thought it was important to speak briefly on my hold on Jack Lew.

Jack Lew is a terrific nominee, and he has the support of many people in this body for his new position, and we are grateful to him for wanting to be the budget director for a country that has serious economic challenges. We are very grateful.

As you know, we have extremely serious economic challenges right now in the Gulf of Mexico. It has been 5 years since Katrina. Three weeks later, we had Rita, and then Gustav and Ike—four of the toughest storms the gulf coast has faced. Then a few years later, we had an oil spill, with more than 5 million barrels of oil spilled in the gulf, which was bad enough. But then this administration placed a hold—or a moratorium, if you will—on an entire industry because of that accident. It was a horrible accident, but I think to place a moratorium on an entire industry because one company and its contractors made some serious and terrible mistakes is really unprecedented, it is unwise, and it is extremely harmful to the gulf coast.

I tried many things over the last several months to call attention to this matter. I called several hearings in Louisiana, several hearings here in Washington, and I sent several letters, set up several meetings, and nothing seemed to be getting through to this administration about the catastrophe they were causing along the gulf coast. So I put this hold on a nominee. It was, in many ways, unprecedented. I didn't know that when I did it. I was told later that it had never been done on a budget director. I figured it would get their attention, and I think it has.

I have had three meetings in the last 24 hours with the Secretary himself. We have talked through some of these issues in a way that I think we can make progress. In the last week, there have been two permits issued. I am told there will be additional permits issued in the next few days. The Secretary has

also committed to me that he himself will be in the gulf coast—in Louisiana, actually—on Monday, expressing his commitment, and in no uncertain terms, to the future robustness of this industry.

Mr. President, this isn't just about Louisiana and the importance to Louisiana. I will submit this report for the RECORD, "The Economic Impact of the Gulf of Mexico Offshore Oil and Natural Gas Industry and the Role of the Independents," released in July of 2010. I will read only one figure, but it is big enough that it should capture people's attention. People are looking for money in this Chamber to solve our budget issues and bring this budget into balance. One figure I will cite from this report is that the independents—not big oil—I am not talking about Chevron, Shell, or BP; I am talking about independent oil and gas operators that are sidelined because of this policy by the administration—independents will bring in more than \$147 billion in Federal, State, and local revenue in the next 10 years. So the stakes are very high, which is why I took the action I did and why today I have released the hold, because notable progress has been made, permits have been issued, and the Secretary has committed, on Monday, to be in the State to give a path forward for this industry.

I am convinced that, at this moment, that was the right thing to do for the country and the gulf coast. But we have more progress that needs to be made. This industry is a valuable, critical, important industry to this Nation. It has been for over 100 years, and it will be for the next 100 years. We have to realize the importance of producing oil and gas here at home. Yes, it was a terrible accident. Yes, we need to have safety and rules and regulations that are in force. But there has to be a way to accomplish that without shutting down the entire industry and putting hundreds of thousands of jobs at risk. Again, this isn't about big oil specifically; it is about contractors and small businesses all along the gulf coast and throughout the United States.

I appreciate the Secretary's commitment, his renewed focus, and his understanding of the urgency of the situation. I thank my colleagues, many of whom were supportive of this action, as we have worked through these last 6 weeks. I appreciate the courtesy of the majority leader.

I ask unanimous consent to have printed in the RECORD "How Big an Impact?" from the study "The Economic Impact of the Gulf of Mexico Offshore Oil and Natural Gas Industry and the Role of the Independents" done by IHS Global Insight (USA), Inc., dated July 21, 2010.

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

## HOW BIG AN IMPACT?

In this study, we analyze the economic contribution of the independents and potential loss as a result of policies that effectively prevent them from participating in future development in the offshore Gulf of Mexico and, in particular, in the deepwater. Our analysis for the 2009–20 forecast period indicates that the exclusion of the independents from the offshore GOM would mean:

The following lost jobs in the four-state Gulf region (Alabama, Louisiana, Mississippi, and Texas)—direct, indirect, and induced: 2009—202,502; 2015—289,716; 2020—300,974.

Additionally, 40,777 construction-related jobs would be lost in the four-state Gulf region during 2009–20. This activity includes construction of rigs, platforms, pipelines, and production facilities.

The following lost taxes and royalties to the federal government: 2009—\$7.34 billion; 2015—\$10.13 billion; 2020—9.98 billion.

The following lost state and local tax revenues in the four-state Gulf region: 2009—\$3.18 billion; 2015—\$4.59 billion; 2020—\$4.68 billion.

Altogether, more than \$147 billion in federal, state, and local revenues would be lost in a 10-year period if independents are excluded from the Gulf of Mexico. These estimates only include revenues collected from the four-state Gulf region.

Within the deepwater, the exclusion of the independents would mean:

The following lost jobs in the four-state Gulf region—direct, indirect, and induced: 2009—121,298; 2015—230,241; 2020—265,113.

The following lost taxes and royalties to the federal government: 2009—\$3.64 billion; 2015—\$726 billion; 2020—\$8.33 billion.

The following lost state and local tax revenues in the four-state Gulf region: 2009—\$1.63 billion; 2015—\$3.35 billion; 2020—\$3.94 billion.

Altogether, more than \$106 billion in federal, state, and local revenues would be lost in a 10-year period if independents are excluded from the deepwater.

Overall, the exclusion of the independents would significantly shrink offshore oil and gas activity, reduce the dynamism of the industry, and dilute U.S. technological and industry leadership.

The reason for all these effects is that independents represent a much larger share of total activity than is generally recognized. Independent producers are an integral part of shelf, as well as deepwater, drilling and discovery.

Independents are the largest shareholder in 66% of the 7,521 leases in the entire Gulf of Mexico and in 81% of the producing leases.

In the deepwater portion of the Gulf of Mexico, independents are the largest shareholder in 52% of all leases and in 46% of the producing leases. They operate over half of the developing and producing deepwater fields.

Independents have drilled 1,298 wells in the deepwater, and they currently account for over 900,000 barrels a day of oil equivalent (oil and natural gas together).

Independents are responsible for an average of 70% of the “farm-ins”: the partnerships formed following the original lease agreement that enable prospects to be drilled and oil and gas produced.

Mr. REID. Mr. President, I ask unanimous consent that the motion to reconsider be considered made and laid upon the table; that any statements relating to the nomination be printed in the RECORD as if read; that the President be immediately notified of the Senate’s action and the Senate resume legislative session.

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

## LEGISLATIVE SESSION

Mr. REID. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of Minnesota, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

## RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Without objection, the Senate stands in recess subject to the call of the Chair.

Thereupon, the Senate, at 9:34 p.m., recessed subject to the call of the Chair and reassembled at 9:56 p.m. when called to order by the Presiding Officer (Mr. FRANKEN).

## FDA FOOD SAFETY MODERNIZATION ACT—Continued

The PRESIDING OFFICER. The Senate will come to order.

The majority leader.

Mr. REID. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The Senate is considering S. 510.

Mr. REID. The food safety bill; is that right?

The PRESIDING OFFICER. That is correct.

## COMMITTEE SUBSTITUTE WITHDRAWN

Mr. REID. I ask unanimous consent that the committee-reported substitute be withdrawn.

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

## AMENDMENT NO. 4715

(Purpose: In the nature of a substitute)

Mr. REID. I now call up the Harkin substitute amendment which is at the desk and ask for that amendment to be considered read.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. HARKIN, proposes an amendment numbered 4715.

(The amendment is printed in today’s RECORD under “Text of Amendments.”)

## CLOTURE MOTIONS

Mr. REID. Mr. President, I have two cloture motions at the desk.

The PRESIDING OFFICER. The clerk will report the cloture motions.

The legislative clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Harkin substitute amendment No. 4715 to Calendar No. 247, S. 510, the FDA Food Safety Modernization Act.

Harry Reid, Patrick J. Leahy, Claire McCaskill, Tom Harkin, Carl Levin, Daniel K. Inouye, Richard J. Durbin,

Byron L. Dorgan, Jack Reed, Jeff Bingaman, Mark Begich, Blanche L. Lincoln, Robert Menendez, Daniel K. Akaka, Sherrod Brown, Sheldon Whitehouse, Patty Murray, Debbie Stabenow, Barbara Boxer.

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Harry Reid, Patrick J. Leahy, Claire McCaskill, Tom Harkin, Carl Levin, Daniel K. Inouye, Richard J. Durbin, Byron L. Dorgan, Jack Reed, Jeff Bingaman, Mark Begich, Blanche L. Lincoln, Robert Menendez, Daniel K. Akaka, Sherrod Brown, Sheldon Whitehouse, Patty Murray, Debbie Stabenow, Barbara Boxer.

Mr. REID. I ask unanimous consent the cloture vote on the substitute amendment occur at 6 p.m. on Monday, November 29, and the mandatory quorum be waived.

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

Mr. REID. I ask unanimous consent that if cloture is invoked on the substitute, then all postcloture time be yielded back except for the time specified in this agreement; and that the only amendments or motions in order be those specified in this agreement, with debate limitations as specified:

Johanns motion to suspend with respect to amendment No. 4702; Baucus motion to suspend with respect to amendment No. 4713, with a total of 60 minutes of debate with respect to these two motions with the time equally divided and controlled between Senators Baucus and Johans; Coburn motion to suspend with respect to amendment No. 4696—substitute; Coburn motion to suspend with respect to amendment No. 4697 dealing with earmarks; that there be a total of 4 hours of debate with respect to the Coburn motions, equally divided and controlled between Senators COBURN and INOUE or their designees; that upon the use or yielding back of all time specified here, the Senate proceed to vote with respect to the motions to suspend in the order listed: Johans 1099; Baucus 1099; Coburn earmarks; Coburn substitute; that upon disposition of the motions, and if any motion is successful, then the Senate vote immediately on the amendment; that no further motions or amendments be in order; the substitute amendment, as amended, if amended, be agreed to; the bill, as amended, be read a third time; that after the reading of the pay-go statement with respect to the bill, the Senate proceed to vote on passage of the bill; and that the cloture motion with respect to the bill be withdrawn.

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

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed

to a period of morning business with Senators allowed to speak therein for up to 10 minutes each.

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

#### HONORING OUR ARMED FORCES

SERGEANT AARON B. CRUTTENDEN

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of SGT Aaron B. Cruttenden. Sergeant Cruttenden, assigned to the 27th Engineer Battalion, based in Fort Bragg, NC, died on November 7, 2010, of injuries sustained when his dismounted patrol encountered small arms fire. Sergeant Cruttenden was serving in support of Operation Enduring Freedom in Kunar Province, Afghanistan. He was 25 years old.

A native of Mesa, AZ, Sergeant Cruttenden earned his graduate equivalency diploma and worked for 2 years as an apprentice electrician. He then enlisted in the Army in March 2008. Sergeant Cruttenden hoped to defend his country, make a better life for his family, and pursue opportunities for higher education. He served a tour of duty in Afghanistan with decoration.

During his 2½ years of service, Sergeant Cruttenden distinguished himself through his courage, dedication to duty, and willingness to take on one of the most dangerous and skillful jobs in the Army—detecting and eliminating improvised explosive devices. Throughout Sergeant Cruttenden's time in the Army, family members recall that his foremost concern was protecting the men and women under his command.

Sergeant Cruttenden worked on the front lines of battle, serving in the most dangerous areas of Afghanistan. He is remembered by those who knew him as a consummate professional with an unending commitment to excellence. His family remembers him as a dedicated son and loving father to his young daughter. Both in service and civilian life, Sergeant Cruttenden's warmth and caring for others were always on display.

Mark Twain once said, "The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time." Sergeant Cruttenden's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Afghanistan. And though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Sergeant Cruttenden will forever be remembered as one of our country's bravest.

To Sergeant Cruttenden's entire family—I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by

your pride in Aaron's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

#### IRAN

Mr. BROWNBACK. Mr. President, I rise to speak in relation to the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 and to congratulate my colleagues on its unanimous passage. This legislation is vital not only to sanction Iran for bad behavior but to signal to the Government of Iran our determination to keep them from developing or acquiring nuclear weapons and from supporting terrorism throughout the Middle East region and around the world.

It did not have to be this way. Iran has been given every opportunity to change its ways and has chosen not to do so. Iran represents one of the biggest threats to our security, and these sanctions should help restrict Iran's ability to operate.

Specifically, this legislation will expand sanctions on foreign companies that do business in Iran. It will ban U.S. banks from conducting financial transactions with foreign banks that are connected to the Iranian nuclear program or Iran's terrorist enterprises.

It imposes a variety of new financial sanctions on Iran, limiting the mullahs' access to the international banking system. And, among other provisions, provides a framework for U.S., state, and local governments to divest their portfolios of foreign companies that work in the Iranian energy sector.

In the past, the United States has not fully utilized its sanctions authority when it comes to Iran. Obviously, enforcement is crucial. Sanctions are only effective when they are actually applied. I urge the administration, in the strongest terms possible, to make full use of the sanctions Congress has authorized in this bill.

It is no secret that Iran is openly hostile to the United States and our important allies, and failing to act would be foolish and irresponsible. The Government of Iran has rejected every opportunity to develop good relations with the rest of the world and sanctions are a logical and necessary response.

We must send a strong, unified message to Tehran and to those who aid their tyrannical ambitions. Terrorism, oppression, and subjugation ought not have any place in society. This legislation imposes financial sanctions and travel restrictions on human rights abusers in Iran. Passage of this legislation helps demonstrate that we reject the repression of the rulers in Tehran and support the efforts of the Iranian people to change their government.

And, I hope that the people of Iran will understand that is our goal here. We support the people of Iran. We support their right to chose their own leaders and chart their own future. We stand with them against the tyranny of the mullahs.

Iranians have a long and proud history, and are some of the most passionate and courageous people I have met. They are just as opposed to the actions of the Iranian regime as we are.

In fact, a little over a year ago, the people of Iran went to the polls to vote for a leader and saw their hopes for a democratically elected leader brutally crushed by a regime unwilling to cede its power. People around the world stood breathlessly, hoping the brave men and women of the Green Revolution would see their efforts rewarded.

Instead of listening to the people of Iran, Ahmadinejad and his cronies killed, imprisoned, and tortured those who were brave enough to speak out in opposition to tyranny.

Unfortunately, this violent course of action is not a recently developed tactic. To this day, there are members of the Green Revolution sitting in prison. Christians are killed for worshiping the God of their choosing, the free press has been silenced, women are brutally oppressed. The human rights abuses of Iran are extensive.

These sanctions are necessary because of the terrible nature of the regime. The rulers in Tehran have demonstrated that they cannot be trusted. They have subverted the interests of the Iranian people. They have manipulated the political process.

We in the United States of America have a duty to stand with the thousands of men and women in Iran who long for the basic rights that we in America take for granted. Freedom of speech, freedom of assembly, freedom of religion, freedom of the press. These are the things the Iranian people long for, and these are the things I am confident they will one day enjoy.

Obviously, freedom for the Iranian people will require much more than legislation from the U.S. Congress, but we ought to do what we can, and this bill sends a strong signal at a key time for our efforts to halt Iran's nuclear program and for the people of Iran who seek a more representative government. I hope we take additional steps to support the Iranian people's free and unfettered access to the internet, boost their ability to receive unbiased news and information and provide the support and assistance they need to sustain the reform movement in the face of a hostile and repressive government.

Senator CORNYN and I have introduced the Iran Democratic Transition Act, which supports the transition to a freely elected democratic government in Iran by assisting eligible Iranian democratic opposition organizations with communications and distribution of information. It is an important bill to aid the courageous people of Iran, and it is my hope that in the coming weeks the Senate will be able to bring this bill to the floor for a vote.

Today is a great step forward. I look forward to working with my colleagues on other ways that we can strengthen

opposition to the regime, halt the development of nuclear weapons, and support the Iranian people's drive for freedom.

#### VOTE EXPLANATION

Mr. KERRY. Mr. President, I am necessarily absent for the vote today on the FDA Food Safety Modernization Act, S. 510. If I were able to attend, I would have supported the motion to proceed to the bill.

#### NEED FOR BIPARTISAN RESOLUTION OF TAX ISSUES

Mr. BROWN of Massachusetts. Mr. President, I rise today to discuss the need for Congress to resolve an issue of importance to millions of Americans: specifically, the need for a bipartisan agreement on taxes.

As the end of the year approaches, Americans face an extraordinary level of uncertainty regarding a number of tax issues: the 2001/2003 tax cuts, including the tax rates on dividends and capital gains, the alternative minimum tax, the estate tax, and last but not least, the extension of many expiring tax provisions affecting individuals, businesses, nonprofit organizations and even members of the U.S. Armed Forces. During this lameduck session, Congress and the White House have an opportunity to work together to develop a package that addresses all of these.

In my view, we should not be raising taxes on any business or individual during a fragile economic recovery. The private sector—this country's job creation engine—continues to struggle, lacking the required stability and confidence needed to expand and hire new workers. Individuals, in turn, have been significantly impacted, further inhibiting economic growth. Uncertainty is a major factor, and one way to reduce uncertainty is to lock down our tax policy for the next few years, giving taxpayers a clear sense of what to expect as we enter 2011.

On the tax extenders, I bring to the Senate's attention a letter just sent to Congress today from over 1,200 organizations located around the country. These are businesses, nonprofit organizations, and organizations representing our men and women in uniform. It points out the crucial nature of the expiring provisions, and asks Congress to extend them before the end of the year. This is a remarkable letter. We often hear from the business community about the importance of tax extenders for job creation, but here we have not only the business community speaking up, but also affordable housing organizations, community development organizations, and the National Education Association and the National Science Teachers Association. The letter is signed by the Alliance to Save Energy and numerous renewable energy organizations. It includes the Association of the United States Navy and the Re-

serve Officer Association. It includes agricultural organizations and technology councils.

In short, this is a statement from a breadth of organizations which do not often work together. I think we have to take this kind of letter very seriously and consider its message carefully. And its message is that these provisions are very important to millions of Americans, and that our failure to extend them could have a significant dampening effect on the economy. And I also want to be clear about something: this should be a "clean" extension of these policies—we shouldn't be raising taxes on other businesses at the same time and thereby blunting the impact of this important action for the economy.

One of the best known of the extenders is the R&D tax credit. It actually expired at the end of 2009, so America's innovative companies—many of them with operations in Massachusetts—have been wondering all year if Congress is going to reinstate the most visible public policy that encourages new ideas and technologies in this country. This is an area where our commitment should not be in doubt.

There are incentives for the production of domestic alternative energy sources and energy efficient products such as hybrid vehicles, energy efficient appliances, homes, and windows. Without these incentives, many producers will not be able to make these products. In fact, many have already discontinued operations in the absence of credits which expired at the end of 2009. The deductions for donations of funds, property, food, and equipment to charities is also hanging in the balance of this package.

There is the deduction for State and local sales taxes. Think about individuals losing the ability to deduct State and local taxes from their Federal taxes. There is the deduction for teacher classroom expenses. Teachers spending their own money for their classrooms is more common than we like to think about, and the least we can do is allow them to deduct those expenses from their tax bill. There is the credit for employers who continue to pay employees while on active duty in the U.S. Armed Forces. This is an important support mechanism for our men and women in uniform, and we should ensure that it remains in place. These are just a few of the tax provisions which have expired or will soon expire. I invite my colleagues to review the Joint Tax Committee's list of the expiring provisions. It is crucial for Congress to act this year to extend as many of them as possible.

Ultimately, I believe we need to reform our Tax Code to lower tax rates and broaden the base. I know Senators BAUCUS and GRASSLEY have already begun that process with a Finance Committee hearing on tax reform earlier this year, and I salute them for starting that conversation. We look forward to working on such a package of reforms on a bipartisan basis in the

112th Congress, but for now, extending the expiring provisions should be a top priority for the remainder of this Congress.

Mr. President, I ask unanimous consent to have printed in the RECORD the November 16 letter from over 1,200 organizations from around the country to which I referred.

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

NOVEMBER 16, 2010.

TO THE MEMBERS OF THE U.S. CONGRESS: The undersigned represent millions of individuals, businesses, organizations and members of the U.S. Armed Forces. We urge Congress to pass legislation in the lame duck session to extend critical tax provisions that, while temporary in nature, are critical to our economy. It is of the utmost importance to all of us, and to the health of the U.S. economy, that this extension be enacted before the end of the year and apply seamlessly, at least through 2011.

Expiration of many of these provisions has already caused job losses, and the uncertainty around their extension will lead to further dislocations just as the fragile economic recovery is beginning. We all look forward to working with you on this issue in the coming weeks.

Sincerely,

(Signed by over 1,200 organizations)

#### NATIONAL SURVIVORS OF SUICIDE DAY

Mr. JOHNSON. Mr. President, each November we set aside a day of healing for those who have lost someone to suicide. I rise today to again recognize Saturday, November 20 as National Survivors of Suicide Day. In 1999, a Senate resolution created this annual event through the efforts of Senator HARRY REID who lost his father to suicide. This year, on November 20, over 270 conferences will take place in the U.S. and around the world to allow survivors of suicide the opportunity to connect with others who have experienced the tragedy of suicide loss and to allow for healing interactions.

The importance of this day is amplified by the shocking statistics on suicide—suicide is the 11th leading cause of death in the United States. Nationwide, approximately 90 lives are lost to suicide each day and over 34,000 die by suicide each year. Suicide is truly an epidemic that devastates thousands of families in the United States each year.

In my State of South Dakota, one suicide occurs every 3 to 4 days and 107 lives are lost each year. These statistics place South Dakota among a group of Western States that consistently has a higher rate of suicide than the rest of the country. Suicide is the fourth leading cause of death among all South Dakotans and is the second leading cause of death of South Dakotans between the ages of 15–34. Suicide among American Indians in South Dakota is of particular concern—the suicide rate for American Indians ages 15–34 is more than three times higher than the national average and the suicide rate for

the Rosebud Sioux Tribe is the highest in the world.

Last year, 16-year-old Dana Lee Jetty, a tribal member from the Spirit Lake Dakota Nation in North Dakota, who lost her 14-year-old sister to suicide spoke before the Senate Committee on Indian Affairs:

We need to make sure that our communities and our people know how to reach out for help if they need it and we need to make sure that the help is there when they ask.

We must take Ms. Jetty's words to heart and provide tribes with the resources they need to implement effective suicide prevention programs. It is critical to strengthen the social fabric to help improve mental health with effective and culturally sensitive prevention programs.

It is necessary to expand access to mental health services nationwide, including a focus on education, prevention and intervention. Furthermore, we need to acknowledge the obstacles that suicide survivors face during their grieving and encourage the involvement of survivors in healing activities and prevention programs. I believe with appropriate support and treatment, suicide survivors can lead effective advocacy efforts to reduce the incidence of suicide and find healing themselves.

The loss of so many lives to suicide is truly a crisis, and it is imperative to provide support for all those left behind. It is my hope that National Suicide Survivors Day will promote the broad based support that each survivor deserves and increase awareness of the need for greater efforts in addressing the root causes of suicide in Indian Country and throughout the Nation.

#### NEW START TREATY

Mr. BOND. Mr. President, I rise today to express my strong opposition to the administration's New START Treaty. I do so after great deliberation and after initial disposition to support the treaty because of the generic importance of these types of treaties for our Nation. But with what I have learned from classified intelligence information, I cannot in good conscience support this treaty. I have written a classified letter summarizing my views that is available to all members in Senate security; I urge them to read it, even as I try now with a few unclassified comments to explain my position.

When the administration announced this new treaty, we were told that its goal was to reduce strategic nuclear forces in a manner that would make America safer and enhance nuclear stability. That goal may be admirable, but unfortunately, the deal the administration has struck with Moscow falls well short. Consequently, I believe the administration's New START Treaty has been oversold and overhyped.

The first thing we must all understand about this treaty is that it forces the United States to reduce unilaterally our forces, such as missiles, bomb-

ers, and warheads, in order to meet treaty limits. On the other hand, the Russians will actually be allowed to increase their deployed forces because they currently fall below the treaty's limits. This raises a crucial question: exactly what does the United States gain from this treaty in exchange for a one-sided reduction in our deployed forces?

Defenders of this treaty have argued, first, that the treaty places no limits on America's plans for missile defense systems, and second, that our own military will have the flexibility to deploy our strategic forces, such as bombers, submarines, and missiles, in ways that best meet our security interests.

Unfortunately, these explanations simply do not stand up to scrutiny. The United States does not need a treaty with Russia, or any other country, to be free to pursue the missile defense system we need to keep America safe. The United States does not need a treaty to give us the flexibility to deploy our strategic forces as we wish.

Interestingly, the administration's justifications completely dismiss the unilateral statement Russia has made to this treaty that claims the right to withdraw if we expand our missile defenses. This Russian statement is pure and simple manipulation.

At some point down the road, our Nation will need to expand its missile defenses. Because of this unilateral statement, however, the reaction from some in the administration or in Congress will be to reject any expansion lest we upset the Russians and cause them to pull out of this new Treaty. The Russians surely are counting on this reaction. Yet in all the rhetoric in support of this treaty, I have not heard any reasonable explanation for why we would give Russia this lever to use against our legitimate and necessary right to defend ourselves against ballistic missile attack.

For several months, we have listened to the administration's claims that New START will make America more secure by strengthening nuclear stability. In the "Show Me" State, where I come from, and I suspect throughout the rest of the country, claims like this need to be backed up by facts. But if we cannot verify that the Russians are complying with each of the treaty's three central limits, then we have no way of knowing whether we are more secure or not.

The Select Committee on Intelligence has been looking at this issue closely over the past several months. As the vice chairman of this committee, I have reviewed the key intelligence on our ability to monitor this treaty and heard from our intelligence professionals. There is no doubt in my mind that the United States cannot reliably verify the treaty's 1,550 limit on deployed warheads.

As an initial hurdle, the ten annual warhead inspections allowed under the treaty permit us to sample only 2 to 3

percent of the total Russian force. Further, under New START, unlike its predecessor, any given missile can have any number of warheads loaded on it. So even if the Russians fully cooperated in every inspection, these inspections cannot provide conclusive evidence of whether the Russians are complying with the warhead limit.

Let's take an example: say that the United States found a missile that was loaded with more warheads than the Russians declared. While this would be a faulty and suspicious declaration by Russia, we could not necessarily infer from it that they had violated the 1,550 warhead limit—especially because the Russians could always make some excuse for a faulty declaration.

Compounding this verification gap is the current structure of the treaty's warhead limits which would allow Russia to prepare legally to add very large numbers of warheads to its forces in excess of the treaty's limit. For example, the Russians could deploy a missile with only one warhead, but legally flight-test it with six warheads to gain confidence in the increased capability—a practice they could not employ under the original START. The Russians could then store the five extra warheads for each such missile nearby, ready to mate them to the missile on a moment's notice. All of this would be legal.

Further, unlike START, this new treaty places no limit on the number of nondeployed missiles, so the Russians legally could store spare missiles to be mated with the spare warheads. This potential for Russia to "break-out" of the treaty in a short period of time—perhaps without adequate warning to the United States—may undermine the very nuclear stability this administration claims this treaty provides.

Arguably, it also means that, despite the opportunities to cheat, it may be even easier for Russia to circumvent legally the limits of this treaty. That does not sound to me like a great bargain for the United States.

Because the details on verification and breakout of this treaty are classified, I have prepared a full classified assessment that is available to any Senator for review. The key points, however, are not classified and I believe the Senate and the American public need to understand them fully.

Common sense suggests that the worse a treaty partner's arms control compliance record with existing and past treaties, the stronger verification must be for any new treaties. So, exactly what is Russia's record? According to the official State Department reports on arms control compliance, published by this administration and the previous administration, the Russians have previously violated, or are still violating, important provisions of most of the key arms control treaties to which they have been a party, including the original START, the Chemical Weapons Convention, the Biological Weapons Convention, the Conventional Forces in Europe Treaty, and

Open Skies. I recommend that my colleagues review the classified versions of these reports before any further Senate action is taken on this treaty.

Despite Russia's poor compliance record, the administration has decided that we will rely primarily on good Russian cooperation to verify New START's key 1,550 limit on deployed warheads. This brings to mind the famous adage: fool me once, shame on you; fool me twice, shame on me.

One of the persistent Russian arms control violations of the original START was its illegal obstruction of U.S. on-site inspections of warheads on certain types of missiles. The only reason these Russian violations did not prevent us from verifying START's warhead limits was because START limited the capability to deploy warheads through a "counting rule" that could be verified primarily with our own intelligence satellites. Unfortunately, New START has discarded this critical counting rule, designed to work hand-in-glove with our satellites, in favor of reliance on no more than ten sample inspections a year—again, just 2 to 3 percent of Russia's force.

The warhead limit in New START is calculated from the actual number of warheads loaded on a missile, and unlike START, this new treaty permits any missile to have any number of warheads loaded on it. But no satellite can tell us how many warheads are loaded on missiles. Therefore, if this treaty is ratified, we will have to rely primarily on on-site inspections to verify actual warhead loadings the very same kind of inspections that the Russians violated in START. If the Russians continue their poor compliance record and obstruct our warhead inspections under New START, the consequences will be much more serious and will substantially degrade verification.

The administration is surely aware of these verification and breakout problems as there is no shortage of verification gimmicks in this treaty. But not even all of them together permit us to verify reliably the treaty's warhead limit. So how have treaty enthusiasts responded to these problems?

First, they discard the military significance of possible Russian cheating. Our own State Department's verification assessment states that:

any Russian cheating under the Treaty would have little if any effect on the assured second-strike capabilities of U.S. strategic forces. In particular, the survivability and response capabilities of [U.S.] strategic submarines and heavy bombers would be unaffected by even large-scale cheating.

This is not exactly a ringing endorsement. I think it is pretty clear that a large-scale breakout would have a seismic impact from a geopolitical perspective. It would escalate tensions between the superpowers and lead to extreme strategic instability. Even more fundamentally, the State Department statement raises a pivotal question: If no level of Russian cheating under New START is deemed militarily signifi-

cant, then what is the value of this treaty in the first place?

Second, treaty proponents attempt to draw a parallel to the "Moscow" arms control treaty, signed by President Bush and approved 95-0 by the Senate. They argue that this treaty has the same kind of warhead verification difficulties as New START, therefore critics of New START are applying a double-standard. This argument fails on two counts: the first being that the Moscow arms control treaty was placed on top of the verification measures already in effect for START; and second, that the United States had decided unilaterally to move to the limits imposed in the Moscow treaty, whether or not Russia reduced to them. This is simply not the case for New START. Clearly, the two treaties are not comparable from a verification standpoint.

The administration also argues that our ability to monitor Russian forces will be greater with the new treaty than without it. As a general proposition, this is true. In actuality, however, the extent of the treaty's monitoring benefits could be insignificant or only modest in some important respects. This disparity between generalization and reality is explained more in my classified paper.

The bottom line is this: if the chief benefit of this treaty is that we will know more about what Russia is doing with its nuclear forces, then the same benefit could have been achieved with a much more modest confidence-building protocol, one which would not require unilateral U.S. force reductions, give Russia a vote on our missile defenses, or present impossible verification problems.

The administration claims that New START is indispensable to reap the "Reset" benefits with Russia. If a fatally flawed arms control agreement is the price of admission to the Reset game, our Nation is better off if we this one out.

Similarly, any suggestion by treaty advocates that rejecting the treaty weakens the "good" Russian leader, Medvedev, and strengthens the "bad" Russian leader, Putin, should be met with healthy skepticism. Now is not the time to fall for a "good cop—bad cop" act from Moscow.

In many cases, concerns about particular treaties can be solved during the ratification process. I respect my colleagues who are attempting to do so with this treaty. Unfortunately, New START suffers from fundamental flaws that no amount of tinkering around the edges can fix. I believe the better course for our nation, and for global stability, is to put this treaty aside and replace it with a better one.

The United States needs, and we in the Senate should demand, a treaty that can be reliably verified by our own intelligence assets without relying on Russia's good graces, not one that requires unilateral reductions or gives Russia a vote on our strategic defenses. I urge my colleagues to reject anything

less and to take a strong stand for America's defense and America's future.

#### RESTORE ONLINE SHOPPERS' CONFIDENCE ACT

• Mrs. HUTCHISON. Mr. President, I wish to engage my colleague Senator ROCKEFELLER in a colloquy. There have been some questions raised about how S. 3386, the Restore Online Shoppers' Confidence Act, affects a company that sells its business entirely or enters into a deal with another company to "step into the first company's shoes" and provide the products or services to consumers that were previously provided by the first company. I would ask the chairman to explain the intent of the legislation.

Mr. ROCKEFELLER. This legislation is not intended to limit a company's ability to provide its customers with a seamless transition when a company sells its assets or arranges to have a new entity provide the products and services it previously provided to its customers.

Mrs. HUTCHISON. I thank the Senator. Questions have also been raised about how this bill would affect an online company that bills its customers monthly for an ongoing service and decides to enter into a deal with another company to provide the backend billing and other services to those same customers. What is the intent of the legislation?

Mr. ROCKEFELLER. The bill would not consider the company providing backend billing and other services for the initial merchant to be a posttransaction third party seller. Therefore, the provisions of the bill governing post-transaction third party sellers would not apply.

This legislation is intended to prevent the kind of fraudulent transactions the Commerce Committee exposed in its recent investigation—where a consumer intentionally purchases products or services from one company and ends up unknowingly purchasing products or services from a different, unrelated company. As we have discussed, this bill is not intended to prevent a company from making a business deal that would provide continuity of service to its customers by entering into a business arrangement that gives another company the right to deliver products and services intentionally purchased by consumers and to bill for those products and services.

Mrs. HUTCHISON. I thank the Senator for those clarifications. •

#### THEOLOGICAL SCHOOL OF HALKI

Mr. CARDIN. Mr. President, a year ago this month I was privileged to again meet with the Ecumenical Patriarch, Bartholomew I. His impassioned call for support for the reopening of the Theological School of Halki promoted

me to introduce S. Res. 356, a bipartisan measure calling upon the Government of Turkey to facilitate the reopening of the Ecumenical Patriarchate's Theological School of Halki without condition or further delay. As we approach the 40th anniversary of the forced closure on that unique institution by the Turkish authorities, I renew my call for the Government of Turkey to allow the seminary to reopen.

Founded in 1844, the Theological School of Halki, located outside modern-day Istanbul, served as the principal seminary of the Ecumenical Patriarchate until its forcible closure by the Turkish authorities in 1971. Counted among alumni of this preeminent educational institution are numerous prominent Orthodox scholars, theologians, priests, and bishops as well as patriarchs, including Bartholomew I. Many of these scholars and theologians have served as faculty at other institutions serving Orthodox communities around the world.

Past indications by the Turkish authorities of pending action to reopen the seminary have, regrettably, failed to materialize. Turkey's Prime Minister Recep Tayyip Erdoğan met with the Ecumenical Patriarch in August 2009. In an address to a wider gathering of minority religious leaders that day, Erdoğan concluded by stating, "We should not be of those who gather, talk and disperse. A result should come out of this." I could not agree more with the sentiment. But resolution of this longstanding matter requires resolve, not rhetoric.

In a positive development this August, the authorities in Ankara, for the first time since 1922, permitted a liturgical celebration to take place at the historic Sumela Monastery. The Ecumenical Patriarch presided at the service, attended by pilgrims and religious leaders from several countries, including Greece and Russia. Earlier this month, a Turkish court ordered the Buyukada orphanage to be returned to Ecumenical Patriarchate. If the transfer of the property occurs, this would be another welcome development, potentially paving the way for the return of scores of other church properties seized by the government. In 2005, the Helsinki Commission, which I chair, convened a briefing, "The Greek Orthodox Church in Turkey: A Victim of Systematic Expropriation." The Commission has consistently raised the issue of the Theological School for well over a decade and will continue to closely monitor related developments.

Yesterday's release of the 2010 Report on International Religious Freedom is a reminder of the challenges faced by Orthodox and other minority religious communities in Turkey. I urge the Turkish Prime Minister to ensure respect for the rights of individuals from these groups to freely profess and practice their religion or beliefs, in keeping with Turkey's obligations as an OSCE participating state.

The 1989 OSCE Vienna Concluding Document affirmed the right of religious communities to provide "training of religious personnel in appropriate institutions." The Theological School of Halki served that function for over a century until its forced closure nearly four decades ago. The time has come to allow the reopening of this unique institution without further delay.

#### TRIBUTE TO KEN FLANZ

Mr. CRAPO. Mr. President, I rise today to recognize a longtime member of my staff who recently became a Senior Stennis Congressional Fellow.

Ken Flanz has been a central member of my staff since 1997, currently serving as my legislative director. In addition to advancing my legislative agenda and guiding my staff, Ken's responsibilities include foreign affairs, intelligence, Native Americans, appropriations, congressional and campaign reform, and human rights issues. Throughout his years of dedicated service, Ken has been a valued resource to many in the Senate and has contributed helpful insight. His thoughtful approach, patience, and knowledge have been instrumental to the Senate community.

Ken's achievements through the Stennis Congressional Fellows Program will serve him well and be beneficial to my office and the Senate. The Stennis Program seeks to enhance senior congressional staff members' leadership skills and communications abilities for those committed to public service. Senior fellows advance congressional staff development and serve as significant resources for Members of Congress, fellow staff, and the public. The program's emphasis on non-partisanship and the long-term effectiveness of Congress provides for an essential discourse.

I have great appreciation for Ken's experience and circumspection. He has served as a trusted adviser and has been a great asset to me and my staff. I commend Ken for this distinguished achievement.

#### ADDITIONAL STATEMENTS

##### HAWAII'S 2010 LITTLE LEAGUE U.S. CHAMPIONS

• Mr. AKAKA. Mr. President, I honor and congratulate the Little League team from Waipio, HI, our 2010 Little League U.S. Champions.

On Saturday, August 28, Waipio defeated the team from Pearland, TX, to win the U.S. Championship title game. It was a resounding victory for Hawaii, who won in five innings via mercy-rule with a final score of 10-0, advancing to the final game of the World Series Championship against Japan.

Our U.S. Champions performed with the highest level of athleticism as they played the International Champions from the Edogawa Minami Little

League of Tokyo. Waipio rose to the occasion and played their hearts out. Despite their hard-fought 4-1 loss to Japan, our young men proved that they are genuine winners, exiting the World Series with their heads held high and leaving an undeniable impression of inspiration and sportsmanship.

With great pride, superior confidence, motivation and spirit, our team showed the Nation and the world what it takes to be a champion. They are: Kahoea Akau, Shiloh Baniaga, Kaimana Bartolome, Matthew Campos, Ty DeSa, Ezra Heleski, Dane Kaneshiro, Tyler Kushima, Cody Maltezo, Justice Nakagawa, Keolu Ramos, Noah Shackles, Brysen Yoshii, Manager Brian Yoshii, and Coaches Kina Akau and Jason Heleski.

Although I am proud of their achievement, I am most proud of the sportsmanlike conduct and warm aloha that these players brought to both the national and international stage. I commend the coaches, parents and families of these players, as well as their friends for the sacrifices made in support of these individuals. I thank them for their dedication to the dreams of these young players, and applaud their hard work. I wish the players all the best in their future endeavors and thank them again for being exceptional representatives of the State of Hawaii and our Nation.●

#### TRIBUTE TO DR. PING-TUNG CHANG

• Mr. BEGICH. Mr. President, today I congratulate Dr. Ping-Tung Chang, the recipient of the U.S. Outstanding Community Colleges Professor of the Year Award. This award is recognized as one of the most prestigious honors bestowed upon a professor, and this is the second time Professor Chang has won a Professor of the Year award.

To be nominated for this award requires dedication to the art of education and excellence in every aspect of the profession. Professor Chang should be proud of this accomplishment as he has been personally vested in each student and has helped shape the leaders of tomorrow.

In his 24 years at Matanuska-Susitna College, Professor Chang has taught mathematics to nearly 6,000 students and has successfully established a scholarship fund for students. Professor Chang has used innovative methods to get students excited about mathematics and problem solving. I commend him for his leadership and passion for educating.

Professor Chang, I wish you the very best in all your endeavors. Congratulations and best regards.●

#### REMEMBERING ANNA ELLA CARROLL

• Ms. MIKULSKI. Mr. President, as dean of the Senate Women, I rise on this day to bring attention to the life and work of fellow Marylander Anna

Ella Carroll, 1815–1893. Our recognition of her achievements is long overdue.

Anna Ellen Carroll was born in Somerset County, the daughter of Maryland Governor Thomas King Carroll. She was one of President Abraham Lincoln's closest advisers and a senior strategist during the Civil War. And though she is nearly absent from history books, Anna was one of the most influential American women of the 19th century.

Anna believed in justice and fairness. She was a free thinker and an abolitionist. In 1853, she freed the slaves she inherited from her father's estate and persuaded her abolitionist friends to accompany the newly freed men and women to Canada, ensuring they would remain free.

Anna's belief in freedom and humanity led her to campaign passionately on behalf of the abolitionist movement. In fact, many believe that Anna's hard work and strong voice helped motivate President Lincoln to end slavery in America.

Anna formally joined the ranks of President Lincoln's top advisers in 1861, after writing a political pamphlet that impressed the President so much that he requested an interview with its author.

After the meeting, President Lincoln sent Anna on a reconnaissance mission to the secessionist South. When she arrived, Anna immediately knew the proposed Union strategy of sending troops down the Mississippi would fail. She recommended an alternative—send troops to divide the South by using the Tennessee and Cumberland rivers. The President listened, and ultimately, Anna's strategy helped the Union win the war.

Anna served as a consultant to Lincoln's War Department and, after his assassination in 1865, as an advisor to President Ulysses S. Grant. She also was a recognized political essayist, an avid writer, and an influential member of the Maryland and Washington political circles before and after her role in wartime politics.

During her life, Anna was recognized by her contemporaries as a top adviser to President Lincoln. In the 1864 painting of Lincoln and his Cabinet by Francis B. Carpenter, a chair sits empty. It is surrounded by maps and notes similar to those carried by Anna during her time advising Lincoln, implying her place at the table. Still, despite multiple petitions, she was never formally acknowledged for her contributions.

Anna Ella Carroll was a woman who had a profound impact on the trajectory of our country's reunification, helping make decisions at a crossroads that were critical to America's survival. I am proud to count her among the ranks of Maryland's most influential women. It is time we give her a proper place in our history books.●

#### TRIBUTE TO RON HAYES

● Mr. SESSIONS. Mr. President, I am honored to bring to the attention of the Senate the work of a remarkable American and constituent of mine, Mr. Ron Hayes, of Fairhope, AL.

As blessed as we are to be living in America, we would do well to remember that our society continues to be enhanced through the noble efforts of those who tirelessly and passionately pursue a better quality of life for us all. These often unsung heroes seek only the reward of knowing they have transformed our laws and our land for the better.

Today I wish to honor one such individual who has spent nearly two decades advocating for strengthened workplace safety regulations and timely communication between the government and accident victims and their families. His efforts have made a difference.

Ron Hayes began his journey to improve workplace safety in 1993 when he lost his beloved 19-year-old son, Patrick, to a grain silo accident in Florida. Facing tremendous emotional pain, Ron and his wife Dot sought details of their son's death as well as survivor's benefits from local, State and Federal agencies, only to be met with delays and few answers. After 2 years of navigating the bureaucracy, they resolved to learn everything they could about workplace safety standards and sought ways to improve both job safety rules and enforcement.

Ron Hayes' dedication resulted in the revision of the Occupational Safety and Health Administration's, OSHA, grain handling standards. But this was only the beginning. Ron and his wife founded the Families In Grief Hold Together "FIGHT" Project, a nonprofit group devoted to assisting families and workers cope with the consequences of workplace accidents and deaths.

Some 10,000 people lose their lives while working each year. Ron Hayes worked with OSHA to create a policy which the agency often uses in communicating with family members after a workplace accident.

Since its founding, the FIGHT Project has reached out to nearly 800 families, providing valuable help in the grieving process, negotiating the red tape and ultimately in healing.

Ron Hayes could have stopped there, but his dedication to improving worker safety has motivated him to speak to almost 50,000 workers and taken him to some of the largest companies in the world. He has testified before Congress on numerous occasions and has served as a special adviser to the Senate Health, Education, Labor, and Pensions Committee.

In the process, Ron Hayes has received many awards for humanitarian efforts.

I commend Ron Hayes' selfless dedication to worker safety while providing comfort and valuable counsel to families.

In our society it is possible for one person, or in this case a husband and

wife, to make a difference that will positively impact the lives of millions. Ron Hayes has shown us that a lone voice for good cannot only be heard but it can change society for the better.●

#### RECOGNIZING TILSON TECHONOLOGY MANAGEMENT

● Ms. SNOWE. Mr. President, it is essential that today's small businesses be flexible and responsive when it comes to changing demands and conditions if they wish to be successful and truly distinguish themselves. My home State of Maine boasts a number of these highly innovative companies, which are poised to lead our economic recovery in the coming years. I rise today to recognize one of these firms, Tilson Technology Management, a small independent information technology project management company based in Portland, which is helping businesses grow through the creative and comprehensive training it offers its customers.

Mike Dow founded Tilson Technology Management in 1996 with the goal of improving the day-to-day operations of construction companies through the unique technology consulting training it offers to its clients. Tilson quickly met this goal and, adjusting to the needs of a variety of other industries, set its sights on providing technology solutions to businesses on a broader, global scale. As such, Tilson expanded its expertise, offering its critical technology services to a wider range of markets, including the biotechnology, banking, and manufacturing industries. All the while, Tilson has maintained its reputation as a leading example of solid and principled business management.

At its core, Tilson is a company of solutions, helping businesses meet their customers' needs while also helping to improve Maine's high-tech infrastructure. As a result of the company's hard work and determined success, Tilson was recognized this year with the Governor's Award for Technology Company of the Year. This honor is bestowed annually on a business that takes great pains to ensure that Maine is a cutting-edge technology State.

The company's work to find solutions to everyday technology problems is never-ending. In Maine, this includes constructing 1,100 miles of fiber optic cable that will expand the reach of broadband and the countless opportunities that will come as a result. I look forward to the completion of this project and the doors it will open for the citizens of Maine and local industries seeking a wider, global reach. At the same time, Tilson is helping to improve the lives of Americans abroad. The company is taking on the crucial task of developing ways to furnish U.S. troops with the food and supplies they need while serving our country in Iraq and Afghanistan.

A member of such organizations as the Portland Regional Chamber of

Commerce, the Maine International Trade Center, and Maine's Software and Information Technology Industry Association, Tilson has been a driving force in the vitality of Maine's business community. On a daily basis, this impressive company makes the lives of the people of my home State easier by helping businesses better serve their customers. There are no bounds to what the future holds for Tilson and its remarkable innovations that are helping Maine become a more competitive and global State. I thank Mike Dow and everyone at Tilson Technology Management for making their company an outstanding example of a successful business, and I offer them best wishes for continued growth.●

#### TRIBUTE TO MICHAEL AND EMILY BECK

● Mr. THUNE. Mr. President, today I recognize Michael and Emily Beck of Keystone, SD, as my nominees for the 2010 Angels in Adoption Award. Since 1999, the Angels in Adoption program through the Congressional Coalition on Adoption Institute has honored more than 1,600 individuals, couples, and organizations nationwide for their work in providing children with loving, stable homes.

Michael and Emily Beck were high school sweethearts, and decided early in their relationship that they would eventually start a family through adoption. The Becks have done exactly that through the adoption of four children. Tehya, 6, was adopted when she was just a baby, and this year the Beck family grew by three more. In July, Michael and Emily finalized the adoption of their foster children, John, 7, and his sisters, Emily, 5, and Shyanne, 4. Michael and Emily worked diligently to reunite John, Emily, and Shyanne who had been separated in the foster system.

I admire the Beck's desire to promote foster care and advocate adoption as a way of life. A significant driving force behind their philosophy on adoption is their belief in the call God has placed upon His family to care for those who have no family to care for them. The Beck's goal is to provide permanency—a stable home and loving family—for children who can often spend their entire childhood in the foster care system.

The Becks also exemplify selfless service to our Nation. Michael and Emily both serve our country through the Army National Guard, and Michael has orders to deploy to the Middle East in 2011.

As a father myself, I can speak to the sacrifices that parents willingly make for the well-being of their children. It is apparent through their stories that Michael and Emily make significant sacrifices to provide for their children and find joy in the small accomplishments of parenting. Michael and Emily are committed to providing a promising and loving future for their family.

National Adoption Day this year is November 20, 2010, and I can think of no better family to serve as a role model for others who seek to adopt than Michael and Emily Beck, my nominees for the 2010 Angels in Adoption Award.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGES FROM THE HOUSE

At 9:36 a.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 6397. An act to amend section 101(a)(35) of the Immigration and Nationality Act to provide for a marriage for which the parties are not physically in the presence of each other due to service abroad in the Armed Forces of the United States.

The message also announced that the House has passed the following bill, without amendment:

S. 1376. An act to restore immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention on Intercountry Adoption to allow their admission into the United States.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 328. Concurrent resolution expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were initially enacted in 1980 by Public Law 96-517 (commonly referred to as the "Bayh-Dole Act") on the occasion of the 30th anniversary of its enactment.

The message also announced that the House has passed the following bill with amendments, in which it requests the concurrence of the Senate:

S. 3689. An act to clarify, improve, and correct the laws relating to copyrights.

The message further announced that the House has agreed to the amendment of the Senate to the bill (H.R. 5566) to amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message also announced that pursuant to Section 1002 of the Intel-

ligence Authorization Act for Fiscal Year 2003 (Public Law 107-306) as amended by section 701(a)(3) of the Intelligence Authorization Act for Fiscal Year 2010 (Public Law 111-259), and the other of the House of January 6, 2009, the Speaker appointed the following member on the part of the House of Representatives to the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community: Mr. Maurice Sonnenberg of New York, NY.

At 12:28 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5367. An act to amend title 11, District of Columbia Official Code, to revise certain administrative authorities of the District of Columbia courts, to authorize the District of Columbia Public Defender Service to provide professional liability insurance for officers and employees of the Service for claims relating to services furnished within the scope of employment with the service, and for other purposes.

H.R. 5655. An act to designate the Little River Branch facility of the United States Postal Service located at 140 NE 84th Street in Miami, Florida, as the "Jesse J. McCrary, Jr. Post Office".

H.R. 5702. An act to amend the District of Columbia Home Rule Act to reduce the waiting period for holding special elections to fill vacancies in local offices in the District of Columbia.

H.R. 6237. An act to designate the facility of the United States Postal Service located at 1351 2nd Street in Napa, California, as the "Tom Kongsgaard Post Office Building".

H.R. 6278. An act to amend the National Children's Island Act of 1995 to expand allowable uses for Kingman and Heritage Islands by the District of Columbia, and for other purposes.

H.R. 6387. An act to designate the facility of the United States Postal Service located at 337 West Clark Street in Eureka, California, as the "Sam Sacco Post Office Building".

H.R. 6399. An act to improve certain administrative operations of the Office of the Architect of the Capitol, and for other purposes.

The message further announced that the House has passed the following bill and joint resolution, without amendment:

S. 3567. An act to designate the facility of the United States Postal Service located at 100 Broadway in Lynbrook, New York, as the "Navy Corpsman Jeffrey L. Wiener Post Office Building".

S.J. Res. 40. Joint resolution appointing the day for the convening of the first session of the One Hundred Twelfth Congress.

At 6:57 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 332. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

The message also announced that the House having proceeded to reconsider the bill (H.R. 3808) to require any Federal or State court to recognize any notarization made by a notary public licensed by a State other than the State where the court is located when such notarization occurs in or affects interstate commerce, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was resolved, that the said bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

#### MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 5758. An act to designate the facility of the United States Postal Service located at 2 Government Center in Fall River, Massachusetts, as the "Sergeant Robert Barrett Post Office Building"; to the Committee on Homeland Security and Governmental Affairs.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 259. Concurrent resolution recognizing the 500th anniversary of the birth of Italian architect Andrea Palladio; to the Committee on the Judiciary.

H. Con. Res. 329. Concurrent resolution recognizing the 35th anniversary of the enactment of the Education for All Handicapped Children Act of 1975; to the Committee on Health, Education, Labor, and Pensions.

#### MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 3962. A bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

S. 3963. A bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children and for other purposes.

#### MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 3975. A bill to permanently extend the 2001 and 2003 tax relief provisions, and to permanently repeal the estate tax, and to provide permanent alternative minimum tax relief, and for other purposes.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-7907. A communication from the Director, National Institute of Food and Agriculture, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Competitive and Noncompetitive Nonformula Federal Assistance Programs—Administrative Provisions for the Sun Grant

Program" (RIN0524-AA64) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC-7908. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Isoxaben; Pesticide Tolerances" (FRL No. 8845-6) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC-7909. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved retirement of Rear Admiral Robert B. Murrett, United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC-7910. A communication from the Secretary of the Navy, transmitting, pursuant to law, a report relative to competitive procedures and the authorization of awarding a contract for short-term dry-docking depot level repair and maintenance availabilities of FFG/DDG ships homeported in the Puget Sound area of Washington from FY 2011 through FY 2015 to Todd Pacific Shipyard; to the Committee on Armed Services.

EC-7911. A communication from the President of the United States, transmitting, pursuant to law, a report on the continuation of the national emergency with respect to Iran that was originally declared in Executive Order 12170 on November 14, 1979; to the Committee on Banking, Housing, and Urban Affairs.

EC-7912. A communication from the Deputy Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency with respect to Syria that was declared in Executive Order 13338 of May 11, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-7913. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Switzerland; to the Committee on Banking, Housing, and Urban Affairs.

EC-7914. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to the Republic of Colombia; to the Committee on Banking, Housing, and Urban Affairs.

EC-7915. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Mortgage Loan Transfer Disclosures" (Docket No. R-1378) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC-7916. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Electronic Fund Transfers; Interim Rule" (Docket No. R-1377) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC-7917. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Regulation Z (Truth in Lending) Interim Rule; Request for Public Comment" (Docket No. R-1366) received during adjournment of the Senate in the Office of the President of the Senate on

November 7, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC-7918. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "12 CFR Part 226 Regulation Z—Truth in Lending" (Docket No. R-1384) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC-7919. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Acquisition Regulation: Socioeconomic Programs" (RIN1991-AB87) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Energy and Natural Resources.

EC-7920. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Acquisition Regulation: Agency Supplementary Regulations" (RIN1991-AB91) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Energy and Natural Resources.

EC-7921. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Threatened Status for the Southern District Population Segment of the Spotted Seal" (RIN0648-XR74) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Environment and Public Works.

EC-7922. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; New York, New Jersey, and Connecticut; Determination of Attainment of the 1997 Fine Particle Standard" (FRL No. 9225-6) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Environment and Public Works.

EC-7923. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities" (FRL No. 9223-2) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Environment and Public Works.

EC-7924. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Texas; Emissions Banking and Trading of Allowances Program" (FRL No. 9226-3) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Environment and Public Works.

EC-7925. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Mandatory Reporting of Greenhouse

Gases: Petroleum and Natural Gas Systems” (FRL No. 9226-1) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Environment and Public Works.

EC-7926. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Capitalization v. Repairs Audit Techniques Guide” (LBandI4-0910-023) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Finance.

EC-7927. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “Update of Weighted Average Interest Rates, Yield Curves, and Segment Rates” (Notice No. 2010-76) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Finance.

EC-7928. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “VERITAS Software Corp. v. Commissioner, 133 T.C. No. 14” (AOD 2010-49) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Finance.

EC-7929. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled “Medicare Program; Withdrawal of Determination of Average Manufacturer Price, Multiple Source Drug Definition, and Upper Limits for Multiple Source Drugs (CMS-2238-F2)” (RIN0938-AP67) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Finance.

EC-7930. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from April 1, 2010 through September 30, 2010 and the Inspector General’s Compendium of Unimplemented Recommendations; to the Committee on Homeland Security and Governmental Affairs.

EC-7931. A communication from the Chairman and President of the Export-Import Bank, transmitting, pursuant to law, the Semi-Annual Report of the Inspector General for the period from April 1, 2010 through September 30, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7932. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, a report entitled “Federal Election Commission 2010 Performance and Accountability Report”; to the Committee on Homeland Security and Governmental Affairs.

EC-7933. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, “Public-Private Development Project Compliance with Certified Business Enterprise Goals through the 2nd Quarter of Fiscal Year 2010”; to the Committee on Homeland Security and Governmental Affairs.

EC-7934. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled, “Audit of the Office of the People’s Counsel Agency Fund for Fiscal Year 2005”; to the Committee on Homeland Security and Governmental Affairs.

EC-7935. A communication from the Counsel for Regulatory and External Affairs, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a rule en-

titled “Employee Responsibilities and Conduct; Enforcement of Nondiscrimination in Programs or Activities; Filing Procedures” (5 CFR Parts 2415, 2416, 2424, and 2429) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7936. A communication from the Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, a report relative to the Administration’s Fiscal Year 2010 Commercial Activities Inventory and Inherently Governmental Inventory; to the Committee on Homeland Security and Governmental Affairs.

EC-7937. A communication from the Counsel for Regulatory and External Affairs, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a rule entitled “Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Federal Labor Relations Authority; Correction” (5 CFR Part 2416) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7938. A communication from the Counsel for Regulatory and External Affairs, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a rule entitled “Unfair Labor Practice Proceedings” (5 CFR Part 2423) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7939. A communication from the Counsel for Regulatory and External Affairs, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a rule entitled “Review of Arbitration Awards; Miscellaneous and General Requirements” (5 CFR Parts 2425 and 2429) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7940. A communication from the Counsel for Regulatory and External Affairs, Federal Labor Relations Authority, transmitting, pursuant to law, the report of a rule entitled “Availability of Official Information” (5 CFR Part 2411) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7941. A communication from the Senior Procurement Executive, Office of Governmentwide Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled “Federal Travel Regulation (FTR); Terms and Definitions for ‘Dependent’, ‘Domestic Partner’, ‘Domestic Partnership’, and ‘Immediate Family’” (RIN3090-AJ06) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC-7942. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting the report of an officer authorized to wear the insignia of the grade of rear admiral (lower half) in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

EC-7943. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Mississippi River, Mile 212.0 to 214.5” ((RIN1625-AA00)(Docket No. USCG-

2010-0576)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7944. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Fireworks Displays, Potomac River, National Harbor, MD” ((RIN1625-AA00)(Docket No. USCG-2010-0776)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7945. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Mississippi River, Mile 427.3 to 427.5” ((RIN1625-AA00)(Docket No. USCG-2010-0703)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7946. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Red Bull Flugtag, Delaware River, Camden, NJ” ((RIN1625-AA00)(Docket No. USCG-2010-0728)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7947. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Olympia Harbor Days Tug Boat Races, Budd Inlet, WA” ((RIN1625-AA00)(Docket No. USCG-2010-0799)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7948. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Potomac River, St. Mary’s River, St. Inigoes, MD” ((RIN1625-AA00)(Docket No. USCG-2010-0719)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7949. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; San Diego Harbor Shark Fest Swim; San Diego Bay, San Diego, CA” ((RIN1625-AA00)(Docket No. USCG-2010-0462)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7950. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Ocean City Beachfront Air Show, Ocean City, NJ” ((RIN1625-AA00)(Docket No. USCG-2010-0817)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7951. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled “Safety Zone; Ohio River, Wheeling, WV, Wheeling Heritage Port Sternwheel Foundation Fireworks Display” ((RIN1625-AA00)(Docket No. USCG-2010-0723)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7952. A communication from the Attorney Advisor, U.S. Coast Guard, Department

of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; VERMILION 380A at Block 380 Outer Continental Shelf Fixed Platform in the Gulf of Mexico" ((RIN1625-AA00)(Docket No. USCG-2010-0857)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7953. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Illinois River, Mile 000.5 to 001.5" ((RIN1625-AA00)(Docket No. USCG-2010-0786)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7954. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Raccoon Creek, Bridgeport, NJ" ((RIN1625-AA00)(Docket No. USCG-2010-0743)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7955. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; NASSCO Launching of USNS Washington Chambers, San Diego Bay, San Diego, CA" ((RIN1625-AA00)(Docket No. USCG-2010-0782)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7956. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Revolution 3 Triathlon, Lake Erie and Sandusky Bay, Cedar Point, OH" ((RIN1625-AA00)(Docket No. USCG-2010-0791)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7957. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; DEEPWATER HORIZON at Mississippi Canyon 252 Outer Continental Shelf MODU in the Gulf of Mexico" ((RIN1625-AA00)(Docket No. USCG-2010-0448)) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7958. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Thunder on the Bay, Chesapeake Bay, Buckroe Beach Park, Hampton, VA" ((RIN1625-AA00)(Docket No. USCG-2010-0755)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7959. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Swim Events within the Sector New York Captain of the Port Zone" ((RIN1625-AA00)(Docket No. USCG-2010-0502)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7960. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulation; Taunton

River, Fall River and Somerset, MA" ((RIN1625-AA09)(Docket No. USCG-2010-0234)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7961. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulation; Pequonnock River, Bridgeport, CT" ((RIN1625-AA09)(Docket No. USCG-2009-0787)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7962. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Operation Regulation; Passaic River, Clifton, NJ" ((RIN1625-AA09)(Docket No. USCG-2010-0200)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7963. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments, Sector Columbia River; Correction" ((RIN1625-AA00)(Docket No. USCG-2010-0351)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7964. A communication from the Attorney, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Special Local Regulation for Marine Events; Roanoke River, Plymouth, NC" ((RIN1625-AA08)(Docket No. USCG-2010-0756)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7965. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Security Zone, Mackinac Bridge, Straits of Mackinac, Michigan" (Docket No. USCG-2010-0790) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7966. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Seattle, WA" ((RIN1625-AA87)(Docket No. USCG-2010-0021)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7967. A communication from the Attorney Advisor, U.S. Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Special Local Regulations, Sabine River; Orange, TX" ((RIN1625-AA08)(Docket No. USCG-2010-0518)) received in the Office of the President of the Senate on October 19, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7968. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Inseason; Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction" (RIN0648-XZ99) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7969. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska" (RIN0648-XZ67) received during adjournment of the Senate in the Office of the President of the Senate on October 27, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7970. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska" (RIN0648-XZ84) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7971. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska" (RIN0648-XY88) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7972. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Highly Migratory Species; Inseason Action to Close the Commercial Non-Sandbar Large Coastal Shark Research Fishery" (RIN0648-XZ43) received during adjournment of the Senate in the Office of the President of the Senate on October 27, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7973. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Pacific Coast Groundfish Final Rule; Inseason Action; October 1, 2010 Changes to Commercial Trip Limits" (RIN0648-BA28) received during adjournment of the Senate in the Office of the President of the Senate on October 21, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7974. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2011" (RIN0648-XZ16) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7975. A communication from the Acting Director of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska" (RIN0648-XZ38) received during adjournment of the Senate in the Office of the President of the Senate on October 21, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7976. A communication from the Deputy Assistant Administrator for Regulatory

Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Final Rule to Implement Amendments 95 and 96 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 87 to the Fishery Management Plan for Groundfish of the Gulf of Alaska" (RIN0648-AY48) received during adjournment of the Senate in the Office of the President of the Senate on October 21, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7977. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area for Modified Nonpelagic Trawl Gear" (RIN0648-AY34) received during adjournment of the Senate in the Office of the President of the Senate on October 21, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7978. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Amendments to Fishing Capacity Reduction Framework" (RIN0648-AY79) received during adjournment of the Senate in the Office of the President of the Senate on October 21, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7979. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Regulatory Amendment to the Fishery Management Plan for the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands Modifying the Bajo de Sico Seasonal Closure" (RIN0648-AY05) received in the Office of the President of the Senate on November 16, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7980. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Correcting Amendment to the Regulations for Framework 21 to the Atlantic Sea Scallop Fishery Management Plan" (RIN0648-BA08) received during adjournment of the Senate in the Office of the President of the Senate on November 2, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7981. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Adjustment to Fishing Year 2010 Georges Bank Yellowtail Flounder Total Allowable Catch" (RIN0648-AY29) received during adjournment of the Senate in the Office of the President of the Senate on November 7, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7982. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures (61); Amdt. No. 3394" (RIN2120-AA65) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7983. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation,

transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures (27); Amdt. No. 3395" (RIN2120-AA65) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7984. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Amdt. No. 3396" (RIN2120-AA65) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7985. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures (40); Amdt. No. 3397" (RIN2120-AA65) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7986. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures (73); Docket No. 30745" (RIN2120-AA65) received during adjournment of the Senate in the Office of the President of the Senate on October 6, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7987. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures (27); Docket No. 30746" (RIN2120-AA65) received during adjournment of the Senate in the Office of the President of the Senate on October 6, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7988. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Part 95 Instrument Flight Rules (156); Docket No. 30742" (RIN2120-AA63) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7989. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Crewmember Requirements When Passengers Are Onboard" ((RIN2120-AJ30)(Docket No. FAA-2009-0022)) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7990. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Flightcrew Alerting" ((RIN2120-AJ35)(Docket No. FAA-2008-1292)) received in the Office of the President of the Senate on November 10, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7991. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Inclusion of Reference to Manual Requirements" ((RIN2120-AJ44)(Docket No. FAA-2006-25877)) received during adjournment of the Senate in the Office of the President of the Senate on Octo-

ber 6, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7992. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Re-registration and Renewal of Aircraft Registration; OMB Approval of Information Collection; Correction" ((RIN2120-A189)(Docket No. FAA-2008-0188)) received during adjournment of the Senate in the Office of the President of the Senate on October 6, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7993. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airports/Locations; Special Operating Restrictions" ((RIN2120-AA66)(Docket No. FAA-2010-0995)) received during adjournment of the Senate in the Office of the President of the Senate on October 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7994. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation of Class C Airspace, Establishment of Class D Airspace, and Modification of Class E Airspace; Columbus, GA" ((RIN2120-AA66)(Docket No. FAA-2010-0386)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7995. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation of Class E Airspace, Franklin, TX" ((RIN2120-AA66)(Docket No. FAA-2010-0603)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7996. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation and Establishment of Class E Airspace; Northeast Alaska, AK" ((RIN2120-AA66)(Docket No. FAA-2010-0445)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7997. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace; Tanana, AK" ((RIN2120-AA66)(Docket No. FAA-2010-0588)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7998. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace; Unalakleet, AK" ((RIN2120-AA66)(Docket No. FAA-2010-0119)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-7999. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E Airspace; Kalaupapa, HI" ((RIN2120-AA66)(Docket No. FAA-2010-0650)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.



a rule entitled "Modification of Class E Airspace; Pendleton, OR" ((RIN2120-AA66) (Docket No. FAA-2010-0616)) received during adjournment of the Senate in the Office of the President of the Senate on October 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC-8025. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; San Clemente, CA" ((RIN2120-AA66) (Docket No. FAA-2010-0619)) received during adjournment of the Senate in the Office of the President of the Senate on October 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC-8026. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Arco, ID" ((RIN2120-AA66) (Docket No. FAA-2010-0615)) received during adjournment of the Senate in the Office of the President of the Senate on October 14, 2010; to the Committee on Commerce, Science, and Transportation.

EC-8027. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 and 440) Airplanes" ((RIN2120-AA64) (Docket No. FAA-2010-0482)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-8028. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200F, 747-300, 747-400, 747-400D, 747SP, and 747SR Series Airplanes" ((RIN2120-AA64) (Docket No. FAA-2010-0950)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

EC-8029. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Pratt and Whitney JT8D-9, -9A, -11, -15, -17, and -17R Turbofan Engines" ((RIN2120-AA64) (Docket No. FAA-2010-0514)) received in the Office of the President of the Senate on October 29, 2010; to the Committee on Commerce, Science, and Transportation.

#### REPORTS OF COMMITTEES DURING ADJOURNMENT ON NOVEMBER 17, 2010

Under the authority of the order of the Senate of November 15, 2010, the following reports of committees were submitted on November 16, 2010.

By Mrs. McCASKILL, from the Committee on Impeachment Trial Committee (Porteous), under the authority of the order of the Senate of 11/15/2010.

Special Report entitled "Report of the Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteous, Jr." (Rept. No. 111-347).

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

S. 2991. A bill to amend title 31, United States Code, to enhance the oversight authorities of the Comptroller General, and for other purposes (Rept. No. 111-350).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with amendments:

S. 3167. A bill to amend title 13 of the United States Code to provide for a 5-year term of office for the Director of the Census and to provide for authority and duties of the Director and Deputy Director of the Census, and for other purposes (Rept. No. 111-351).

By Mr. KERRY, from the Committee on Foreign Relations, with an amendment in the nature of a substitute and an amendment to the title:

S. 1183. A bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes (Rept. No. 111-352).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 3650. A bill to amend chapter 21 of title 5, United States Code, to provide that fathers of certain permanently disabled or deceased veterans shall be included with mothers of such veterans as preference eligibles for treatment in the civil service.

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 3804. A bill to combat online infringement, and for other purposes.

#### EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LEAHY for the Committee on the Judiciary.

Ripley Rand, of North Carolina, to be United States Attorney for the Middle District of North Carolina for the term of four years.

Charles M. Oberly III, of Delaware, to be United States Attorney for the District of Delaware for the term of four years.

William Conner Eldridge, of Arkansas, to be United States Attorney for the Western District of Arkansas for the term of four years.

Frank Leon-Guerrero, of Guam, to be United States Marshal for the District of Guam and concurrently United States Marshal for the District of the Northern Mariana Islands for the term of four years.

Charles Thomas Weeks II, of Oklahoma, to be United States Marshal for the Western District of Oklahoma for the term of four years.

Kenneth F. Bohac, of Illinois, to be United States Marshal for the Central District of Illinois for term of four years.

Wilfredo Martinez, of Florida, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2013.

Chase Theodora Rogers, of Connecticut, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2012.

Isabel Framer, of Ohio, to be a Member of the Board of Directors of the State Justice Institute for a term expiring September 17, 2012.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CASEY:

S. 3964. A bill to provide for an expedited response to emergencies related to oil or gas production or storage; to the Committee on Health, Education, Labor, and Pensions.

By Ms. STABENOW:

S. 3965. A bill to amend title XVIII of the Social Security Act to ensure continued access to Medicare for seniors and people with disabilities and to TRICARE for America's military families; to the Committee on Finance.

By Mrs. SHAHEEN (for herself and Ms. COLLINS):

S. 3966. A bill to amend title III of the Public Health Service Act to provide for increased gestational diabetes research and to lower the rate of gestational diabetes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU (for herself and Mr. CARDIN):

S. 3967. A bill to encourage investment in and innovation by small business concerns, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. DODD (for himself and Mr. CASEY):

S. 3968. A bill to establish a National Council on Children, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BEGICH (for himself, Ms. MURKOWSKI, Mrs. MURRAY, and Mr. WYDEN):

S. 3969. A bill to amend the Federal Food, Drug, and Cosmetic Act to require labeling of genetically-engineered fish; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MENENDEZ:

S. 3970. A bill to establish a program under which the Administrator of the Environmental Protection Agency shall provide grants to eligible State consortia to establish and carry out municipal sustainability certification programs, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BEGICH (for himself, Ms. MURKOWSKI, and Mrs. MURRAY):

S. 3971. A bill to amend the Federal Food, Drug, and Cosmetic Act to prevent the approval of genetically-engineered fish; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CARDIN (for himself, Mr. GRAHAM, and Mr. LEAHY):

S. 3972. A bill to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty; to the Committee on the Judiciary.

By Mr. VOINOVICH (for himself, Mr. CARPER, Mr. INHOFE, Mrs. BOXER, Ms. COLLINS, Mr. ALEXANDER, Ms. KLOBUCHAR, Mr. LUGAR, Mrs. GILLIBRAND, Mrs. SHAHEEN, Mr. TESTER, Mrs. FEINSTEIN, Mr. KERRY, Mr. BAUCUS, Mr. HARKIN, Mr. MERKLEY, Mr. LIEBERMAN, Mr. BROWN of Ohio, Mr. WHITEHOUSE, Mr. WYDEN, Ms. LANDRIEU, Mrs. HAGAN, Mr. WARNER, Mr. LAUTENBERG, Mr. CARDIN, Mr.

FRANKEN, Mr. BURRIS, Mr. SCHUMER, Mr. DURBIN, and Mr. REED):

S. 3973. A bill to amend the Energy Policy Act of 2005 to reauthorize and modify provisions relating to the diesel emissions reduction program; to the Committee on Environment and Public Works.

By Mr. BROWNBAC (for himself, Mr. CORNYN, and Mr. BURR):

S. 3974. A bill to impose sanctions on individuals who are complicit in human rights abuses committed against nationals of Vietnam or their family members, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DEMINT:

S. 3975. A bill to permanently extend the 2001 and 2003 tax relief provisions, and to permanently repeal the estate tax, and to provide permanent alternative minimum tax relief, and for other purposes; read the first time.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEMIEUX:

S. Res. 682. A resolution commending the Children's Home Society of America; to the Committee on the Judiciary.

By Mr. KERRY (for himself, Mr. LUGAR, and Mrs. HAGAN):

S. Res. 683. A resolution recognizing the recent accomplishments of the people and Government of Moldova and expressing support for free and transparent parliamentary elections on November 28, 2010; considered and agreed to.

By Mr. HARKIN (for himself, Mr. ENZI, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. CARDIN, Mr. COCHRAN, Mr. DODD, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mr. GREGG, Mr. HATCH, Mrs. HUTCHISON, Mr. ISAKSON, Mr. JOHANNIS, Mr. LAUTENBERG, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANDERS, Mr. TESTER, Mr. UDALL of Colorado, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WHITEHOUSE, Mr. BARRASSO, and Ms. MURKOWSKI):

S. Res. 684. A resolution recognizing the 35th anniversary of the enactment of the Education for All Handicapped Children Act of 1975; considered and agreed to.

By Mr. CARDIN (for himself and Mr. COCHRAN):

S. Res. 685. A resolution commemorating the 100th anniversary of the discovery of sickle cell disease by Dr. James B. Herrick; considered and agreed to.

By Mr. KERRY:

S. Con. Res. 75. A concurrent resolution authorizing the use of the rotunda of the Capitol for an event marking the 50th anniversary of the inaugural address of President John F. Kennedy; considered and agreed to.

By Mrs. BOXER (for herself, Mr. BURR, Mrs. MURRAY, Mr. KERRY, Mr. BENNETT, Mr. PRYOR, Mr. DURBIN, Mr. NELSON of Nebraska, Ms. MURKOWSKI, Mr. JOHANNIS, Mr. LAUTENBERG, Ms. KLOBUCHAR, Mrs. SHAHEEN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. SANDERS, Mr. BEGICH, Mr. BROWN of Massachusetts, and Mr. BAUCUS):

S. Con. Res. 76. A concurrent resolution to recognize and honor the commitment and sacrifices of military families of the United States; considered and agreed to.

#### ADDITIONAL COSPONSORS

S. 132

At the request of Mrs. FEINSTEIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 132, a bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to expand and improve gang prevention programs, and for other purposes.

S. 231

At the request of Mr. LIEBERMAN, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 231, a bill to designate a portion of the Arctic National Wildlife Refuge as wilderness.

S. 1334

At the request of Mrs. GILLIBRAND, the names of the Senator from Ohio (Mr. BROWN), the Senator from Delaware (Mr. COONS) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of S. 1334, a bill to amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist attack in New York City on September 11, 2001, and for other purposes.

S. 1580

At the request of Mrs. MURRAY, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 1580, a bill to amend the Occupational Safety and Health Act of 1970 to expand coverage under the Act, to increase protections for whistleblowers, to increase penalties for certain violators, and for other purposes.

S. 2984

At the request of Ms. LANDRIEU, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 2984, a bill to direct the Secretary of Health and Human Services to revise regulations implementing the statutory reporting and auditing requirements for the Medicaid disproportionate share hospital ("DSH") payment program to be consistent with the scope of the statutory provisions and avoid substantive changes to preexisting DSH policy.

S. 3058

At the request of Mr. DORGAN, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 3058, a bill to amend the Public Health Service Act to reauthorize the special diabetes programs for Type I diabetes and Indians under that Act.

S. 3184

At the request of Mrs. BOXER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 3184, a bill to provide United States assistance for the purpose of eradicating severe forms of trafficking in children

in eligible countries through the implementation of Child Protection Compacts, and for other purposes.

S. 3211

At the request of Mrs. SHAHEEN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 3211, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certain certified diabetes educators as certified providers for purposes of outpatient diabetes self-management training services under part B of the Medicare Program.

S. 3213

At the request of Mr. LEVIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 3213, a bill to ensure that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance.

S. 3221

At the request of Mr. KOHL, the names of the Senator from Ohio (Mr. BROWN), the Senator from Minnesota (Ms. KLOBUCHAR) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 3221, a bill to amend the Farm Security and Rural Investment Act of 2002 to extend the suspension of limitation on the period for which certain borrowers are eligible for guaranteed assistance.

S. 3315

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 3315, a bill to amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program.

S. 3447

At the request of Mr. AKAKA, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 3447, a bill to amend title 38, United States Code, to improve educational assistance for veterans who served in the Armed Forces after September 11, 2001, and for other purposes.

S. 3517

At the request of Mr. AKAKA, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 3517, a bill to amend title 38, United States Code, to improve the processing of claims for disability compensation filed with the Department of Veterans Affairs, and for other purposes.

S. 3578

At the request of Mr. JOHANNIS, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 3578, a bill to repeal the expansion of information reporting requirements for payments of \$600 or more to corporations, and for other purposes.

S. 3703

At the request of Mr. BENNETT, his name was added as a cosponsor of S. 3703, a bill to expand the research, prevention, and awareness activities of

the Centers for Disease Control and Prevention and the National Institutes of Health with respect to pulmonary fibrosis, and for other purposes.

S. 3709

At the request of Mr. WHITEHOUSE, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 3709, a bill to amend the Public Health Services Act and the Social Security Act to extend health information technology assistance eligibility to behavioral health, mental health, and substance abuse professionals and facilities, and for other purposes.

S. 3790

At the request of Mr. COBURN, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 3790, a bill to amend title 5, United States Code, to provide that persons having seriously delinquent tax debts shall be ineligible for Federal employment.

S. 3804

At the request of Mr. LEAHY, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 3804, a bill to combat online infringement, and for other purposes.

S. 3805

At the request of Mr. BINGAMAN, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. 3805, a bill to authorize the Attorney General to award grants for States to implement minimum and enhanced DNA collection processes.

S. 3860

At the request of Mrs. MCCASKILL, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Maryland (Mr. CARDIN) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 3860, a bill to require reports on the management of Arlington National Cemetery.

S. 3874

At the request of Mrs. BOXER, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3874, a bill to amend the Safe Drinking Act to reduce lead in drinking water.

S. 3906

At the request of Mr. ALEXANDER, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. 3906, a bill to reduce preterm labor and delivery and the risk of pregnancy-related deaths and complications due to pregnancy, and to reduce infant mortality caused by prematurity.

S. 3925

At the request of Mr. BINGAMAN, the names of the Senator from Delaware (Mr. COONS) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 3925, a bill to amend the Energy Policy and Conservation Act to improve the energy efficiency of, and standards applicable to, certain

appliances and equipment, and for other purposes.

S. 3946

At the request of Mr. BAUCUS, the names of the Senator from Ohio (Mr. BROWN) and the Senator from West Virginia (Mr. MANCHIN) were added as cosponsors of S. 3946, a bill to repeal the expansion of information reporting requirements for payments of \$600 or more to corporations, and for other purposes.

S. CON. RES. 63

At the request of Mr. JOHNSON, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. Con. Res. 63, a concurrent resolution expressing the sense of Congress that Taiwan should be accorded observer status in the International Civil Aviation Organization (ICAO).

S. RES. 680

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. Res. 680, a resolution supporting international tiger conservation efforts and the upcoming Global Tiger Summit in St. Petersburg, Russia.

AMENDMENT NO. 4705

At the request of Mr. NELSON of Nebraska, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of amendment No. 4705 intended to be proposed to S. 3454, an original bill to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARDIN (for himself, Mr. GRAHAM, and Mr. LEAHY):

S. 3972. A bill to encourage, enhance, and integrate Blue Alert plans throughout the United States in order to disseminate information when a law enforcement officer is seriously injured or killed in the line of duty; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, I rise today to introduce the National Blue Alert Act of 2010.

Having just concluded Crime Prevention month it is important to remember our law enforcement officers that put their lives on the line every day. There are more than 900,000 police officers in the United States dedicated to stopping crime and making our communities safer. Every day they go out onto the streets, and unfortunately become targets for criminals who have no regard for law and order.

According to the National Law Enforcement Officers Memorial Fund, of-

ficer deaths have surged by 43 percent in the first half of 2010. Eighty-seven officers died in the line of duty between January 1 and June 30 of this year. If this rate continues, 2010 could become one of the deadliest years for U.S. law enforcement in two decades. We need to make sure our officers have all the tools they need to protect themselves and each other.

This is why I, along with Senator GRAHAM and Senator LEAHY, am introducing the National Blue Alert Act in an effort to provide law enforcement with an additional tool in fighting crime. The Blue Alert system is intended to provide rapid dissemination of information about such offenders to help facilitate capture of violent offenders and reduce the risk those offenders cause to our communities and law enforcement officers. The National Blue Alert will encourage, enhance and integrate blue alert plans throughout the United States in order to effectively disseminate information notifying law enforcement, media and the public that a suspect is wanted.

Currently there is no national alert system that provides immediate information to other law enforcement agencies, the media or the public at large. Many states have created a state blue alert system in an effort to better inform their local communities. For example, after the unfortunate murder of Maryland State Trooper Wesley Brown, Maryland Governor O'Malley immediately signed an executive order establishing the Maryland blue alert system. But Maryland is not alone. Florida was the first state to implement the alert system in 2008. They were followed by Texas, Oklahoma, Alabama, Georgia, and Delaware.

My bill creates a national blue alert program within the Department of Justice. Currently, under the COPS technology program, Congress authorizes funds for the continued development of technologies and automated systems that help tribal, state and local law enforcement agencies prevent, respond to, and investigate crime. My bill authorizes \$10 million out of this program to be appropriated for the creation of blue alert plans throughout the United States. This new technology will provide police officers and other emergency units with the ability to react quickly to apprehend violent offenders.

Based on the success of the AMBER Alert and the SILVER Alert, I believe this BLUE Alert will be equally successful in helping to apprehend criminal suspects who have injured or killed our law enforcement officers. This legislation has received the support of the Fraternal Order of Police and the Concerns of Police Survivors National Office. The Blue Alert will provide a valuable tool to our law enforcement officials. I urge my colleagues to support this legislation.

## SUBMITTED RESOLUTIONS

SENATE RESOLUTION 682—COM-  
MENDING THE CHILDREN'S HOME  
SOCIETY OF AMERICA

Mr. LEMIEUX submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 682

Whereas, since 1885, the Children's Home Society of America (referred to in this preamble as "CHSA") has made extraordinary contributions to the well being of children and families in the United States;

Whereas more than 400,000 children have been placed in loving, permanent families by CHSA members across the United States;

Whereas CHSA members have aided in the creation of many successful and sustainable programs that help children to be safe, healthy, and prepared for life;

Whereas the CHSA provides services to more than 570,000 children and families each year;

Whereas the CHSA engages more than 12,500 volunteers to support the efforts of the CHSA in finding permanent homes for children in foster care, building community schools, improving the health and mental health of children and families in the United States, providing temporary housing, and assisting foster youth to become successful adults; and

Whereas CHSA members receive more than \$90,000,000 annually in cash resources from individuals and corporations to support the efforts of the CHSA: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends the more than 6,700 staff and 12,500 volunteers of the Children's Home Society of America for the dedication and commitment of the Children's Home Society of America to the children and families of the United States;

(2) recognizes the Children's Home Society of America for leveraging human, financial, and material resources to carry out the mission of the Children's Home Society of America of helping children and families to remain safe, healthy, and prepared for life; and

(3) encourages the continued efforts of the staff and volunteers of the Children's Home Society of America on behalf of the children and families of the United States.

SENATE RESOLUTION 683—REC-  
GNIZING THE RECENT ACCOM-  
PLISHMENTS OF THE PEOPLE  
AND GOVERNMENT OF MOLDOVA  
AND EXPRESSING SUPPORT FOR  
FREE AND TRANSPARENT PAR-  
LIAMENTARY ELECTIONS ON NO-  
VEMBER 28, 2010

Mr. KERRY (for himself, Mr. LUGAR, and Mrs. HAGAN) submitted the following resolution; which was considered and agreed to:

S. RES. 683

Whereas, since independence 19 years ago, the people of Moldova have made extraordinary progress in transitioning from authoritarian government and a closed market to a democratic government and market economy;

Whereas, for 19 years, the constitution of Moldova has guaranteed its citizens freedom to emigrate confirmed by years of successive Presidential waivers concerning the Jackson-Vanik amendment;

Whereas, on January 12, 2010, the Government of Moldova initiated negotiations with

the European Union on an Association Agreement between the European Union and the Republic of Moldova, an important step towards European Union accession;

Whereas, in order to comply with the criteria of the Millennium Challenge Corporation (MCC), the Government of Moldova implemented far-reaching legal reforms to curb corruption, introduce budgetary transparency, and strengthen the capacity of civil society and the media, resulting in the successful conclusion of negotiations and the signing of an MCC Compact on January 22, 2010;

Whereas the Government of Moldova initiated a visa dialogue between the Republic of Moldova and the European Union aiming at visa liberalization on June 15, 2010;

Whereas, on August 26, 2010, Secretary of State Hillary Clinton praised progress in Moldova in "advancing transparent governance, human rights, and economic reform";

Whereas, on October 20, 2010, Reporters Without Borders reported an improvement in the freedom of press in Moldova, with Moldova rising from the 114th position in 2009 to the 75th position in 2010;

Whereas, in November 2010, the Government of Moldova concluded a treaty with Romania important to the assertion of its sovereignty and its future development;

Whereas Assistant Secretary of State for European and Eurasian Affairs Philip H. Gordon noted in testimony before the Subcommittee on Europe of the Committee on Foreign Affairs of the House of Representatives on June 16, 2009, "We will continue to work for a negotiated settlement of the separatist conflict in the Transnistria region that provides for a whole and democratic Moldova and the withdrawal of Russian forces."; and

Whereas the Republic of Moldova has made commitments to the Organization for Security and Cooperation in Europe (OSCE) to conduct elections according to international standards: Now, therefore, be it

*Resolved*, That the Senate—

(1) supports the development of an enduring democratic political system and free market economy in Moldova and a parliamentary election process on November 28, 2010, that comports with international standards of fairness and transparency;

(2) recognizes that the commitment of the Government of Moldova to economic and political reforms since 2009 has resulted in tangible progress towards integration into European institutions;

(3) acknowledges that continued reform and commitment to a free and fair election process will remain necessary for Moldova's full integration into the Western community of nations;

(4) notes that continued reforms in Moldova could provide for an additional basis for the repeal of the Jackson-Vanik trade restrictions;

(5) encourages ongoing negotiations between the European Union and the Republic of Moldova concerning visa liberalization and an Association Agreement;

(6) urges fulfillment by the Government of Moldova of commitments it has made to the OSCE with respect to the free and fair conduct of its upcoming parliamentary elections; and

(7) expresses the belief that the free and fair conduct of parliamentary elections in Moldova will contribute to a strong and stable government that is responsive to the vital needs of its people.

SENATE RESOLUTION 684—REC-  
GNIZING THE 35TH ANNIVERSARY  
OF THE ENACTMENT OF THE  
EDUCATION FOR ALL HANDI-  
CAPPED CHILDREN ACT OF 1975

Mr. HARKIN (for himself, Mr. ENZI, Mr. BROWN of Massachusetts, Mr. BROWN of Ohio, Mr. CARDIN, Mr. COCHRAN, Mr. DODD, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mr. GREGG, Mr. HATCH, Mrs. HUTCHISON, Mr. ISAKSON, Mr. JOHANNES, Mr. LAUTENBERG, Mr. MENENDEZ, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SANDERS, Mr. TESTER, Mr. UDALL of Colorado, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, Mr. WHITEHOUSE, Mr. BARRASSO, and Ms. MURKOWSKI) submitted the following resolution; which was considered and agreed to:

S. RES. 684

Whereas the Education for All Handicapped Children Act of 1975 (Public Law 94-142) was signed into law 35 years ago on November 29;

Whereas the Education for All Handicapped Children Act of 1975 established the Federal policy of ensuring that all children, regardless of the nature or severity of their disability, have available to them a free appropriate public education in the least restrictive environment;

Whereas the Education of the Handicapped Act (Public Law 91-230), as amended by the Education for All Handicapped Children Act of 1975, was further amended by the Education of the Handicapped Act Amendments of 1986 (Public Law 99-457) to create a preschool grant program for children with disabilities 3 to 5 years of age and an early intervention program for infants and toddlers with disabilities from birth through age 2;

Whereas the Education of the Handicapped Act Amendments of 1990 (Public Law 101-476) renamed the Education of the Handicapped Act as the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.);

Whereas IDEA was amended by the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105-17) to ensure that children with disabilities have equal access to, and make progress in, the general education curriculum and are included in all general State and district-wide assessment programs;

Whereas IDEA was amended by the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their individual needs and prepare them for further education, employment, and independent living;

Whereas IDEA currently serves an estimated 342,000 infants and toddlers, 709,000 preschoolers, and 5,890,000 children 6 to 21 years of age;

Whereas IDEA has opened neighborhood schools to students with disabilities and increased the number of children living in their communities instead of institutions;

Whereas the academic achievement of students with disabilities has significantly increased since the enactment of IDEA;

Whereas the number of children with disabilities who complete high school with a standard diploma has grown significantly since the enactment of IDEA;

Whereas the number of children with disabilities who enroll in institutions of higher

education has more than tripled since the enactment of IDEA;

Whereas IDEA requires partnership among parents of children with disabilities and education professionals in the design and implementation of the educational services provided to children with disabilities;

Whereas the achievement of students with disabilities is integrally linked with the successful alignment of special and general education systems;

Whereas IDEA has increased the quality of research in effective teaching practices for students with disabilities; and

Whereas IDEA continues to serve as the framework to marshal the resources of this Nation to implement the promise of full participation in society of children with disabilities: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the 35th anniversary of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142);

(2) acknowledges the many and varied contributions of children with disabilities and their parents, teachers, related services personnel, and administrators; and

(3) reaffirms its support for the Individuals with Disabilities Education Act so that all children with disabilities have access to a free appropriate public education in the least restrictive environment and the opportunity to benefit from the general education curriculum and be prepared for further education, employment, and independent living.

**SENATE RESOLUTION 685—COMMEMORATING THE 100TH ANNIVERSARY OF THE DISCOVERY OF SICKLE CELL DISEASE BY DR. JAMES B. HERRICK**

Mr. CARDIN (for himself and Mr. COCHRAN) submitted the following resolution; which was considered and agreed to:

S. RES. 685

Whereas sickle cell disease is an inherited disorder that affects red blood cells leading to significant morbidity and mortality in nearly 80,000 people in the United States;

Whereas sickle cell disease causes blockage of small blood vessels which can lead to tissue damage resulting in severe pain, infection, or stroke;

Whereas scientific breakthroughs over the past century have improved the lives of millions of people suffering from sickle cell disease;

Whereas scientific advances in treatment for sickle cell disease began with Dr. James B. Herrick, an attending physician at Presbyterian Hospital and professor of medicine at Rush Medical College in Chicago, Illinois, who discovered sickle cell disease and published the first recorded case in Western medical literature in November of 1910 in the journal *Annals of Internal Medicine*;

Whereas the hemoglobin mutation responsible for sickle cell disease was discovered by Linus Pauling in 1950;

Whereas penicillin was proven to be effective as a preventative strategy against pneumococcal infection in 1986, sparing patients with sickle cell disease from contracting this particularly dangerous infection;

Whereas in 1995, the National Heart, Lung, and Blood Institute reported the first effective drug treatment for adults with severe sickle cell disease;

Whereas the anticancer drug hydroxyurea was found to reduce the frequency of painful crises of sickle cell disease and patients taking the drug needed fewer blood transfusions;

Whereas in 1996, bone marrow transplantation was discovered to improve the course of sickle cell disease for select patients;

Whereas in 1997, blood transfusions were found to help prevent stroke in patients with sickle cell disease;

Whereas the introduction of pneumococcal vaccine in 2000 revolutionized the prevention of lethal infections in children and adults with sickle cell disease;

Whereas the first mouse model demonstrating the usefulness of genetic therapy for sickle cell disease was developed in 2001;

Whereas in 2007, scientists from the University of Alabama at Birmingham and the Massachusetts Institute of Technology developed an animal model for curing sickle cell disease;

Whereas improvements in treatments have substantially improved quality of life for patients with sickle cell disease and led to an increase in overall life expectancy from 14 years in 1973 to the mid to late 40s in 2010; and

Whereas the National Institutes of Health sponsored a symposium on November 16 and 17, 2010, to commemorate the 100th anniversary of Dr. James Herrick's initial description of sickle cell disease: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the contributions of the biomedical research community to the improvement in diagnosis and treatment of sickle cell disease; and

(2) commemorates the 100th anniversary of the discovery of sickle cell disease in November 1910.

**SENATE CONCURRENT RESOLUTION 75—AUTHORIZING THE USE OF THE ROTUNDA OF THE CAPITOL FOR AN EVENT MARKING THE 50TH ANNIVERSARY OF THE INAUGURAL ADDRESS OF PRESIDENT JOHN F. KENNEDY**

Mr. KERRY submitted the following resolution; which was considered and agreed to:

S. CON. RES. 75

Whereas John Fitzgerald Kennedy was elected to the United States House of Representatives and served from January 3, 1947, to January 3, 1953, until he was elected by the Commonwealth of Massachusetts to the Senate where he served from January 3, 1953, to December 22, 1960;

Whereas on November 8, 1960, John Fitzgerald Kennedy was elected as the 35th President of the United States; and

Whereas on January 20, 1961, President Kennedy was sworn in as President of the United States and delivered his inaugural address at 12:51 pm, a speech that served as a clarion call to service for the Nation: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),*

**SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL FOR AN EVENT HONORING PRESIDENT KENNEDY.**

The rotunda of the United States Capitol is authorized to be used on January 20, 2011, for a ceremony in honor of the 50th anniversary of the inaugural address of President John F. Kennedy. Physical preparations for the conduct of the ceremony shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

**SENATE CONCURRENT RESOLUTION 76—TO RECOGNIZE AND HONOR THE COMMITMENT AND SACRIFICES OF MILITARY FAMILIES OF THE UNITED STATES**

Mrs. BOXER (for herself, Mr. BURR, Mrs. MURRAY, Mr. KERRY, Mr. BENNET, Mr. PRYOR, Mr. DURBIN, Mr. NELSON of Nebraska, Ms. MURKOWSKI, Mr. JOHANNIS, Mr. LAUTENBERG, Ms. KLOBUCHAR, Mrs. SHAHEEN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. SANDERS, Mr. BEGICH, Mr. BROWN of Massachusetts, and Mr. BAUCUS) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 76

Whereas the month of November marks Military Family Month;

Whereas the freedom and security the citizens of the United States enjoy today are a result of the continued dedication and vigilance of the Armed Forces throughout the history of the United States;

Whereas the security of the United States depends on the readiness and retention of the men and women of the Armed Forces, a force comprised of active, National Guard, and Reserve personnel;

Whereas military families are an integral source of strength for the Soldiers, Sailors, Marines, Airmen, and Coastguardsmen of the United States, and have continually proven their dedication, service, and willingness to make great sacrifices in support of service members of the United States;

Whereas military families often endure unique circumstances that are central to military life, including long separations from their loved ones, the uncertainty and demands of multiple deployments, school and job transfers, and frequent moves from communities where they have established roots and relationships;

Whereas military family members have become the central support system for each other as they reinforce units through family readiness efforts and initiatives, support service members within the units, and reach out to the families whose loved ones have been deployed; and

Whereas it is important to recognize the sacrifices, support, and dedication of the families of the men and women who serve in the Armed Forces; Now, therefore be it

*Resolved by the Senate (the House of Representatives concurring), That Congress—*

(1) recognizes the commitment and ever-increasing sacrifices military families make every day during the current era of protracted conflict;

(2) honors the families of the Armed Forces and thanks the families for their dedication and service to the United States; and

(3) encourages the citizens of the United States to recognize, commemorate, and honor the role and contribution of the military family, including selfless service that ensures freedom and preserves the quality of life in the United States.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 4708. Mr. PRYOR submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table.

SA 4709. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 510, supra; which was ordered to lie on the table.

SA 4710. Mr. CORKER submitted an amendment intended to be proposed by him to the bill S. 510, supra; which was ordered to lie on the table.

SA 4711. Mr. REID (for Mr. BAUCUS for himself and Mr. GRASSLEY) proposed an amendment to the bill H.R. 5712, entitled "The Physician Payment and Therapy Relief Act of 2010".

SA 4712. Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5712, supra.

SA 4713. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table.

SA 4714. Mr. REID submitted an amendment intended to be proposed by him to the bill S. 510, supra; which was ordered to lie on the table.

SA 4715. Mr. REID (for Mr. HARKIN) proposed an amendment to the bill S. 510, supra.

### TEXT OF AMENDMENTS

**SA 4708.** Mr. PRYOR submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

#### **SEC. 405. NANOTECHNOLOGY PROGRAM.**

Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

#### **"SEC. 1012. NANOTECHNOLOGY PROGRAM.**

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, shall establish within the Food and Drug Administration a program for the scientific investigation of nanoscale materials included or intended for inclusion in FDA-regulated products, to address the potential toxicology of such materials, the effects of such materials on biological systems, and interaction of such materials with biological systems.

"(b) PROGRAM PURPOSES.—The purposes of the program established under subsection (a) shall be to—

"(1) assess scientific literature and data on general nanoscale material interactions with biological systems and on specific nanoscale materials of concern to Food and Drug Administration;

"(2) develop and organize information using databases and models that will enable the formulation of generalized principles for the behavior of classes of nanoscale materials with biological systems;

"(3) promote intramural Administration programs and participate in collaborative efforts, to further the understanding of the science of novel properties at the nanoscale that might contribute to toxicity;

"(4) promote and participate in collaborative efforts to further the understanding of measurement and detection methods for nanoscale materials;

"(5) collect, synthesize, interpret, and disseminate scientific information and data related to the interactions of nanoscale materials with biological systems;

"(6) build scientific expertise on nanoscale materials within such Administration;

"(7) ensure ongoing training, as well as dissemination of new information within the centers of such Administration, and more broadly across such Administration, to en-

sure timely, informed consideration of the most current science;

"(8) encourage such Administration to participate in international and national consensus standards activities; and

"(9) carry out other activities that the Secretary determines are necessary and consistent with the purposes described in paragraphs (1) through (8).

"(c) PROGRAM ADMINISTRATION.—

"(1) PROGRAM MANAGER.—In carrying out the program under this section, the Secretary shall designate a program manager who shall supervise the planning, management, and coordination of the program.

"(2) DUTIES.—The program manager shall—  
"(A) develop a detailed strategic plan for achieving specific short- and long-term technical goals for the program;

"(B) coordinate and integrate the strategic plan with investments by the Food and Drug Administration and other departments and agencies participating in the National Nanotechnology Initiative; and

"(C) develop intramural Administration programs, contracts, memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals of the program.

"(d) REPORTS.—The Secretary shall submit to the National Science and Technology Council information on the program under this section, including the information required to be provided by the National Research Council in the annual report described in section 2(d) of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7501(d)).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out this section."

**SA 4709.** Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table; as follows:

At the end of title III, insert the following:

#### **SEC. 310. RESTRICTION ON PARTICIPATION IN VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

Section 806 of the Federal Food, Drug, and Cosmetic Act (as added by section 302), is amended—

(1) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively; and

(2) by inserting after subsection (d) the following:

"(e) RESTRICTION ON PARTICIPATION.—Notwithstanding section 307 of the Tariff Act of 1930, the Secretary shall deny entry into the United States under the program described in this section of any food exported from a country listed by the Bureau of International Labor Affairs of the Department of Labor in the 'List of Goods Produced by Child Labor or Forced Labor' for the most recent reporting period as a country that produces food with the use of child or forced labor."

#### **SEC. 311. IMPORTED SEAFOOD.**

(a) PENALTIES FOR THE IMPORT OF SEAFOOD CONTAINING BANNED SUBSTANCES.—Section 303 (21 U.S.C. 333) is amended by adding at the end the following:

"(h) If the Secretary finds that seafood imported or offered for import into the United States contains a substance that has been banned by the Food and Drug Administration for use in food in the United States, the

following shall apply to the importer of such seafood, notwithstanding section 801:

"(1) In the case of a first such violation by an importer, the Secretary shall impose a fine upon the importer, in an amount determined by the Secretary.

"(2) In the case of a second such violation by an importer, the Secretary shall ban such importer from importing or offering for import into the United States seafood until the importer provides substantiating evidence that seafood imported or offered for import by such importer does not contain any substance banned by the Food and Drug Administration for use in food.

"(3) In the case of a third such violation, the Secretary shall permanently ban the importer from importing or offering for import into the United States seafood."

(b) INSPECTION OF IMPORTED SEAFOOD.—

(1) IN GENERAL.—Section 801 (21 U.S.C. 381), as amended by section 303, is further amended by adding at the end the following:

"(r) The Secretary shall inspect not less than 20 percent of all seafood imported or offered for import into the United States."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 2015.

#### **SEC. 312. REGISTRATION FOR COMMERCIAL IMPORTERS OF FOOD.**

(a) PROHIBITIONS.—Section 301 (21 U.S.C. 331), as amended by section 301(b) of this Act, is further amended by adding at the end the following:

"(aaa) the failure to register in accordance with section 801(s)."

(b) MISBRANDING.—Section 403 (21 U.S.C. 343) is amended by adding at the end the following:

"(z) If it is imported or offered for import by an importer not duly registered under section 801(s)."

(c) REGISTRATION.—Section 801 (21 U.S.C. 381), as amended by section 310 of this Act, is further amended by adding at the end the following:

"(s) REGISTRATION OF IMPORTERS.—

"(1) IN GENERAL.—The Secretary shall require an importer of food to be registered with the Secretary in a form and manner specified by the Secretary.

"(2) CONDITIONS OF REGISTRATION.—As a condition of registration under paragraph (1), an importer shall demonstrate to the Secretary that:

"(A) the importer has fully disclosed to the Secretary all ownership interests in the importer;

"(B) the importer has sufficiently complied with U.S. food safety and trade laws;

"(C) the importer has submitted appropriate unique facility identifiers required under section 1012;

"(D) there is no reason to believe that the importer is not likely to engage in good importer practices described in paragraph (3); and

"(E) the importer has sufficiently demonstrated or provided information regarding any other requirement deemed necessary for registration by the Secretary."

"(3) GOOD IMPORTER PRACTICES.—The initial grant and subsequent maintenance of registration under this subsection is conditioned on compliance with good importer practices in accordance with the following:

"(A) The Secretary, in consultation with Customs and Border Protection, shall promulgate regulations to establish good importer practices that specify the measures an importer shall take to ensure imported food is in compliance with the requirements of this Act.

"(B) The measures under subparagraph (A) shall ensure that the importer of a food—

"(i) has adequate information about the food, hazards of the food, and the requirements of this Act applicable to such food;

“(ii) has adequate information or procedures in place to verify that both the food and each person that produced, manufactured, processed, packed, transported, or held the food, including components of the food, are in compliance with the requirements of this Act; and

“(iii) has adequate procedures in place to take corrective action, such as the ability to appropriately trace, withhold, and recall articles of food, if a food imported by the importer is not in compliance with the requirements of this Act.

“(4) SUSPENSION OF REGISTRATION.—Registration under this subsection is subject to suspension upon a finding by the Secretary, after notice and an opportunity for an informal hearing, of—

“(A) a violation of this Act; or

“(B) the knowing or repeated making of an inaccurate or incomplete statement or submission of information relating to the importation of food.”

“(5) CANCELLATION OF REGISTRATION.—

“(A) IN GENERAL.—Not earlier than 10 days after providing the notice under subparagraph (B), the Secretary shall cancel a registration that the Secretary determines was not updated in accordance with this section or otherwise contains false, incomplete, or inaccurate information.

“(B) NOTICE OF CANCELLATION.—Cancellation shall be preceded by notice to the importer of the intent to cancel the registration and the basis for such cancellation.

“(C) TIMELY UPDATE OR CORRECTION.—If the registration for the importer is updated or corrected not later than 7 days after notice is provided under subparagraph (B), the Secretary shall not cancel such registration.

“(6) EXEMPTIONS.—The Secretary, by notice published in the Federal Register—

“(A) shall establish an exemption from the requirements of this subsection for importations for personal use; and

“(B) may establish other exemptions from the requirements of this subsection.”

(d) UNIQUE IDENTIFICATION NUMBER FOR IMPORTERS.—

(1) IN GENERAL.—Chapter X (21 U.S.C. 391 et seq) is amended by adding at the end the following:

**“SEC. 1012. UNIQUE FACILITY IDENTIFIER.**

“(a) REGISTRATION OF IMPORTERS.—A person required to register pursuant to section 801(s) shall submit, at the time of registration, a unique facility identifier for the principal place of business for which such person is required to register under section 801(s).

“(b) GUIDANCE.—The Secretary may, by guidance, and in consultation with the Commissioner responsible for Customs and Border Protection, specify the unique numerical identifier system to be used to meet the requirements of subsection (a) and the form, manner, and timing of a submission under such subsection. Development of such guidelines shall take into account the utilization of existing unique identification schemes and compatibility with customs automated systems, such as integration with the Automated Commercial Environment and the International Trade Data System, and any successor systems.

“(c) IMPORTATION.—An article of food imported or offered for import shall be refused admission unless the appropriate unique facility identifiers, as specified by the Secretary, are provided for such article.”

(e) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner of Customs and Border Protection, shall promulgate the regulations required to carry out sections 801(s) and 1012 of the Federal Food, Drug, and Cosmetic Act, as added by subsections (c) and (d).

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 180 days after the date of enactment of this Act.

**SA 4710.** Mr. CORKER submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table; as follows:

At the end of title IV, add the following:

**SEC. 405. RESCISSION OF UNSPENT FEDERAL FUNDS TO OFFSET NEW SPENDING.**

(a) IN GENERAL.—Notwithstanding any other provision of law, there are hereby rescinded from all available unobligated funds, such appropriated discretionary funds as may be necessary to offset amounts expended to carry out this Act (including any amendments made by this Act).

(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall determine and identify from which appropriation accounts the rescission under subsection (a) shall apply and the amount of such rescission that shall apply to each such account. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress of the accounts and amounts determined and identified for rescission under the preceding sentence.

(c) EXCEPTION.—This section shall not apply to the unobligated funds of the Department of Defense or the Department of Veterans Affairs.

**SA 4711.** Mr. REID (for Mr. BAUCUS (for himself and Mr. GRASSLEY)) proposed an amendment to the bill H.R. 5712, entitled “The Physician Payment and Therapy Relief Act of 2010”, as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “The Physician Payment and Therapy Relief Act of 2010”.

**SEC. 2. PHYSICIAN PAYMENT UPDATE.**

Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w-4(d)(11)) is amended—

(1) in the heading, by striking “NOVEMBER” and inserting “DECEMBER”;

(2) in subparagraph (A), by striking “November 30” and inserting “December 31”; and

(3) in subparagraph (B)—

(A) in the heading, by striking “REMAINING PORTION OF 2010” and inserting “2011”; and

(B) by striking “the period beginning on December 1, 2010, and ending on December 31, 2010, and for”.

**SEC. 3. TREATMENT OF MULTIPLE SERVICE PAYMENT POLICIES FOR THERAPY SERVICES.**

(a) SMALLER PAYMENT DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

“(7) ADJUSTMENT IN DISCOUNT FOR CERTAIN MULTIPLE THERAPY SERVICES.—In the case of therapy services furnished on or after January 1, 2011, and for which payment is made under fee schedules established under this section, instead of the 25 percent multiple procedure payment reduction specified in the final rule published by the Secretary in the Federal Register on November 29, 2010, the reduction percentage shall be 20 percent.”

(b) EXEMPTION OF PAYMENT REDUCTION FROM BUDGET-NEUTRALITY.—Section

1848(c)(2)(B)(v) of the Social Security Act (42 U.S.C. 1395w-4(c)(2)(B)(v)) is amended by adding at the end the following new subclause:

“(VII) REDUCED EXPENDITURES FOR MULTIPLE THERAPY SERVICES.—Effective for fee schedules established beginning with 2011, reduced expenditures attributable to the multiple procedure payment reduction for therapy services (as described in subsection (b)(7)).”

**SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

**SA 4712.** Mr. REID (for Mr. BAUCUS) proposed an amendment to the bill H.R. 5712, entitled “The Physician Payment and Therapy Relief Act of 2010”; as follows:

Amend the title so as to read:

An act entitled “The Physician Payment and Therapy Relief Act of 2010”.

**SA 4713.** Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Small Business Paperwork Relief Act”.

**SEC. 2. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS.**

(a) REPEAL OF PAYMENTS FOR PROPERTY AND OTHER GROSS PROCEEDS.—Subsection (b) of section 9006 of the Patient Protection and Affordable Care Act, and the amendments made thereby, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection, and amendments, had never been enacted.

(b) REPEAL OF APPLICATION TO CORPORATIONS; APPLICATION OF REGULATORY AUTHORITY.—

(1) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006(a) of the Patient Protection and Affordable Care Act and section 2101 of the Small Business Jobs Act of 2010, is amended by striking subsections (i) and (j) and inserting the following new subsection:

“(i) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.”

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments made after December 31, 2010.

**SA 4714.** Mr. REID submitted an amendment intended to be proposed by him to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. FISCAL YEARS 2011 THROUGH 2013 EAR-MARK MORATORIUM.**

(a) BILLS AND JOINT RESOLUTIONS.—

(1) POINT OF ORDER.—It shall not be in order to—

(A) consider a bill or joint resolution reported by any committee or a bill or joint resolution reported by any committee with a report that includes an earmark, limited tax benefit, or limited tariff benefit; or

(B) a Senate bill or joint resolution not reported by committee that includes an earmark, limited tax benefit, or limited tariff benefit.

(2) RETURN TO THE CALENDAR.—If a point of order is sustained under this subsection, the bill or joint resolution shall be returned to the calendar until compliance with this subsection has been achieved.

(b) CONFERENCE REPORT.—

(1) POINT OF ORDER.—It shall not be in order to vote on the adoption of a report of a committee of conference if the report includes an earmark, limited tax benefit, or limited tariff benefit.

(2) RETURN TO THE CALENDAR.—If a point of order is sustained under this subsection, the conference report shall be returned to the calendar.

(c) FLOOR AMENDMENT.—It shall not be in order to consider an amendment to a bill or joint resolution if the amendment contains an earmark, limited tax benefit, or limited tariff benefit.

(d) AMENDMENT BETWEEN THE HOUSES.—

(1) IN GENERAL.—It shall not be in order to consider an amendment between the Houses if that amendment includes an earmark, limited tax benefit, or limited tariff benefit.

(2) RETURN TO THE CALENDAR.—If a point of order is sustained under this subsection, the amendment between the Houses shall be returned to the calendar until compliance with this subsection has been achieved.

(e) WAIVER.—Any Senator may move to waive any or all points of order under this section by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(f) DEFINITIONS.—For the purpose of this section—

(1) the term “earmark” means a provision or report language included primarily at the request of a Senator or Member of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process;

(2) the term “limited tax benefit” means any revenue provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; and

(3) the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

(g) FISCAL YEARS 2011 THROUGH 2013.—The point of order under this section shall only apply to legislation providing or authorizing discretionary budget authority, credit authority or other spending authority, providing a federal tax deduction, credit, or exclusion, or modifying the Harmonized Tariff Schedule in fiscal years 2011 through 2013.

(h) APPLICATION.—This rule shall not apply to any authorization of appropriations to a Federal entity if such authorization is not specifically targeted to a State, locality, or congressional district.

(i) This rule shall not apply to any bill, conference report or joint resolution in

which the total funding provided for earmarks do not exceed the amount provided for such purposes in 2009.”

**SA 4715.** Mr. REID (for Mr. HARKIN) proposed an amendment to the bill S. 510, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “FDA Food Safety Modernization Act”.

(b) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

Sec. 1. Short title; references; table of contents.

**TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS**

Sec. 101. Inspections of records.

Sec. 102. Registration of food facilities.

Sec. 103. Hazard analysis and risk-based preventive controls.

Sec. 104. Performance standards.

Sec. 105. Standards for produce safety.

Sec. 106. Protection against intentional adulteration.

Sec. 107. Authority to collect fees.

Sec. 108. National agriculture and food defense strategy.

Sec. 109. Food and Agriculture Coordinating Councils.

Sec. 110. Building domestic capacity.

Sec. 111. Sanitary transportation of food.

Sec. 112. Food allergy and anaphylaxis management.

Sec. 113. New dietary ingredients.

Sec. 114. Requirement for guidance relating to post harvest processing of raw oysters.

Sec. 115. Port shopping.

Sec. 116. Alcohol-related facilities.

**TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS**

Sec. 201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.

Sec. 202. Laboratory accreditation for analyses of foods.

Sec. 203. Integrated consortium of laboratory networks.

Sec. 204. Enhancing tracking and tracing of food and recordkeeping.

Sec. 205. Surveillance.

Sec. 206. Mandatory recall authority.

Sec. 207. Administrative detention of food.

Sec. 208. Decontamination and disposal standards and plans.

Sec. 209. Improving the training of State, local, territorial, and tribal food safety officials.

Sec. 210. Enhancing food safety.

Sec. 211. Improving the reportable food registry.

**TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD**

Sec. 301. Foreign supplier verification program.

Sec. 302. Voluntary qualified importer program.

Sec. 303. Authority to require import certifications for food.

Sec. 304. Prior notice of imported food shipments.

Sec. 305. Building capacity of foreign governments with respect to food safety.

Sec. 306. Inspection of foreign food facilities.

Sec. 307. Accreditation of third-party auditors.

Sec. 308. Foreign offices of the Food and Drug Administration.

Sec. 309. Smuggled food.

**TITLE IV—MISCELLANEOUS PROVISIONS**

Sec. 401. Funding for food safety.

Sec. 402. Employee protections.

Sec. 403. Jurisdiction; authorities.

Sec. 404. Compliance with international agreements.

Sec. 405. Determination of budgetary effects.

**TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS**

**SEC. 101. INSPECTIONS OF RECORDS.**

(a) IN GENERAL.—Section 414(a) (21 U.S.C. 350c(a)) is amended—

(1) by striking the heading and all that follows through “of food is” and inserting the following: “RECORDS INSPECTION.—

“(1) ADULTERATED FOOD.—If the Secretary has a reasonable belief that an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, is”;

(2) by inserting “, and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner,” after “relating to such article”;

(3) by striking the last sentence; and

(4) by inserting at the end the following:

“(2) USE OF OR EXPOSURE TO FOOD OF CONCERN.—If the Secretary believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, that are needed to assist the Secretary in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals.

“(3) APPLICATION.—The requirement under paragraphs (1) and (2) applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.”.

(b) CONFORMING AMENDMENT.—Section 704(a)(1)(B) (21 U.S.C. 374(a)(1)(B)) is amended by striking “section 414 when” and all that follows through “subject to” and inserting “section 414, when the standard for records inspection under paragraph (1) or (2) of section 414(a) applies, subject to”.

**SEC. 102. REGISTRATION OF FOOD FACILITIES.**

(a) UPDATING OF FOOD CATEGORY REGULATIONS; BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(1) in paragraph (2), by—

(A) striking “conducts business and” and inserting “conducts business, the e-mail address for the contact person of the facility

or, in the case of a foreign facility, the United States agent for the facility, and"; and

(B) inserting " , or any other food categories as determined appropriate by the Secretary, including by guidance" after "Code of Federal Regulations";

(2) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(3) by inserting after paragraph (2) the following:

"(3) BIENNIAL REGISTRATION RENEWAL.—During the period beginning on October 1 and ending on December 31 of each even-numbered year, a registrant that has submitted a registration under paragraph (1) shall submit to the Secretary a renewal registration containing the information described in paragraph (2). The Secretary shall provide for an abbreviated registration renewal process for any registrant that has not had any changes to such information since the registrant submitted the preceding registration or registration renewal for the facility involved."

(b) SUSPENSION OF REGISTRATION.—

(1) IN GENERAL.—Section 415 (21 U.S.C. 350d) is amended—

(A) in subsection (a)(2), by inserting after the first sentence the following: "The registration shall contain an assurance that the Secretary will be permitted to inspect such facility at the times and in the manner permitted by this Act.";

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following:

"(b) SUSPENSION OF REGISTRATION.—

"(1) IN GENERAL.—If the Secretary determines that food manufactured, processed, packed, received, or held by a facility registered under this section has a reasonable probability of causing serious adverse health consequences or death to humans or animals, the Secretary may by order suspend the registration of a facility—

"(A) that created, caused, or was otherwise responsible for such reasonable probability; or

"(B)(i) that knew of, or had reason to know of, such reasonable probability; and

"(ii) packed, received, or held such food.

"(2) HEARING ON SUSPENSION.—The Secretary shall provide the registrant subject to an order under paragraph (1) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 business days after the issuance of the order or such other time period, as agreed upon by the Secretary and the registrant, on the actions required for reinstatement of registration and why the registration that is subject to suspension should be reinstated. The Secretary shall reinstate a registration if the Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

"(3) POST-HEARING CORRECTIVE ACTION PLAN; VACATING OF ORDER.—

"(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan not later than 14 days after the submission of the corrective action plan or such other time period as determined by the Secretary.

"(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Sec-

retary shall promptly vacate the order and reinstate the registration of the facility subject to the order or modify the order, as appropriate.

"(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, no person shall import or export food into the United States from such facility, offer to import or export food into the United States from such facility, or otherwise introduce food from such facility into interstate or intrastate commerce in the United States.

"(5) REGULATIONS.—

"(A) IN GENERAL.—The Secretary shall promulgate regulations to implement this subsection. The Secretary may promulgate such regulations on an interim final basis.

"(B) REGISTRATION REQUIREMENT.—The Secretary may require that registration under this section be submitted in an electronic format. Such requirement may not take effect before the date that is 5 years after the date of enactment of the FDA Food Safety Modernization Act.

"(6) APPLICATION DATE.—Facilities shall be subject to the requirements of this subsection beginning on the earlier of—

"(A) the date on which the Secretary issues regulations under paragraph (5); or

"(B) 180 days after the date of enactment of the FDA Food Safety Modernization Act.

"(7) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner."

(2) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of the regulations promulgated under section 415(b)(5) of the Federal Food, Drug, and Cosmetic Act (as added by this section), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such regulations to assist small entities in complying with registration requirements and other activities required under such section.

(3) IMPORTED FOOD.—Section 801(1) (21 U.S.C. 381(1)) is amended by inserting "(or for which a registration has been suspended under such section)" after "section 415".

(c) CLARIFICATION OF INTENT.—

(1) RETAIL FOOD ESTABLISHMENT.—The Secretary shall amend the definition of the term "retail food establishment" in section 1.227(b)(11) of title 21, Code of Federal Regulations to clarify that, in determining the primary function of an establishment or a retail food establishment under such section, the sale of food products directly to consumers by such establishment and the sale of food directly to consumers by such retail food establishment include—

(A) the sale of such food products or food directly to consumers by such establishment at a roadside stand or farmers' market where such stand or market is located other than where the food was manufactured or processed;

(B) the sale and distribution of such food through a community supported agriculture program; and

(C) the sale and distribution of such food at any other such direct sales platform as determined by the Secretary.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) the term "community supported agriculture program" has the same meaning given the term "community supported agriculture (CSA) program" in section 249.2 of title 7, Code of Federal Regulations (or any successor regulation); and

(B) the term "consumer" does not include a business.

(d) CONFORMING AMENDMENTS.—

(1) Section 301(d) (21 U.S.C. 331(d)) is amended by inserting "415," after "404,".

(2) Section 415(d), as redesignated by subsection (b), is amended by adding at the end before the period "for a facility to be registered, except with respect to the reinstatement of a registration that is suspended under subsection (b)".

#### SEC. 103. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

#### "SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

"(a) IN GENERAL.—The owner, operator, or agent in charge of a facility shall, in accordance with this section, evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent the occurrence of such hazards and provide assurances that such food is not adulterated under section 402 or misbranded under section 403(w), monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

"(b) HAZARD ANALYSIS.—The owner, operator, or agent in charge of a facility shall—

"(1) identify and evaluate known or reasonably foreseeable hazards that may be associated with the facility, including—

"(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, allergens, and unapproved food and color additives; and

"(B) hazards that occur naturally, or may be unintentionally introduced; and

"(2) identify and evaluate hazards that may be intentionally introduced, including by acts of terrorism; and

"(3) develop a written analysis of the hazards.

"(c) PREVENTIVE CONTROLS.—The owner, operator, or agent in charge of a facility shall identify and implement preventive controls, including at critical control points, if any, to provide assurances that—

"(1) hazards identified in the hazard analysis conducted under subsection (b)(1) will be significantly minimized or prevented;

"(2) any hazards identified in the hazard analysis conducted under subsection (b)(2) will be significantly minimized or prevented and addressed, consistent with section 420, as applicable; and

"(3) the food manufactured, processed, packed, or held by such facility will not be adulterated under section 402 or misbranded under section 403(w).

"(d) MONITORING OF EFFECTIVENESS.—The owner, operator, or agent in charge of a facility shall monitor the effectiveness of the preventive controls implemented under subsection (c) to provide assurances that the outcomes described in subsection (c) shall be achieved.

"(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures to ensure that, if the preventive controls implemented under subsection (c) are not properly implemented or are found to be ineffective—

"(1) appropriate action is taken to reduce the likelihood of recurrence of the implementation failure;

"(2) all affected food is evaluated for safety; and

"(3) all affected food is prevented from entering into commerce if the owner, operator or agent in charge of such facility cannot ensure that the affected food is not adulterated under section 402 or misbranded under section 403(w).

"(f) VERIFICATION.—The owner, operator, or agent in charge of a facility shall verify that—

“(1) the preventive controls implemented under subsection (c) are adequate to control the hazards identified under subsection (b);

“(2) the owner, operator, or agent is conducting monitoring in accordance with subsection (d);

“(3) the owner, operator, or agent is making appropriate decisions about corrective actions taken under subsection (e);

“(4) the preventive controls implemented under subsection (c) are effectively and significantly minimizing or preventing the occurrence of identified hazards, including through the use of environmental and product testing programs and other appropriate means; and

“(5) there is documented, periodic reanalysis of the plan under subsection (i) to ensure that the plan is still relevant to the raw materials, conditions and processes in the facility, and new and emerging threats.

“(g) RECORDKEEPING.—The owner, operator, or agent in charge of a facility shall maintain, for not less than 2 years, records documenting the monitoring of the preventive controls implemented under subsection (c), instances of nonconformance material to food safety, the results of testing and other appropriate means of verification under subsection (f)(4), instances when corrective actions were implemented, and the efficacy of preventive controls and corrective actions.

“(h) WRITTEN PLAN AND DOCUMENTATION.—The owner, operator, or agent in charge of a facility shall prepare a written plan that documents and describes the procedures used by the facility to comply with the requirements of this section, including analyzing the hazards under subsection (b) and identifying the preventive controls adopted under subsection (c) to address those hazards. Such written plan, together with the documentation described in subsection (g), shall be made promptly available to a duly authorized representative of the Secretary upon oral or written request.

“(i) REQUIREMENT TO REANALYZE.—The owner, operator, or agent in charge of a facility shall conduct a reanalysis under subsection (b) whenever a significant change is made in the activities conducted at a facility operated by such owner, operator, or agent if the change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard or not less frequently than once every 3 years, whichever is earlier. Such reanalysis shall be completed and additional preventive controls needed to address the hazard identified, if any, shall be implemented before the change in activities at the facility is operative. Such owner, operator, or agent shall revise the written plan required under subsection (h) if such a significant change is made or document the basis for the conclusion that no additional or revised preventive controls are needed. The Secretary may require a reanalysis under this section to respond to new hazards and developments in scientific understanding, including, as appropriate, results from the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessment.

“(j) EXEMPTION FOR SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES SUBJECT TO HACCP.—

“(1) IN GENERAL.—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

“(A) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(B) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(C) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

“(2) APPLICABILITY.—The exemption under paragraph (1)(C) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

“(k) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 419.—This section shall not apply to activities of a facility that are subject to section 419.

“(1) MODIFIED REQUIREMENTS FOR QUALIFIED FACILITIES.—

“(1) QUALIFIED FACILITIES.—

“(A) IN GENERAL.—A facility is a qualified facility for purposes of this subsection if the facility meets the conditions under subparagraph (B) or (C).

“(B) VERY SMALL BUSINESS.—A facility is a qualified facility under this subparagraph—

“(i) if the facility, including any subsidiary or affiliate of the facility, is, collectively, a very small business (as defined in the regulations promulgated under subsection (n)); and

“(ii) in the case where the facility is a subsidiary or affiliate of an entity, if such subsidiaries or affiliates, are, collectively, a very small business (as so defined).

“(C) LIMITED ANNUAL MONETARY VALUE OF SALES.—

“(i) IN GENERAL.—A facility is a qualified facility under this subparagraph if clause (ii) applies—

“(I) to the facility, including any subsidiary or affiliate of the facility, collectively; and

“(II) to the subsidiaries or affiliates, collectively, of any entity of which the facility is a subsidiary or affiliate.

“(ii) AVERAGE ANNUAL MONETARY VALUE.—This clause applies if—

“(I) during the 3-year period preceding the applicable calendar year, the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as described in clause (i)) that is sold directly to qualified end-users during such period exceeded the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as so described) sold by such facility (or collectively by any such subsidiary or affiliate) to all other purchasers during such period; and

“(II) the average annual monetary value of all food sold by such facility (or the collective average annual monetary value of such food sold by any subsidiary or affiliate, as described in clause (i)) during such period was less than \$500,000, adjusted for inflation.

“(2) EXEMPTION.—A qualified facility—

“(A) shall not be subject to the requirements under subsections (a) through (i) and subsection (n) in an applicable calendar year; and

“(B) shall submit to the Secretary—

“(i)(I) documentation that demonstrates that the owner, operator, or agent in charge of the facility has identified potential hazards associated with the food being produced, is implementing preventive controls to address the hazards, and is monitoring the preventive controls to ensure that such controls are effective; or

“(ii) documentation (which may include licenses, inspection reports, certificates, permits, credentials, certification by an appropriate agency (such as a State department of agriculture), or other evidence of oversight), as specified by the Secretary, that the facil-

ity is in compliance with State, local, county, or other applicable non-Federal food safety law; and

“(ii) documentation, as specified by the Secretary in a guidance document issued not later than 1 year after the date of enactment of this section, that the facility is a qualified facility under paragraph (1)(B) or (1)(C).

“(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a qualified facility subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a qualified facility that are material to the safety of the food manufactured, processed, packed, or held at such facility, the Secretary may withdraw the exemption provided to such facility under this subsection.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

“(4) DEFINITIONS.—In this subsection:

“(A) AFFILIATE.—The term ‘affiliate’ means any facility that controls, is controlled by, or is under common control with another facility.

“(B) QUALIFIED END-USER.—The term ‘qualified end-user’, with respect to a food, means—

“(i) the consumer of the food; or

“(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that—

“(I) is located—

“(aa) in the same State as the qualified facility that sold the food to such restaurant or establishment; or

“(bb) not more than 275 miles from such facility; and

“(II) is purchasing the food for sale directly to consumers at such restaurant or retail food establishment.

“(C) CONSUMER.—For purposes of subparagraph (B), the term ‘consumer’ does not include a business.

“(D) SUBSIDIARY.—The term ‘subsidiary’ means any company which is owned or controlled directly or indirectly by another company.

“(5) STUDY.—

“(A) IN GENERAL.—The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study of the food processing sector regulated by the Secretary to determine—

“(i) the distribution of food production by type and size of operation, including monetary value of food sold;

“(ii) the proportion of food produced by each type and size of operation;

“(iii) the number and types of food facilities co-located on farms, including the number and proportion by commodity and by manufacturing or processing activity;

“(iv) the incidence of foodborne illness originating from each size and type of operation and the type of food facilities for which no reported or known hazard exists; and

“(v) the effect on foodborne illness risk associated with commingling, processing, transporting, and storing food and raw agricultural commodities, including differences in risk based on the scale and duration of such activities.

“(B) SIZE.—The results of the study conducted under subparagraph (A) shall include the information necessary to enable the Secretary to define the terms ‘small business’ and ‘very small business’, for purposes of

promulgating the regulation under subsection (n). In defining such terms, the Secretary shall include consideration of harvestable acres, income, the number of employees, and the volume of food harvested.

“(C) SUBMISSION OF REPORT.—Not later than 18 months after the date of enactment the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that describes the results of the study conducted under subparagraph (A).

“(6) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production of food. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

“(7) NOTIFICATION TO CONSUMERS.—

“(A) IN GENERAL.—A qualified facility that is exempt from the requirements under subsections (a) through (i) and subsection (n) and does not prepare documentation under paragraph (2)(B)(i)(I) shall—

“(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the facility where the food was manufactured or processed; or

“(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provisions of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the facility where the food was manufactured or processed, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

“(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this Act.

“(m) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the production of food for animals other than man, the storage of raw agricultural commodities (other than fruits and vegetables) intended for further distribution or processing, or the storage of packaged foods that are not exposed to the environment.

“(n) REGULATIONS.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations—

“(A) to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under this section; and

“(B) to define, for purposes of this section, the terms ‘small business’ and ‘very small business’, taking into consideration the study described in subsection (1)(5).

“(2) COORDINATION.—In promulgating the regulations under paragraph (1)(A), with regard to hazards that may be intentionally introduced, including by acts of terrorism, the Secretary shall coordinate with the Secretary of Homeland Security, as appropriate.

“(3) CONTENT.—The regulations promulgated under paragraph (1)(A) shall—

“(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm;

“(B) comply with chapter 35 of title 44, United States Code (commonly known as the

‘Paperwork Reduction Act’), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the facility, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

“(C) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

“(D) not require a facility to hire a consultant or other third party to identify, implement, certify, or audit preventative controls, except in the case of negotiated enforcement resolutions that may require such a consultant or third party.

“(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to prescribe specific technologies, practices, or critical controls for an individual facility.

“(5) REVIEW.—In promulgating the regulations under paragraph (1)(A), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of the FDA Food Safety Modernization Act, including the Grade ‘A’ Pasteurized Milk Ordinance to ensure that such regulations are consistent, to the extent practicable, with applicable domestic and internationally-recognized standards in existence on such date.

“(o) DEFINITIONS.—For purposes of this section:

“(1) CRITICAL CONTROL POINT.—The term ‘critical control point’ means a point, step, or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce such hazard to an acceptable level.

“(2) FACILITY.—The term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.

“(3) PREVENTIVE CONTROLS.—The term ‘preventive controls’ means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would employ to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (b) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

“(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

“(B) Supervisor, manager, and employee hygiene training.

“(C) An environmental monitoring program to verify the effectiveness of pathogen controls in processes where a food is exposed to a potential contaminant in the environment.

“(D) A food allergen control program.

“(E) A recall plan.

“(F) Current Good Manufacturing Practices (cGMPs) under part 110 of title 21, Code of Federal Regulations (or any successor regulations).

“(G) Supplier verification activities that relate to the safety of food.”

(b) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to the regulations promulgated under subsection (b)(1) with respect to the hazard analysis and preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(c) RULEMAKING.—

(1) PROPOSED RULEMAKING.—

(A) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this subsection as the “Sec-

retary”) shall publish a notice of proposed rulemaking in the Federal Register to promulgate regulations with respect to—

(i) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act; and

(ii) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415.

(B) CLARIFICATION.—The rulemaking described under subparagraph (A) shall enhance the implementation of such section 415 and clarify the activities that are included as part of the definition of the term ‘facility’ under such section 415. Nothing in this Act authorizes the Secretary to modify the definition of the term ‘facility’ under such section.

(C) SCIENCE-BASED RISK ANALYSIS.—In promulgating regulations under subparagraph (A), the Secretary shall conduct a science-based risk analysis of—

(i) specific types of on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership, as such packing and holding relates to specific foods; and

(ii) specific on-farm manufacturing and processing activities as such activities relate to specific foods that are not consumed on that farm or on another farm under common ownership.

(D) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—

(i) IN GENERAL.—In promulgating the regulations under subparagraph (A), the Secretary shall consider the results of the science-based risk analysis conducted under subparagraph (C), and shall exempt certain facilities from the requirements in section 418 of the Federal Food, Drug, and Cosmetic Act (as added by this section), including hazard analysis and preventive controls, and the mandatory inspection frequency in section 421 of such Act (as added by section 201), or modify the requirements in such sections 418 or 421, as the Secretary determines appropriate, if such facilities are engaged only in specific types of on-farm manufacturing, processing, packing, or holding activities that the Secretary determines to be low risk involving specific foods the Secretary determines to be low risk.

(ii) LIMITATION.—The exemptions or modifications under clause (i) shall not include an exemption from the requirement to register under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act, if applicable, and shall apply only to small businesses and very small businesses, as defined in the regulation promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added under subsection (a)).

(2) FINAL REGULATIONS.—Not later than 9 months after the close of the comment period for the proposed rulemaking under paragraph (1), the Secretary shall adopt final rules with respect to—

(A) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act;

(B) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415; and

(C) the requirements under sections 418 and 421 of the Federal Food, Drug, and Cosmetic Act, as added by this Act, from which the Secretary may issue exemptions or modifications of the requirements for certain types of facilities.

(d) **SMALL ENTITY COMPLIANCE POLICY GUIDE.**—Not later than 180 days after the issuance of the regulations promulgated under subsection (n) of section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 418 and this section to assist small entities in complying with the hazard analysis and other activities required under such section 418 and this section.

(e) **PROHIBITED ACTS.**—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

“(uu) The operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418.”

(f) **NO EFFECT ON HACCP AUTHORITIES.**—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce Hazard Analysis Critical Control programs and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(g) **DIETARY SUPPLEMENTS.**—Nothing in the amendments made by this section shall apply to any facility with regard to the manufacturing, processing, packing, or holding of a dietary supplement that is in compliance with the requirements of sections 402(g)(2) and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(g)(2), 379aa-1).

(h) **UPDATING GUIDANCE RELATING TO FISH AND FISHERIES PRODUCTS HAZARDS AND CONTROLS.**—The Secretary shall, not later than 180 days after the date of enactment of this Act, update the Fish and Fisheries Products Hazards and Control Guidance to take into account advances in technology that have occurred since the previous publication of such Guidance by the Secretary.

(i) **EFFECTIVE DATES.**—

(1) **GENERAL RULE.**—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

(2) **FLEXIBILITY FOR SMALL BUSINESSES.**—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined in the regulations promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added by this section)) beginning on the date that is 6 months after the effective date of such regulations; and

(B) the amendments made by this section shall apply to a very small business (as defined in such regulations) beginning on the date that is 18 months after the effective date of such regulations.

**SEC. 104. PERFORMANCE STANDARDS.**

(a) **IN GENERAL.**—The Secretary shall, in coordination with the Secretary of Agriculture, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, current Good Manufacturing Practices issued by the Secretary relating to food, and relevant recommendations of relevant advisory committees, including the Food Advisory Committee, to determine the most significant foodborne contaminants.

(b) **GUIDANCE DOCUMENTS AND REGULATIONS.**—Based on the review and evaluation

conducted under subsection (a), and when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent adulteration of the food under section 402 of the Federal Food, Drug, or Cosmetic Act (21 U.S.C. 342) or to prevent the spread by food of communicable disease under section 361 of the Public Health Service Act (42 U.S.C. 264), the Secretary shall issue contaminant-specific and science-based guidance documents, including guidance documents regarding action levels, or regulations. Such guidance, including guidance regarding action levels, or regulations—

(1) shall apply to products or product classes;

(2) shall, where appropriate, differentiate between food for human consumption and food intended for consumption by animals other than humans; and

(3) shall not be written to be facility-specific.

(c) **NO DUPLICATION OF EFFORTS.**—The Secretary shall coordinate with the Secretary of Agriculture to avoid issuing duplicative guidance on the same contaminants.

(d) **REVIEW.**—The Secretary shall periodically review and revise, as appropriate, the guidance documents, including guidance documents regarding action levels, or regulations promulgated under this section.

**SEC. 105. STANDARDS FOR PRODUCE SAFETY.**

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

**“SEC. 419. STANDARDS FOR PRODUCE SAFETY.**

**“(a) PROPOSED RULEMAKING.—**

**“(1) IN GENERAL.—**

**“(A) RULEMAKING.**—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Agriculture and representatives of State departments of agriculture (including with regard to the national organic program established under the Organic Foods Production Act of 1990), and in consultation with the Secretary of Homeland Security, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

**“(B) DETERMINATION BY SECRETARY.**—With respect to small businesses and very small businesses (as such terms are defined in the regulation promulgated under subparagraph (A)) that produce and harvest those types of fruits and vegetables that are raw agricultural commodities that the Secretary has determined are low risk and do not present a risk of serious adverse health consequences or death, the Secretary may determine not to include production and harvesting of such fruits and vegetables in such rulemaking, or may modify the applicable requirements of regulations promulgated pursuant to this section.

**“(2) PUBLIC INPUT.**—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

**“(3) CONTENT.**—The proposed rulemaking under paragraph (1) shall—

**“(A)** provide sufficient flexibility to be applicable to various types of entities engaged in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including small businesses and entities that sell directly to consumers, and

be appropriate to the scale and diversity of the production and harvesting of such commodities;

**“(B)** include, with respect to growing, harvesting, sorting, packing, and storage operations, science-based minimum standards related to soil amendments, hygiene, packaging, temperature controls, animals in the growing area, and water;

**“(C)** consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism;

**“(D)** take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by Federal natural resource conservation, wildlife conservation, and environmental agencies;

**“(E)** in the case of production that is certified organic, not include any requirements that conflict with or duplicate the requirements of the national organic program established under the Organic Foods Production Act of 1990, while providing the same level of public health protection as the requirements under guidance documents, including guidance documents regarding action levels, and regulations under the FDA Food Safety Modernization Act; and

**“(F)** define, for purposes of this section, the terms ‘small business’ and ‘very small business’

**“(4) PRIORITIZATION.**—The Secretary shall prioritize the implementation of the regulations under this section for specific fruits and vegetables that are raw agricultural commodities based on known risks which may include a history and severity of foodborne illness outbreaks.

**“(b) FINAL REGULATION.—**

**“(1) IN GENERAL.**—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum science-based standards for those types of fruits and vegetables, including specific mixes or categories of fruits or vegetables, that are raw agricultural commodities, based on known safety risks, which may include a history of foodborne illness outbreaks.

**“(2) FINAL REGULATION.**—The final regulation shall—

**“(A)** provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States or the appropriate elected State official as recognized by State statute; and

**“(B)** include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

**“(3) FLEXIBILITY FOR SMALL BUSINESSES.**—Notwithstanding paragraph (1)—

**“(A)** the regulations promulgated under this section shall apply to a small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 1 year after the effective date of the final regulation under paragraph (1); and

**“(B)** the regulations promulgated under this section shall apply to a very small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 2 years after the effective date of the final regulation under paragraph (1).

**“(c) CRITERIA.—**

**“(1) IN GENERAL.**—The regulations adopted under subsection (b) shall—

**“(A)** set forth those procedures, processes, and practices that the Secretary determines to minimize the risk of serious adverse health consequences or death, including procedures, processes, and practices that the

Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402;

“(B) provide sufficient flexibility to be practicable for all sizes and types of businesses, including small businesses such as a small food processing facility co-located on a farm;

“(C) comply with chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the business, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

“(D) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

“(E) not require a business to hire a consultant or other third party to identify, implement, certify, compliance with these procedures, processes, and practices, except in the case of negotiated enforcement resolutions that may require such a consultant or third party; and

“(F) permit States and foreign countries from which food is imported into the United States to request from the Secretary variances from the requirements of the regulations, subject to paragraph (2), where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 and to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

“(2) VARIANCES.—

“(A) REQUESTS FOR VARIANCES.—A State or foreign country from which food is imported into the United States may in writing request a variance from the Secretary. Such request shall describe the variance requested and present information demonstrating that the variance does not increase the likelihood that the food for which the variance is requested will be adulterated under section 402, and that the variance provides the same level of public health protection as the requirements of the regulations adopted under subsection (b). The Secretary shall review such requests in a reasonable timeframe.

“(B) APPROVAL OF VARIANCES.—The Secretary may approve a variance in whole or in part, as appropriate, and may specify the scope of applicability of a variance to other similarly situated persons.

“(C) DENIAL OF VARIANCES.—The Secretary may deny a variance request if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably likely to provide the same level of public health protection as the requirements of the regulation adopted under subsection (b). The Secretary shall notify the person requesting such variance of the reasons for the denial.

“(D) MODIFICATION OR REVOCATION OF A VARIANCE.—The Secretary, after notice and an opportunity for a hearing, may modify or revoke a variance if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably

likely to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

“(d) ENFORCEMENT.—The Secretary may coordinate with the Secretary of Agriculture and, as appropriate, shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

“(e) GUIDANCE.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture, representatives of State departments of agriculture, farmer representatives, and various types of entities engaged in the production and harvesting or importing of fruits and vegetables that are raw agricultural commodities, including small businesses, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce under this section.

“(2) PUBLIC MEETINGS.—The Secretary shall conduct not fewer than 3 public meetings in diverse geographical areas of the United States as part of an effort to conduct education and outreach regarding the guidance described in paragraph (1) for persons in different regions who are involved in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including persons that sell directly to consumers and farmer representatives, and for importers of fruits and vegetables that are raw agricultural commodities.

“(3) PAPERWORK REDUCTION.—The Secretary shall ensure that any updated guidance under this section will—

“(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm; and

“(B) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods.

“(f) EXEMPTION FOR DIRECT FARM MARKETING.—

“(1) IN GENERAL.—A farm shall be exempt from the requirements under this section in a calendar year if—

“(A) during the previous 3-year period, the average annual monetary value of the food sold by such farm directly to qualified end-users during such period exceeded the average annual monetary value of the food sold by such farm to all other buyers during such period; and

“(B) the average annual monetary value of all food sold during such period was less than \$500,000, adjusted for inflation.

“(2) NOTIFICATION TO CONSUMERS.—

“(A) IN GENERAL.—A farm that is exempt from the requirements under this section shall—

“(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the farm where the produce was grown; or

“(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provision of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

“(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition

to any label required under any other provision of this Act.

“(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

“(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a farm subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a farm that are material to the safety of the food produced or harvested at such farm, the Secretary may withdraw the exemption provided to such farm under this subsection.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

“(4) DEFINITIONS.—

“(A) QUALIFIED END-USER.—In this subsection, the term ‘qualified end-user’, with respect to a food means—

“(i) the consumer of the food; or

“(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that is located—

“(I) in the same State as the farm that produced the food; or

“(II) not more than 275 miles from such farm.

“(B) CONSUMER.—For purposes of subparagraph (A), the term ‘consumer’ does not include a business.

“(5) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production, harvesting, holding, transportation, and sale of fresh fruits and vegetables. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

“(6) LIMITATION OF EFFECT.—Nothing in this subsection shall prevent the Secretary from exercising any authority granted in the other sections of this Act.

“(g) CLARIFICATION.—This section shall not apply to produce that is produced by an individual for personal consumption.

“(h) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 418.—This section shall not apply to activities of a facility that are subject to section 418.”

(b) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of regulations under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary of Health and Human Services shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 419 and to assist small entities in complying with standards for safe production and harvesting and other activities required under such section.

(c) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following: “(vv) The failure to comply with the requirements under section 419.”

(d) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

**SEC. 106. PROTECTION AGAINST INTENTIONAL ADULTERATION.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 105, is amended by adding at the end the following:

**“SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERATION.****“(a) DETERMINATIONS.—****“(1) IN GENERAL.—**The Secretary shall—

“(A) conduct a vulnerability assessment of the food system, including by consideration of the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessments;

“(B) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration of food at vulnerable points; and

“(C) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

“(2) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which determinations made under paragraph (1) are made publicly available.

“(b) REGULATIONS.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Homeland Security and in consultation with the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act. Such regulations shall—

“(1) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food; and

“(2) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate.

“(c) APPLICABILITY.—Regulations promulgated under subsection (b) shall apply only to food for which there is a high risk of intentional contamination, as determined by the Secretary, in consultation with the Secretary of Homeland Security, under subsection (a), that could cause serious adverse health consequences or death to humans or animals and shall include those foods—

“(1) for which the Secretary has identified clear vulnerabilities (including short shelf-life or susceptibility to intentional contamination at critical control points); and

“(2) in bulk or batch form, prior to being packaged for the final consumer.

“(d) EXCEPTION.—This section shall not apply to farms, except for those that produce milk.

“(e) DEFINITION.—For purposes of this section, the term ‘farm’ has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).”

**(b) GUIDANCE DOCUMENTS.—**

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) CONTENT.—The guidance documents issued under paragraph (1) shall—

(A) include a model assessment for a person to use under subsection (b)(1) of section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a);

(B) include examples of mitigation strategies or measures described in subsection (b)(2) of such section; and

(C) specify situations in which the examples of mitigation strategies or measures described in subsection (b)(2) of such section are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

(c) PERIODIC REVIEW.—The Secretary of Health and Human Services shall periodically review and, as appropriate, update the regulations under section 420(b) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 105, is amended by adding at the end the following:

“(ww) The failure to comply with section 420.”

**SEC. 107. AUTHORITY TO COLLECT FEES.**

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by adding at the end the following:

**“PART 6—FEES RELATED TO FOOD****“SEC. 743. AUTHORITY TO COLLECT AND USE FEES.****“(a) IN GENERAL.—**

“(1) PURPOSE AND AUTHORITY.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

“(A) the responsible party for each domestic facility (as defined in section 415(b)) and the United States agent for each foreign facility subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year;

“(B) the responsible party for a domestic facility (as defined in section 415(b)) and an importer who does not comply with a recall order under section 423 or under section 412(f) in such fiscal year, to cover food recall activities associated with such order performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for such year;

“(C) each importer participating in the voluntary qualified importer program under section 806 in such year, to cover the administrative costs of such program for such year; and

“(D) each importer subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year.

“(2) DEFINITIONS.—For purposes of this section—

“(A) the term ‘reinspection’ means—

“(i) with respect to domestic facilities (as defined in section 415(b)), 1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction; and

“(ii) with respect to importers, 1 or more examinations conducted under section 801 subsequent to an examination conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary’s satisfaction;

“(B) the term ‘reinspection-related costs’ means all expenses, including administrative expenses, incurred in connection with—

“(i) arranging, conducting, and evaluating the results of reinspections; and

“(ii) assessing and collecting reinspection fees under this section; and

“(C) the term ‘responsible party’ has the meaning given such term in section 417(a)(1).

**“(b) ESTABLISHMENT OF FEES.—**

“(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

**“(2) FEE METHODOLOGY.—**

“(A) FEES.—Fees amounts established for collection—

“(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

“(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

“(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

“(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary’s estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

**“(B) OTHER CONSIDERATIONS.—**

“(i) VOLUNTARY QUALIFIED IMPORTER PROGRAM.—

“(I) PARTICIPATION.—In establishing the fee amounts under subparagraph (A)(iii) for a fiscal year, the Secretary shall provide for the number of importers who have submitted to the Secretary a notice under section 806(c) informing the Secretary of the intent of such importer to participate in the program under section 806 in such fiscal year.

“(II) RECOUPMENT.—In establishing the fee amounts under subparagraph (A)(iii) for the first 5 fiscal years after the date of enactment of this section, the Secretary shall include in such fee a reasonable surcharge that provides a recoupment of the costs expended by the Secretary to establish and implement the first year of the program under section 806.

“(ii) CREDITING OF FEES.—In establishing the fee amounts under subparagraph (A) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

“(iii) PUBLISHED GUIDELINES.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish in the Federal Register a proposed set of guidelines in consideration of the burden of fee amounts on small business. Such consideration may include reduced fee amounts for small businesses. The Secretary shall provide for a period of public comment on such guidelines. The Secretary shall adjust the fee schedule for small businesses subject to such fees only through notice and comment rulemaking.

“(3) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clause (i), (ii), (iii), and (iv) of paragraph (2)(A) available solely to pay for the costs referred to in such clause (i), (ii), (iii), and (iv) of paragraph (2)(A), respectively.

**“(c) LIMITATIONS.—**

“(1) **IN GENERAL.**—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless the amount of the total appropriations for food safety activities at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) is equal to or greater than the amount of appropriations for food safety activities at the Food and Drug Administration for fiscal year 2009 (excluding the amount of fees appropriated for such fiscal year), multiplied by the adjustment factor under paragraph (3).

**“(2) AUTHORITY.—If—**

“(A) the Secretary does not assess fees under subsection (a) for a portion of a fiscal year because paragraph (1) applies; and

“(B) at a later date in such fiscal year, such paragraph (1) ceases to apply, the Secretary may assess and collect such fees under subsection (a), without any modification to the rate of such fees, notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

**“(3) ADJUSTMENT FACTOR.—**

“(A) **IN GENERAL.**—The adjustment factor described in paragraph (1) shall be the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year, but in no case shall such adjustment factor be negative.

“(B) **COMPOUNDED BASIS.**—The adjustment under subparagraph (A) made each fiscal year shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2009.

**“(4) LIMITATION ON AMOUNT OF CERTAIN FEES.—**

“(A) **IN GENERAL.**—Notwithstanding any other provision of this section and subject to subparagraph (B), the Secretary may not collect fees in a fiscal year such that the amount collected—

“(i) under subparagraph (B) of subsection (a)(1) exceeds \$20,000,000; and

“(ii) under subparagraphs (A) and (D) of subsection (a)(1) exceeds \$25,000,000 combined.

“(B) **EXCEPTION.**—If a domestic facility (as defined in section 415(b)) or an importer becomes subject to a fee described in subparagraph (A), (B), or (D) of subsection (a)(1) after the maximum amount of fees has been collected by the Secretary under subparagraph (A), the Secretary may collect a fee from such facility or importer.

“(d) **CREDITING AND AVAILABILITY OF FEES.**—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

**“(e) COLLECTION OF FEES.—**

“(1) **IN GENERAL.**—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time and manner in which fees assessed under this section shall be collected.

“(2) **COLLECTION OF UNPAID FEES.**—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States

Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

“(f) **ANNUAL REPORT TO CONGRESS.**—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

“(g) **AUTHORIZATION OF APPROPRIATIONS.**—For fiscal year 2010 and each fiscal year thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or otherwise affected under the other provisions of this section.”

**(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—**

(1) **AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.**—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking “a drug” and inserting “a food, drug”;

(B) in clause (i) by striking “exported drug” and inserting “exported food, drug”; and

(C) in clause (ii) by striking “the drug” each place it appears and inserting “the food, drug”.

(2) **CLARIFICATION OF CERTIFICATION.**—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

“(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.”

**SEC. 108. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.****(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—**

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and transmit to the relevant committees of Congress, and make publicly available on the Internet Web sites of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) **IMPLEMENTATION PLAN.**—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) **RESEARCH.**—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) **REVISIONS.**—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) **CONSISTENCY WITH EXISTING PLANS.**—The strategy described in paragraph (1) shall be consistent with—

(A) the National Incident Management System;

(B) the National Response Framework;

(C) the National Infrastructure Protection Plan;

(D) the National Preparedness Goals; and

(E) other relevant national strategies.

(b) **COMPONENTS.**—

(1) **IN GENERAL.**—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) **GOALS.**—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) **PREPAREDNESS GOAL.**—Enhance the preparedness of the agriculture and food system by—

(i) conducting vulnerability assessments of the agriculture and food system;

(ii) mitigating vulnerabilities of the system;

(iii) improving communication and training relating to the system;

(iv) developing and conducting exercises to test decontamination and disposal plans;

(v) developing modeling tools to improve event consequence assessment and decision support; and

(vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) **DETECTION GOAL.**—Improve agriculture and food system detection capabilities by—

(i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) **EMERGENCY RESPONSE GOAL.**—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) **RECOVERY GOAL.**—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture, food production, and international trade;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

(3) **EVALUATION.**—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall—

(A) develop metrics to measure progress for the evaluation process described in paragraph (1)(B); and

(B) report on the progress measured in subparagraph (A) as part of the National Agriculture and Food Defense strategy described in subsection (a)(1).

(c) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, may determine the manner and format in which the National Agriculture and Food Defense strategy established under this section is made publicly available on the Internet Web sites of the Department of Health and Human Services, the Department of Homeland Security, and the Department of Agriculture, as described in subsection (a)(1).

**SEC. 109. FOOD AND AGRICULTURE COORDINATING COUNCILS.**

The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help coordinate and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

**SEC. 110. BUILDING DOMESTIC CAPACITY.**

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and supply chain security of food and to prevent outbreaks of foodborne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for further regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 109, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to foodborne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 108 and 205.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(H) The impact of requirements under this Act (including amendments made by this Act) on certified organic farms and facilities (as defined in section 415 (21 U.S.C. 350d).

(I) Specific efforts taken pursuant to the agreements authorized under section 421(c) of the Federal Food, Drug, and Cosmetic Act (as added by section 201), together with, as necessary, a description of any additional authorities necessary to improve seafood safety.

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (H) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including commercially-available techniques that can be employed at ports of entry and by Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities and progress toward laboratory accreditation under section 422 of the Federal Food, Drug, and Cosmetic Act (as added by section 202).

(d) INFORMATION TECHNOLOGY.—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) AUTOMATED RISK ASSESSMENT.—The report developed under subsection (a)(1) shall

include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) TRACEBACK AND SURVEILLANCE REPORT.—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in foodborne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, as such communication and coordination relates to outbreak identification and traceback.

(g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.—The Secretary, the Secretary of Agriculture, and the Secretary of Homeland Security shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of foodborne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the subsequent 2-year period.

(h) EFFECTIVENESS OF PROGRAMS ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(1) IN GENERAL.—To determine whether existing Federal programs administered by the Department of Health and Human Services are effective in achieving the stated goals of such programs, the Secretary shall, beginning not later than 1 year after the date of enactment of this Act—

(A) conduct an annual evaluation of each program of such Department to determine the effectiveness of each such program in achieving legislated intent, purposes, and objectives; and

(B) submit to Congress a report concerning such evaluation.

(2) CONTENT.—The report described under paragraph (1)(B) shall—

(A) include conclusions concerning the reasons that such existing programs have proven successful or not successful and what factors contributed to such conclusions;

(B) include recommendations for consolidation and elimination to reduce duplication and inefficiencies in such programs at such Department as identified during the evaluation conduct under this subsection; and

(C) be made publicly available in a publication entitled "Guide to the U.S. Department of Health and Human Services Programs".

(i) UNIQUE IDENTIFICATION NUMBERS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study regarding the need for, and challenges associated with, development and implementation of a program that requires a unique identification number for each food facility registered with the Secretary and, as appropriate, each broker that imports food into the United States. Such study shall include an evaluation of the costs associated with development and implementation of such a system, and make recommendations about what new authorities, if any, would be necessary to develop and implement such a system.

(2) REPORT.—Not later than 15 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the findings of the study conducted under paragraph (1) and that includes

any recommendations determined appropriate by the Secretary.

**SEC. 111. SANITARY TRANSPORTATION OF FOOD.**

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

(b) FOOD TRANSPORTATION STUDY.—The Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study of the transportation of food for consumption in the United States, including transportation by air, that includes an examination of the unique needs of rural and frontier areas with regard to the delivery of safe food.

**SEC. 112. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.**

(a) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA DEFINITIONS.—The terms “local educational agency”, “secondary school”, “elementary school”, and “parent” have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SCHOOL.—The term “school” includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(b) ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) APPLICABILITY OF FERPA.—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of section 444 of the General Education Provisions Act (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”) (20 U.S.C. 1232g).

(2) CONTENTS.—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child’s physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child’s readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early childhood education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) RELATION TO STATE LAW.—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.—

(1) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a local edu-

catinal agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

(IV) any other activities that the Secretary determines appropriate;

(iii) an itemization of how grant funds received under this subsection will be expended;

(iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

(v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) USE OF FUNDS.—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) DURATION OF AWARDS.—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A grant awarded under this subsection may not be made in an amount that is more than \$50,000 annually.

(7) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) MATCHING FUNDS.—

(A) IN GENERAL.—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by

such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(1) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$30,000,000 for fiscal year 2011 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

#### SEC. 113. NEW DIETARY INGREDIENTS.

(a) IN GENERAL.—Section 413 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350b) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) NOTIFICATION.—

“(1) IN GENERAL.—If the Secretary determines that the information in a new dietary ingredient notification submitted under this section for an article purported to be a new dietary ingredient is inadequate to establish that a dietary supplement containing such article will reasonably be expected to be safe because the article may be, or may contain, an anabolic steroid or an analogue of an anabolic steroid, the Secretary shall notify the Drug Enforcement Administration of such determination. Such notification by the Secretary shall include, at a minimum, the name of the dietary supplement or article, the name of the person or persons who marketed the product or made the submission of information regarding the article to the Secretary under this section, and any contact information for such person or persons that the Secretary has.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘anabolic steroid’ has the meaning given such term in section 102(41) of the Controlled Substances Act; and

“(B) the term ‘analogue of an anabolic steroid’ means a substance whose chemical structure is substantially similar to the chemical structure of an anabolic steroid.”.

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish guidance that clarifies when a dietary supplement ingredient is a new dietary ingredient, when the manufacturer or distributor of a dietary ingredient or dietary supplement should provide the Secretary with information as described in section 413(a)(2) of the Federal Food, Drug, and Cosmetic Act, the evidence needed to document the safety of new dietary ingredients, and appropriate methods for establishing the identity of a new dietary ingredient.

#### SEC. 114. REQUIREMENT FOR GUIDANCE RELATING TO POST HARVEST PROCESSING OF RAW OYSTERS.

(a) IN GENERAL.—Not later than 90 days prior to the issuance of any guidance, regulation, or suggested amendment by the Food and Drug Administration to the National Shellfish Sanitation Program’s Model Ordinance, or the issuance of any guidance or regulation by the Food and Drug Administration relating to the Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration (parts 123 and 1240 of title 21, Code of Federal Regulations (or any successor regulations), where such guidance, regulation or suggested amendment relates to post harvest processing for raw oysters, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report which shall include—

(1) an assessment of how post harvest processing or other equivalent controls feasibly may be implemented in the fastest, safest, and most economical manner;

(2) the projected public health benefits of any proposed post harvest processing;

(3) the projected costs of compliance with such post harvest processing measures;

(4) the impact post harvest processing is expected to have on the sales, cost, and availability of raw oysters;

(5) criteria for ensuring post harvest processing standards will be applied equally to shellfish imported from all nations of origin;

(6) an evaluation of alternative measures to prevent, eliminate, or reduce to an acceptable level the occurrence of foodborne illness; and

(7) the extent to which the Food and Drug Administration has consulted with the States and other regulatory agencies, as appropriate, with regard to post harvest processing measures.

(b) LIMITATION.—Subsection (a) shall not apply to the guidance described in section 103(h).

(c) REVIEW AND EVALUATION.—Not later than 30 days after the Secretary issues a proposed regulation or guidance described in subsection (a), the Comptroller General of the United States shall—

(1) review and evaluate the report described in (a) and report to Congress on the findings of the estimates and analysis in the report;

(2) compare such proposed regulation or guidance to similar regulations or guidance with respect to other regulated foods, including a comparison of risks the Secretary may find associated with seafood and the instances of those risks in such other regulated foods; and

(3) evaluate the impact of post harvest processing on the competitiveness of the do-

mestic oyster industry in the United States and in international markets.

(d) WAIVER.—The requirement of preparing a report under subsection (a) shall be waived if the Secretary issues a guidance that is adopted as a consensus agreement between Federal and State regulators and the oyster industry, acting through the Interstate Shellfish Sanitation Conference.

(e) PUBLIC ACCESS.—Any report prepared under this section shall be made available to the public.

#### SEC. 115. PORT SHOPPING.

Until the date on which the Secretary promulgates a final rule that implements the amendments made by section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (Public Law 107–188), the Secretary shall notify the Secretary of Homeland Security of all instances in which the Secretary refuses to admit a food into the United States under section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) so that the Secretary of Homeland Security, acting through the Commissioner of Customs and Border Protection, may prevent food refused admittance into the United States by a United States port of entry from being admitted by another United States port of entry, through the notification of other such United States ports of entry.

#### SEC. 116. ALCOHOL-RELATED FACILITIES.

(a) IN GENERAL.—Except as provided by sections 102, 206, 207, 302, 304, 402, 403, and 404 of this Act, and the amendments made by such sections, nothing in this Act, or the amendments made by this Act, shall be construed to apply to a facility that—

(1) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and

(2) under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages, with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages.

(b) LIMITED RECEIPT AND DISTRIBUTION OF NON-ALCOHOL FOOD.—Subsection (a) shall not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that such paragraph shall apply to a facility described in such paragraph that receives and distributes non-alcohol food, provided such food is received and distributed—

(1) in a prepackaged form that prevents any direct human contact with such food; and

(2) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

(c) RULE OF CONSTRUCTION.—Except as provided in subsections (a) and (b), this section shall not be construed to exempt any food, other than alcoholic beverages, as defined in section 214 of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of this Act (including the amendments made by this Act).

#### TITLE II—IMPROVING CAPACITY TO DETECT AND RESPOND TO FOOD SAFETY PROBLEMS

##### SEC. 201. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

(a) TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.—Chapter IV (21

U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

**“SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.**

“(a) IDENTIFICATION AND INSPECTION OF FACILITIES.—

“(1) IDENTIFICATION.—The Secretary shall identify high-risk facilities and shall allocate resources to inspect facilities according to the known safety risks of the facilities, which shall be based on the following factors:

“(A) The known safety risks of the food manufactured, processed, packed, or held at the facility.

“(B) The compliance history of a facility, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

“(C) The rigor and effectiveness of the facility’s hazard analysis and risk-based preventive controls.

“(D) Whether the food manufactured, processed, packed, or held at the facility meets the criteria for priority under section 801(h)(1).

“(E) Whether the food or the facility that manufactured, processed, packed, or held such food has received a certification as described in section 801(q) or 806, as appropriate.

“(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(2) INSPECTIONS.—

“(A) IN GENERAL.—Beginning on the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall increase the frequency of inspection of all facilities.

“(B) DOMESTIC HIGH-RISK FACILITIES.—The Secretary shall increase the frequency of inspection of domestic facilities identified under paragraph (1) as high-risk facilities such that each such facility is inspected—

“(i) not less often than once in the 5-year period following the date of enactment of the FDA Food Safety Modernization Act; and

“(ii) not less often than once every 3 years thereafter.

“(C) DOMESTIC NON-HIGH-RISK FACILITIES.—The Secretary shall ensure that each domestic facility that is not identified under paragraph (1) as a high-risk facility is inspected—

“(i) not less often than once in the 7-year period following the date of enactment of the FDA Food Safety Modernization Act; and

“(ii) not less often than once every 5 years thereafter.

“(D) FOREIGN FACILITIES.—

“(i) YEAR 1.—In the 1-year period following the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall inspect not fewer than 600 foreign facilities.

“(ii) SUBSEQUENT YEARS.—In each of the 5 years following the 1-year period described in clause (i), the Secretary shall inspect not fewer than twice the number of foreign facilities inspected by the Secretary during the previous year.

“(E) RELIANCE ON FEDERAL, STATE, OR LOCAL INSPECTIONS.—In meeting the inspection requirements under this subsection for domestic facilities, the Secretary may rely on inspections conducted by other Federal, State, or local agencies under interagency agreement, contract, memoranda of understanding, or other obligation.

“(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect any article of food imported into the United States according to the known safety risks of the article of food, which shall be based on the following factors:

“(1) The known safety risks of the food imported.

“(2) The known safety risks of the countries or regions of origin and countries through which such article of food is transported.

“(3) The compliance history of the importer, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

“(4) The rigor and effectiveness of the activities conducted by the importer of such article of food to satisfy the requirements of the foreign supplier verification program under section 805.

“(5) Whether the food importer participates in the voluntary qualified importer program under section 806.

“(6) Whether the food meets the criteria for priority under section 801(h)(1).

“(7) Whether the food or the facility that manufactured, processed, packed, or held such food received a certification as described in section 801(q) or 806.

“(8) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

“(c) INTERAGENCY AGREEMENTS WITH RESPECT TO SEAFOOD.—

“(1) IN GENERAL.—The Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of Homeland Security, the Chairman of the Federal Trade Commission, and the heads of other appropriate agencies may enter into such agreements as may be necessary or appropriate to improve seafood safety.

“(2) SCOPE OF AGREEMENTS.—The agreements under paragraph (1) may include—

“(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

“(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

“(C) standardization of data on seafood names, inspection records, and laboratory testing to improve interagency coordination;

“(D) coordination to detect and investigate violations under applicable Federal law;

“(E) a process, including the use or modification of existing processes, by which officers and employees of the National Oceanic and Atmospheric Administration may be duly designated by the Secretary to carry out seafood examinations and investigations under section 801 of this Act or section 203 of the Food Allergen Labeling and Consumer Protection Act of 2004;

“(F) the sharing of information concerning observed non-compliance with United States food requirements domestically and in foreign nations and new regulatory decisions and policies that may affect the safety of food imported into the United States;

“(G) conducting joint training on subjects that affect and strengthen seafood inspection effectiveness by Federal authorities; and

“(H) outreach on Federal efforts to enhance seafood safety and compliance with Federal food safety requirements.

“(d) COORDINATION.—The Secretary shall improve coordination and cooperation with the Secretary of Agriculture and the Secretary of Homeland Security to target food inspection resources.

“(e) FACILITY.—For purposes of this section, the term ‘facility’ means a domestic facility or a foreign facility that is required to register under section 415.”

(b) ANNUAL REPORT.—Section 1003 (21 U.S.C. 393) is amended by adding at the end the following:

“(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report,

including efforts to coordinate and cooperate with other Federal agencies with responsibilities for food inspections, regarding—

“(1) information about food facilities including—

“(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

“(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

“(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

“(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year;

“(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

“(F) the number of high-risk facilities identified pursuant to section 421 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year.

“(2) information about food imports including—

“(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

“(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

“(C) the average cost of physically inspecting or sampling a line of food subject to this Act that is imported or offered for import into the United States; and

“(3) information on the foreign offices of the Food and Drug Administration including—

“(A) the number of foreign offices established; and

“(B) the number of personnel permanently stationed in each foreign office.

“(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.”

(c) ADVISORY COMMITTEE CONSULTATION.—In allocating inspection resources as described in section 421 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary may, as appropriate, consult with any relevant advisory committee within the Department of Health and Human Services.

**SEC. 202. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.**

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 201, is amended by adding at the end the following:

**“SEC. 422. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.**

“(a) RECOGNITION OF LABORATORY ACCREDITATION.—

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

“(A) establish a program for the testing of food by accredited laboratories;

“(B) establish a publicly available registry of accreditation bodies recognized by the Secretary and laboratories accredited by a recognized accreditation body, including the name of, contact information for, and other information deemed appropriate by the Secretary about such bodies and laboratories; and

“(C) require, as a condition of recognition or accreditation, as appropriate, that recognized accreditation bodies and accredited laboratories report to the Secretary any changes that would affect the recognition of such accreditation body or the accreditation of such laboratory.

“(2) PROGRAM REQUIREMENTS.—The program established under paragraph (1)(A) shall provide for the recognition of laboratory accreditation bodies that meet criteria established by the Secretary for accreditation of laboratories, including independent private laboratories and laboratories run and operated by a Federal agency (including the Department of Commerce), State, or locality with a demonstrated capability to conduct 1 or more sampling and analytical testing methodologies for food.

“(3) INCREASING THE NUMBER OF QUALIFIED LABORATORIES.—The Secretary shall work with the laboratory accreditation bodies recognized under paragraph (1), as appropriate, to increase the number of qualified laboratories that are eligible to perform testing under subparagraph (b) beyond the number so qualified on the date of enactment of the FDA Food Safety Modernization Act.

“(4) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in coordination with the Secretary of Homeland Security, may determine the time, manner, and form in which the registry established under paragraph (1)(B) is made publicly available.

“(5) FOREIGN LABORATORIES.—Accreditation bodies recognized by the Secretary under paragraph (1) may accredit laboratories that operate outside the United States, so long as such laboratories meet the accreditation standards applicable to domestic laboratories accredited under this section.

“(6) MODEL LABORATORY STANDARDS.—The Secretary shall develop model standards that a laboratory shall meet to be accredited by a recognized accreditation body for a specified sampling or analytical testing methodology and included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall consult existing standards for guidance. The model standards shall include—

“(A) methods to ensure that—

“(i) appropriate sampling, analytical procedures (including rapid analytical procedures), and commercially available techniques are followed and reports of analyses are certified as true and accurate;

“(ii) internal quality systems are established and maintained;

“(iii) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is accredited; and

“(iv) individuals who conduct the sampling and analyses are qualified by training and experience to do so; and

“(B) any other criteria determined appropriate by the Secretary.

“(7) REVIEW OF RECOGNITION.—To ensure compliance with the requirements of this section, the Secretary—

“(A) shall periodically, and in no case less than once every 5 years, reevaluate accreditation bodies recognized under paragraph (1) and may accompany auditors from an accreditation body to assess whether the accreditation body meets the criteria for recognition; and

“(B) shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section, specifying, as appropriate, any terms and conditions necessary for laboratories accredited by such body to continue to perform testing as described in this section.

“(b) TESTING PROCEDURES.—

“(1) IN GENERAL.—Not later than 30 months after the date of enactment of the FDA Food Safety Modernization Act, food testing shall be conducted by Federal laboratories or non-Federal laboratories that have been accredited for the appropriate sampling or analytical testing methodology or methodologies by a recognized accreditation body on the registry established by the Secretary under subsection (a)(1)(B) whenever such testing is conducted—

“(A) by or on behalf of an owner or consignee—

“(i) in response to a specific testing requirement under this Act or implementing regulations, when applied to address an identified or suspected food safety problem; and

“(ii) as required by the Secretary, as the Secretary deems appropriate, to address an identified or suspected food safety problem; or

“(B) on behalf of an owner or consignee—

“(i) in support of admission of an article of food under section 801(a); and

“(ii) under an Import Alert that requires successful consecutive tests.

“(2) RESULTS OF TESTING.—The results of any such testing shall be sent directly to the Food and Drug Administration, except the Secretary may by regulation exempt test results from such submission requirement if the Secretary determines that such results do not contribute to the protection of public health. Test results required to be submitted may be submitted to the Food and Drug Administration through electronic means.

“(3) EXCEPTION.—The Secretary may waive requirements under this subsection if—

“(A) a new methodology or methodologies have been developed and validated but a laboratory has not yet been accredited to perform such methodology or methodologies; and

“(B) the use of such methodology or methodologies are necessary to prevent, control, or mitigate a food emergency or foodborne illness outbreak.

“(c) REVIEW BY SECRETARY.—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by a recognized accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing results for the purpose of determining the need for a national recall or other compliance and enforcement activities.

“(d) NO LIMIT ON SECRETARIAL AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Secretary to review and act upon information from food testing, including determining the sufficiency of such information and testing.”

(b) FOOD EMERGENCY RESPONSE NETWORK.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State, local, and tribal food laboratories, including the adoption of novel surveillance and identification technologies and the sharing of data between Federal agencies and State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

#### SEC. 203. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.

(a) IN GENERAL.—The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to reduce the time required to detect and respond to foodborne illness outbreaks and facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify means by which laboratory network members could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) REPORTING REQUIREMENT.—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

#### SEC. 204. ENHANCING TRACKING AND TRACING OF FOOD AND RECORDKEEPING.

(a) PILOT PROJECTS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”), taking into account recommendations from the Secretary of Agriculture and representatives of State departments of health and agriculture, shall establish pilot projects in coordination with the food industry to explore and evaluate methods to rapidly and effectively identify recipients of food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) or misbranded under section 403(w) of such Act (21 U.S.C. 343(w)).

(2) CONTENT.—The Secretary shall conduct 1 or more pilot projects under paragraph (1) in coordination with the processed food sector and 1 or more such pilot projects in coordination with processors or distributors of fruits and vegetables that are raw agricultural commodities. The Secretary shall ensure that the pilot projects under paragraph (1) reflect the diversity of the food supply and include at least 3 different types of foods that have been the subject of significant outbreaks during the 5-year period preceding the date of enactment of this Act, and are selected in order to—

(A) develop and demonstrate methods for rapid and effective tracking and tracing of

foods in a manner that is practicable for facilities of varying sizes, including small businesses;

(B) develop and demonstrate appropriate technologies, including technologies existing on the date of enactment of this Act, that enhance the tracking and tracing of food; and

(C) inform the promulgation of regulations under subsection (d).

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot projects under this subsection together with recommendations for improving the tracking and tracing of food.

(b) ADDITIONAL DATA GATHERING.—

(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Agriculture and multiple representatives of State departments of health and agriculture, shall assess—

(A) the costs and benefits associated with the adoption and use of several product tracing technologies, including technologies used in the pilot projects under subsection (a);

(B) the feasibility of such technologies for different sectors of the food industry, including small businesses; and

(C) whether such technologies are compatible with the requirements of this subsection.

(2) REQUIREMENTS.—To the extent practicable, in carrying out paragraph (1), the Secretary shall—

(A) evaluate domestic and international product tracing practices in commercial use;

(B) consider international efforts, including an assessment of whether product tracing requirements developed under this section are compatible with global tracing systems, as appropriate; and

(C) consult with a diverse and broad range of experts and stakeholders, including representatives of the food industry, agricultural producers, and nongovernmental organizations that represent the interests of consumers.

(c) PRODUCT TRACING SYSTEM.—The Secretary, in consultation with the Secretary of Agriculture, shall, as appropriate, establish within the Food and Drug Administration a product tracing system to receive information that improves the capacity of the Secretary to effectively and rapidly track and trace food that is in the United States or offered for import into the United States. Prior to the establishment of such product tracing system, the Secretary shall examine the results of applicable pilot projects and shall ensure that the activities of such system are adequately supported by the results of such pilot projects.

(d) ADDITIONAL RECORDKEEPING REQUIREMENTS FOR HIGH RISK FOODS.—

(1) IN GENERAL.—In order to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of such Act, not later than 2 years after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish recordkeeping requirements, in addition to the requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations), for facilities that manufacture, process, pack, or hold foods that the Secretary designates under paragraph (2) as high-risk foods. The Secretary shall set an appropriate effective date of such additional requirements for foods designated as high

risk that takes into account the length of time necessary to comply with such requirements. Such requirements shall—

(A) relate only to information that is reasonably available and appropriate;

(B) be science-based;

(C) not prescribe specific technologies for the maintenance of records;

(D) ensure that the public health benefits of imposing additional recordkeeping requirements outweigh the cost of compliance with such requirements;

(E) be scale-appropriate and practicable for facilities of varying sizes and capabilities with respect to costs and recordkeeping burdens, and not require the creation and maintenance of duplicate records where the information is contained in other company records kept in the normal course of business;

(F) minimize the number of different recordkeeping requirements for facilities that handle more than 1 type of food;

(G) to the extent practicable, not require a facility to change business systems to comply with such requirements;

(H) allow any person subject to this subsection to maintain records required under this subsection at a central or reasonably accessible location provided that such records can be made available to the Secretary not later than 24 hours after the Secretary requests such records;

(I) include a process by which the Secretary may issue a waiver of the requirements under this subsection if the Secretary determines that such requirements would result in an economic hardship for an individual facility or a type of facility;

(J) be commensurate with the known safety risks of the designated food;

(K) take into account international trade obligations;

(L) not require—

(i) a full pedigree, or a record of the complete previous distribution history of the food from the point of origin of such food;

(ii) records of recipients of a food beyond the immediate subsequent recipient of such food; or

(iii) product tracking to the case level by persons subject to such requirements; and

(M) include a process by which the Secretary may remove a high-risk food designation developed under paragraph (2) for a food or type of food.

(2) DESIGNATION OF HIGH-RISK FOODS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and thereafter as the Secretary determines necessary, the Secretary shall designate high-risk foods for which the additional recordkeeping requirements described in paragraph (1) are appropriate and necessary to protect the public health. Each such designation shall be based on—

(i) the known safety risks of a particular food, including the history and severity of foodborne illness outbreaks attributed to such food, taking into consideration foodborne illness data collected by the Centers for Disease Control and Prevention;

(ii) the likelihood that a particular food has a high potential risk for microbiological or chemical contamination or would support the growth of pathogenic microorganisms due to the nature of the food or the processes used to produce such food;

(iii) the point in the manufacturing process of the food where contamination is most likely to occur;

(iv) the likelihood of contamination and steps taken during the manufacturing process to reduce the possibility of contamination;

(v) the likelihood that consuming a particular food will result in a foodborne illness due to contamination of the food; and

(vi) the likely or known severity, including health and economic impacts, of a foodborne illness attributed to a particular food.

(B) LIST OF HIGH-RISK FOODS.—At the time the Secretary promulgates the final rules under paragraph (1), the Secretary shall publish the list of the foods designated under subparagraph (A) as high-risk foods on the Internet website of the Food and Drug Administration. The Secretary may update the list to designate new high-risk foods and to remove foods that are no longer deemed to be high-risk foods, provided that each such update to the list is consistent with the requirements of this subsection and notice of such update is published in the Federal Register.

(3) PROTECTION OF SENSITIVE INFORMATION.—In promulgating regulations under this subsection, the Secretary shall take appropriate measures to ensure that there are effective procedures to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by the Secretary pursuant to this section, including periodic risk assessment and planning to prevent unauthorized release and controls to—

(A) prevent unauthorized reproduction of trade secret or confidential information;

(B) prevent unauthorized access to trade secret or confidential information; and

(C) maintain records with respect to access by any person to trade secret or confidential information maintained by the agency.

(4) PUBLIC INPUT.—During the comment period in the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(5) RETENTION OF RECORDS.—Except as otherwise provided in this subsection, the Secretary may require that a facility retain records under this subsection for not more than 2 years, taking into consideration the risk of spoilage, loss of value, or loss of palatability of the applicable food when determining the appropriate timeframes.

(6) LIMITATIONS.—

(A) FARM TO SCHOOL PROGRAMS.—In establishing requirements under this subsection, the Secretary shall, in consultation with the Secretary of Agriculture, consider the impact of requirements on farm to school or farm to institution programs of the Department of Agriculture and other farm to school and farm to institution programs outside such agency, and shall modify the requirements under this subsection, as appropriate, with respect to such programs so that the requirements do not place undue burdens on farm to school or farm to institution programs.

(B) IDENTITY-PRESERVED LABELS WITH RESPECT TO FARM SALES OF FOOD THAT IS PRODUCED AND PACKAGED ON A FARM.—The requirements under this subsection shall not apply to a food that is produced and packaged on a farm if—

(i) the packaging of the food maintains the integrity of the product and prevents subsequent contamination or alteration of the product; and

(ii) the labeling of the food includes the name, complete address (street address, town, State, country, and zip or other postal code), and business phone number of the farm, unless the Secretary waives the requirement to include a business phone number of the farm, as appropriate, in order to accommodate a religious belief of the individual in charge of such farm.

(C) FISHING VESSELS.—The requirements under this subsection with respect to a food that is produced through the use of a fishing

vessel (as defined in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(18))) shall be limited to the requirements under subparagraph (F) until such time as the food is sold by the owner, operator, or agent in charge of such fishing vessel.

(D) **COMMINGLED RAW AGRICULTURAL COMMODITIES.**—

(i) **LIMITATION ON EXTENT OF TRACING.**—Recordkeeping requirements under this subsection with regard to any commingled raw agricultural commodity shall be limited to the requirements under subparagraph (F).

(ii) **DEFINITIONS.**—For the purposes of this subparagraph—

(I) the term “commingled raw agricultural commodity” means any commodity that is combined or mixed after harvesting, but before processing;

(II) the term “commingled raw agricultural commodity” shall not include types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that standards promulgated under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by section 105) would minimize the risk of serious adverse health consequences or death; and

(III) the term “processing” means operations that alter the general state of the commodity, such as canning, cooking, freezing, dehydration, milling, grinding, pasteurization, or homogenization.

(E) **EXEMPTION OF OTHER FOODS.**—The Secretary may, by notice in the Federal Register, modify the requirements under this subsection with respect to, or exempt a food or a type of facility from, the requirements of this subsection (other than the requirements under subparagraph (F), if applicable) if the Secretary determines that product tracing requirements for such food (such as bulk or commingled ingredients that are intended to be processed to destroy pathogens) or type of facility is not necessary to protect the public health.

(F) **RECORDKEEPING REGARDING PREVIOUS SOURCES AND SUBSEQUENT RECIPIENTS.**—In the case of a person or food to which a limitation or exemption under subparagraph (C), (D), or (E) applies, if such person, or a person who manufactures, processes, packs, or holds such food, is required to register with the Secretary under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) with respect to the manufacturing, processing, packing, or holding of the applicable food, the Secretary shall require such person to maintain records that identify the immediate previous source of such food and the immediate subsequent recipient of such food.

(G) **GROCERY STORES.**—With respect to a sale of a food described in subparagraph (H) to a grocery store, the Secretary shall not require such grocery store to maintain records under this subsection other than records documenting the farm that was the source of such food. The Secretary shall not require that such records be kept for more than 180 days.

(H) **FARM SALES TO CONSUMERS.**—The Secretary shall not require a farm to maintain any distribution records under this subsection with respect to a sale of a food described in subparagraph (I) (including a sale of a food that is produced and packaged on such farm), if such sale is made by the farm directly to a consumer.

(I) **SALE OF A FOOD.**—A sale of a food described in this subparagraph is a sale of a food in which—

(i) the food is produced on a farm; and  
(ii) the sale is made by the owner, operator, or agent in charge of such farm directly to a consumer or grocery store.

(7) **NO IMPACT ON NON-HIGH-RISK FOODS.**—The recordkeeping requirements established under paragraph (1) shall have no effect on foods that are not designated by the Secretary under paragraph (2) as high-risk foods. Foods described in the preceding sentence shall be subject solely to the recordkeeping requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations).

(e) **EVALUATION AND RECOMMENDATIONS.**—

(1) **REPORT.**—Not later than 1 year after the effective date of the final rule promulgated under subsection (d)(1), the Comptroller General of the United States shall submit to Congress a report, taking into consideration the costs of compliance and other regulatory burdens on small businesses and Federal, State, and local food safety practices and requirements, that evaluates the public health benefits and risks, if any, of limiting—

(A) the product tracing requirements under subsection (d) to foods identified under paragraph (2) of such subsection, including whether such requirements provide adequate assurance of traceability in the event of intentional adulteration, including by acts of terrorism; and

(B) the participation of restaurants in the recordkeeping requirements.

(2) **DETERMINATION AND RECOMMENDATIONS.**—In conducting the evaluation and report under paragraph (1), if the Comptroller General of the United States determines that the limitations described in such paragraph do not adequately protect the public health, the Comptroller General shall submit to Congress recommendations, if appropriate, regarding recordkeeping requirements for restaurants and additional foods, in order to protect the public health.

(f) **FARMS.**—

(1) **REQUEST FOR INFORMATION.**—Notwithstanding subsection (d), during an active investigation of a foodborne illness outbreak, or if the Secretary determines it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak, the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, may request that the owner, operator, or agent of a farm identify potential immediate recipients, other than consumers, of an article of the food that is the subject of such investigation if the Secretary reasonably believes such article of food—

(A) is adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act;

(B) presents a threat of serious adverse health consequences or death to humans or animals; and

(C) was adulterated as described in subparagraph (A) on a particular farm (as defined in section 1.227 of chapter 21, Code of Federal Regulations (or any successor regulation)).

(2) **MANNER OF REQUEST.**—In making a request under paragraph (1), the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, shall issue a written notice to the owner, operator, or agent of the farm to which the article of food has been traced. The individual providing such notice shall present to such owner, operator, or agent appropriate credentials and shall deliver such notice at reasonable times and within reasonable limits and in a reasonable manner.

(3) **DELIVERY OF INFORMATION REQUESTED.**—The owner, operator, or agent of a farm shall deliver the information requested under paragraph (1) in a prompt and reasonable manner. Such information may consist of

records kept in the normal course of business, and may be in electronic or non-electronic format.

(4) **LIMITATION.**—A request made under paragraph (1) shall not include a request for information relating to the finances, pricing of commodities produced, personnel, research, sales (other than information relating to shipping), or other disclosures that may reveal trade secrets or confidential information from the farm to which the article of food has been traced, other than information necessary to identify potential immediate recipients of such food. Section 301(j) of the Federal Food, Drug, and Cosmetic Act and the Freedom of Information Act shall apply with respect to any confidential commercial information that is disclosed to the Food and Drug Administration in the course of responding to a request under paragraph (1).

(5) **RECORDS.**—Except with respect to identifying potential immediate recipients in response to a request under this subsection, nothing in this subsection shall require the establishment or maintenance by farms of new records.

(g) **NO LIMITATION ON COMMINGLING OF FOOD.**—Nothing in this section shall be construed to authorize the Secretary to impose any limitation on the commingling of food.

(h) **SMALL ENTITY COMPLIANCE GUIDE.**—Not later than 180 days after promulgation of a final rule under subsection (d), the Secretary shall issue a small entity compliance guide setting forth in plain language the requirements of the regulations under such subsection in order to assist small entities, including farms and small businesses, in complying with the recordkeeping requirements under such subsection.

(i) **FLEXIBILITY FOR SMALL BUSINESSES.**—Notwithstanding any other provision of law, the regulations promulgated under subsection (d) shall apply—

(1) to small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 1 year after the effective date of the final regulations promulgated under subsection (d); and

(2) to very small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 2 years after the effective date of the final regulations promulgated under subsection (d).

(j) **ENFORCEMENT.**—

(1) **PROHIBITED ACTS.**—Section 301(e) (21 U.S.C. 331(e)) is amended by inserting “; or the violation of any recordkeeping requirement under section 204 of the FDA Food Safety Modernization Act (except when such violation is committed by a farm)” before the period at the end.

(2) **IMPORTS.**—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting “or (4) the recordkeeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of such section) have not been complied with regarding such article,” in the third sentence before “then such article shall be refused admission”.

## SEC. 205. SURVEILLANCE.

(a) **DEFINITION OF FOODBORNE ILLNESS OUTBREAK.**—In this Act, the term “foodborne illness outbreak” means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a certain food.

(b) **FOODBORNE ILLNESS SURVEILLANCE SYSTEMS.**—

(1) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses by—

(A) coordinating Federal, State and local foodborne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of surveillance information on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, the Department of Homeland Security, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a foodborne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of identification practices, including fingerprinting strategies, for foodborne infectious agents, in order to identify new or rarely documented causes of foodborne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating foodborne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels, including by sharing foodborne illness surveillance data with the National Biosurveillance Integration Center; and

(J) other activities as determined appropriate by the Secretary.

(2) **WORKING GROUP.**—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food and food testing industries, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of foodborne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on foodborne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to foodborne illness aggregated, de-identified surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers at Federal, State, and local levels to improving foodborne illness surveillance and the utility of such surveillance for preventing foodborne illness;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group's recommendations, and achieve the

purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out the activities described in paragraph (1), there is authorized to be appropriated \$24,000,000 for each fiscal years 2011 through 2015.

(c) **IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.**—

(1) **IN GENERAL.**—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve foodborne illness outbreak response and containment.

(B) Accelerate foodborne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of foodborne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 108.

(2) **REVIEW.**—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) **FOOD SAFETY CAPACITY BUILDING GRANTS.**—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b-20(b)) is amended—

(1) by striking “2002” and inserting “2010”;

and

(2) by striking “2003 through 2006” and inserting “2011 through 2015”.

**SEC. 206. MANDATORY RECALL AUTHORITY.**

(a) **IN GENERAL.**—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 202, is amended by adding at the end the following:

**“SEC. 423. MANDATORY RECALL AUTHORITY.**

“(a) **VOLUNTARY PROCEDURES.**—If the Secretary determines, based on information gathered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

“(b) **PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.**—

“(1) **IN GENERAL.**—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order required, as the Secretary deems necessary, such person to—

“(A) immediately cease distribution of such article; and

“(B) as applicable, immediately notify all persons—

“(i) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

“(ii) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

“(2) **REQUIRED ADDITIONAL INFORMATION.**—

“(A) **IN GENERAL.**—If an article of food covered by a recall order issued under paragraph (1)(B) has been distributed to a warehouse-based third party logistics provider without providing such provider sufficient information to know or reasonably determine the precise identity of the article of food covered by a recall order that is in its possession, the notice provided by the responsible party subject to the order issued under paragraph (1)(B) shall include such information as is necessary for the warehouse-based third party logistics provider to identify the food.

“(B) **RULES OF CONSTRUCTION.**—Nothing in this paragraph shall be construed—

“(i) to exempt a warehouse-based third party logistics provider from the requirements of this Act, including the requirements in this section and section 414; or

“(ii) to exempt a warehouse-based third party logistics provider from being the subject of a mandatory recall order.

“(3) **DETERMINATION TO LIMIT AREAS AFFECTED.**—If the Secretary requires a responsible party to cease distribution under paragraph (1)(A) of an article of food identified in subsection (a), the Secretary may limit the size of the geographic area and the markets affected by such cessation if such limitation would not compromise the public health.

“(c) **HEARING ON ORDER.**—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible, but not later than 2 days after the issuance of the order, on the actions required by the order and on why the article that is the subject of the order should not be recalled.

“(d) **POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.**—

“(1) **AMENDMENT OF ORDER.**—If, after providing opportunity for an informal hearing under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

“(A) amend the order to require recall of such article or other appropriate action;

“(B) specify a timetable in which the recall shall occur;

“(C) require periodic reports to the Secretary describing the progress of the recall; and

“(D) provide notice to consumers to whom such article was, or may have been, distributed.

“(2) **VACATING OF ORDER.**—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

“(e) **RULE REGARDING ALCOHOLIC BEVERAGES.**—The Secretary shall not initiate a mandatory recall or take any other action under this section with respect to any alcohol beverage until the Secretary has provided the Alcohol and Tobacco Tax and

Trade Bureau with a reasonable opportunity to cease distribution and recall such article under the Alcohol and Tobacco Tax and Trade Bureau authority.

“(f) COOPERATION AND CONSULTATION.—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

“(g) PUBLIC NOTIFICATION.—In conducting a recall under this section, the Secretary shall—

“(1) ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification—

“(A) of the recall to consumers and retailers to whom such article was, or may have been, distributed; and

“(B) that includes, at a minimum—

“(i) the name of the article of food subject to the recall;

“(ii) a description of the risk associated with such article; and

“(iii) to the extent practicable, information for consumers about similar articles of food that are not affected by the recall;

“(2) consult the policies of the Department of Agriculture regarding providing to the public a list of retail consignees receiving products involved in a Class I recall and shall consider providing such a list to the public, as determined appropriate by the Secretary; and

“(3) if available, publish on the Internet Web site of the Food and Drug Administration an image of the article that is the subject of the press release described in (1).

“(h) NO DELEGATION.—The authority conferred by this section to order a recall or vacate a recall order shall not be delegated to any officer or employee other than the Commissioner.

“(i) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall, or to issue an order to cease distribution or to recall under any other provision of this Act or under the Public Health Service Act.

“(j) COORDINATED COMMUNICATION.—

“(1) IN GENERAL.—To assist in carrying out the requirements of this subsection, the Secretary shall establish an incident command operation or a similar operation within the Department of Health and Human Services that will operate not later than 24 hours after the initiation of a mandatory recall or the recall of an article of food for which the use of, or exposure to, such article will cause serious adverse health consequences or death to humans or animals.

“(2) REQUIREMENTS.—To reduce the potential for miscommunication during recalls or regarding investigations of a food borne illness outbreak associated with a food that is subject to a recall, each incident command operation or similar operation under paragraph (1) shall use regular staff and resources of the Department of Health and Human Services to—

“(A) ensure timely and coordinated communication within the Department, including enhanced communication and coordination between different agencies and organizations within the Department;

“(B) ensure timely and coordinated communication from the Department, including public statements, throughout the duration of the investigation and related foodborne illness outbreak;

“(C) identify a single point of contact within the Department for public inquiries regarding any actions by the Secretary related to a recall;

“(D) coordinate with Federal, State, local, and tribal authorities, as appropriate, that have responsibilities related to the recall of a food or a foodborne illness outbreak associated with a food that is subject to the recall,

including notification of the Secretary of Agriculture and the Secretary of Education in the event such recalled food is a commodity intended for use in a child nutrition program (as identified in section 25(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769f(b)); and

“(E) conclude operations at such time as the Secretary determines appropriate.

“(3) MULTIPLE RECALLS.—The Secretary may establish multiple or concurrent incident command operations or similar operations in the event of multiple recalls or foodborne illness outbreaks necessitating such action by the Department of Health and Human Services.”

(b) SEARCH ENGINE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall modify the Internet Web site of the Food and Drug Administration to include a search engine that—

(1) is consumer-friendly, as determined by the Secretary; and

(2) provides a means by which an individual may locate relevant information regarding each article of food subject to a recall under section 423 of the Federal Food, Drug, and Cosmetic Act and the status of such recall (such as whether a recall is ongoing or has been completed).

(c) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting “or any person who does not comply with a recall order under section 423” after “section 402(a)(2)(B)”.

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

“(xx) The refusal or failure to follow an order under section 423.”

(e) GAO REVIEW.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

(A) identifies State and local agencies with the authority to require the mandatory recall of food, and evaluates use of such authority with regard to frequency, effectiveness, and appropriateness, including consideration of any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant authority to have been an error;

(B) identifies Federal agencies, other than the Department of Health and Human Services, with mandatory recall authority and examines use of that authority with regard to frequency, effectiveness, and appropriateness, including any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant agency to have been an error;

(C) considers models for farmer restitution implemented in other nations in cases of erroneous recalls; and

(D) makes recommendations to the Secretary regarding use of the authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by this section) to protect the public health while seeking to minimize unnecessary economic costs.

(2) EFFECT OF REVIEW.—If the Comptroller General of the United States finds, after the review conducted under paragraph (1), that the mechanisms described in such paragraph do not exist or are inadequate, then, not later than 90 days after the conclusion of such review, the Secretary of Agriculture shall conduct a study of the feasibility of implementing a farmer indemnification program to provide restitution to agricultural producers for losses sustained as a result of a mandatory recall of an agricultural commodity by a Federal or State regulatory

agency that is subsequently determined to be in error. The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study, including any recommendations.

(f) ANNUAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the use of recall authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)) and any public health advisories issued by the Secretary that advise against the consumption of an article of food on the ground that the article of food is adulterated and poses an imminent danger to health.

(2) CONTENT.—The report under paragraph (1) shall include, with respect to the report year—

(A) the identity of each article of food that was the subject of a public health advisory described in paragraph (1), an opportunity to cease distribution and recall under subsection (a) of section 423 of the Federal Food, Drug, and Cosmetic Act, or a mandatory recall order under subsection (b) of such section;

(B) the number of responsible parties, as defined in section 417 of the Federal Food, Drug, and Cosmetic Act, formally given the opportunity to cease distribution of an article of food and recall such article, as described in section 423(a) of such Act;

(C) the number of responsible parties described in subparagraph (B) who did not cease distribution of or recall an article of food after given the opportunity to cease distribution or recall under section 423(a) of the Federal Food, Drug, and Cosmetic Act;

(D) the number of recall orders issued under section 423(b) of the Federal Food, Drug, and Cosmetic Act; and

(E) a description of any instances in which there was no testing that confirmed adulteration of an article of food that was the subject of a recall under section 423(b) of the Federal Food, Drug, and Cosmetic Act or a public health advisory described in paragraph (1).

**SEC. 207. ADMINISTRATIVE DETENTION OF FOOD.**

(a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking “credible evidence or information indicating” and inserting “reason to believe”; and

(2) striking “presents a threat of serious adverse health consequences or death to humans or animals” and inserting “is adulterated or misbranded”.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 208. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.**

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this section as the “Administrator”), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance

to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

(b) DEVELOPMENT OF STANDARDS.—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) DEVELOPMENT OF MODEL PLANS.—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) EXERCISES.—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

(e) MODIFICATIONS.—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) PRIORITIZATION.—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

**SEC. 209. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.**

(a) IMPROVING TRAINING.—Chapter X (21 U.S.C.391 et seq.) is amended by adding at the end the following:

**“SEC. 1011. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.**

“(a) TRAINING.—The Secretary shall set standards and administer training and education programs for the employees of State, local, territorial, and tribal food safety officials relating to the regulatory responsibilities and policies established by this Act, including programs for—

“(1) scientific training;

“(2) training to improve the skill of officers and employees authorized to conduct inspections under sections 702 and 704;

“(3) training to achieve advanced product or process specialization in such inspections;

“(4) training that addresses best practices;

“(5) training in administrative process and procedure and integrity issues;

“(6) training in appropriate sampling and laboratory analysis methodology; and

“(7) training in building enforcement actions following inspections, examinations, testing, and investigations.

**“(b) PARTNERSHIPS WITH STATE AND LOCAL OFFICIALS.—**

“(1) IN GENERAL.—The Secretary, pursuant to a contract or memorandum of understanding between the Secretary and the head of a State, local, territorial, or tribal department or agency, is authorized and encouraged to conduct examinations, testing, and investigations for the purposes of determining compliance with the food safety provisions of this Act through the officers and employees of such State, local, territorial, or tribal department or agency.

“(2) CONTENT.—A contract or memorandum described under paragraph (1) shall include provisions to ensure adequate training of such officers and employees to conduct such examinations, testing, and investigations. The contract or memorandum shall contain provisions regarding reimbursement. Such provisions may, at the sole discretion of the head of the other department or agency, require reimbursement, in whole or in part, from the Secretary for the examinations, testing, or investigations performed pursuant to this section by the officers or employees of the State, territorial, or tribal department or agency.

“(3) EFFECT.—Nothing in this subsection shall be construed to limit the authority of the Secretary under section 702.

“(c) EXTENSION SERVICE.—The Secretary shall ensure coordination with the extension activities of the National Institute of Food and Agriculture of the Department of Agriculture in advising producers and small processors transitioning into new practices required as a result of the enactment of the FDA Food Safety Modernization Act and assisting regulated industry with compliance with such Act.

**“(d) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—**

“(1) IN GENERAL.—In order to improve food safety and reduce the incidence of foodborne illness, the Secretary shall, not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, enter into one or more memoranda of understanding, or enter into other cooperative agreements, with the Secretary of Agriculture to establish a competitive grant program within the National Institute for Food and Agriculture to provide food safety training, education, extension, outreach, and technical assistance to—

“(A) owners and operators of farms;

“(B) small food processors; and

“(C) small fruit and vegetable merchant wholesalers.

“(2) IMPLEMENTATION.—The competitive grant program established under paragraph (1) shall be carried out in accordance with section 405 of the Agricultural Research, Extension, and Education Reform Act of 1998.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2011 through 2015.”

(b) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.—Title IV of the Agricultural Research, Extension, and Education Reform Act of 1998 is amended by inserting after section 404 (7 U.S.C. 7624) the following:

**“SEC. 405. NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.**

“(a) IN GENERAL.—The Secretary shall award grants under this section to carry out the competitive grant program established under section 1011(d) of the Federal Food,

Drug, and Cosmetic Act, pursuant to any memoranda of understanding entered into under such section.

“(b) INTEGRATED APPROACH.—The grant program described under subsection (a) shall be carried out under this section in a manner that facilitates the integration of food safety standards and guidance with the variety of agricultural production systems, encompassing conventional, sustainable, organic, and conservation and environmental practices.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to projects that target small and medium-sized farms, beginning farmers, socially disadvantaged farmers, small processors, or small fresh fruit and vegetable merchant wholesalers.

**“(d) PROGRAM COORDINATION.—**

“(1) IN GENERAL.—The Secretary shall coordinate implementation of the grant program under this section with the National Integrated Food Safety Initiative.

“(2) INTERACTION.—The Secretary shall—

“(A) in carrying out the grant program under this section, take into consideration applied research, education, and extension results obtained from the National Integrated Food Safety Initiative; and

“(B) in determining the applied research agenda for the National Integrated Food Safety Initiative, take into consideration the needs articulated by participants in projects funded by the program under this section.

**“(e) GRANTS.—**

“(1) IN GENERAL.—In carrying out this section, the Secretary shall make competitive grants to support training, education, extension, outreach, and technical assistance projects that will help improve public health by increasing the understanding and adoption of established food safety standards, guidance, and protocols.

“(2) ENCOURAGED FEATURES.—The Secretary shall encourage projects carried out using grant funds under this section to include co-management of food safety, conservation systems, and ecological health.

**“(3) MAXIMUM TERM AND SIZE OF GRANT.—**

“(A) IN GENERAL.—A grant under this section shall have a term that is not more than 3 years.

“(B) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to an entity under this section after such entity has received 3 years of grant funding under this section.

**“(f) GRANT ELIGIBILITY.—**

“(1) IN GENERAL.—To be eligible for a grant under this section, an entity shall be—

“(A) a State cooperative extension service;

“(B) a Federal, State, local, or tribal agency, a nonprofit community-based or non-governmental organization, or an organization representing owners and operators of farms, small food processors, or small fruit and vegetable merchant wholesalers that has a commitment to public health and expertise in administering programs that contribute to food safety;

“(C) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a foundation maintained by an institution of higher education;

“(D) a collaboration of 2 or more eligible entities described in this subsection; or

“(E) such other appropriate entity, as determined by the Secretary.

“(2) MULTISTATE PARTNERSHIPS.—Grants under this section may be made for projects involving more than 1 State.

“(g) REGIONAL BALANCE.—In making grants under this section, the Secretary shall, to the maximum extent practicable, ensure—

“(1) geographic diversity; and

“(2) diversity of types of agricultural production.

“(h) TECHNICAL ASSISTANCE.—The Secretary may use funds made available under this section to provide technical assistance to grant recipients to further the purposes of this section.

“(i) BEST PRACTICES AND MODEL PROGRAMS.—Based on evaluations of, and responses arising from, projects funded under this section, the Secretary may issue a set of recommended best practices and models for food safety training programs for agricultural producers, small food processors, and small fresh fruit and vegetable merchant wholesalers.

“(j) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.”

#### SEC. 210. ENHANCING FOOD SAFETY.

(a) GRANTS TO ENHANCE FOOD SAFETY.—Section 1009 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399) is amended to read as follows:

##### “SEC. 1009. GRANTS TO ENHANCE FOOD SAFETY.

“(a) IN GENERAL.—The Secretary is authorized to make grants to eligible entities to—

“(1) undertake examinations, inspections, and investigations, and related food safety activities under section 702;

“(2) train to the standards of the Secretary for the examination, inspection, and investigation of food manufacturing, processing, packing, holding, distribution, and importation, including as such examination, inspection, and investigation relate to retail food establishments;

“(3) build the food safety capacity of the laboratories of such eligible entity, including the detection of zoonotic diseases;

“(4) build the infrastructure and capacity of the food safety programs of such eligible entity to meet the standards as outlined in the grant application; and

“(5) take appropriate action to protect the public health in response to—

“(A) a notification under section 1008, including planning and otherwise preparing to take such action; or

“(B) a recall of food under this Act.

“(b) ELIGIBLE ENTITIES; APPLICATION.—

“(1) IN GENERAL.—In this section, the term ‘eligible entity’ means an entity—

“(A) that is—

“(i) a State;

“(ii) a locality;

“(iii) a territory;

“(iv) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act); or

“(v) a nonprofit food safety training entity that collaborates with 1 or more institutions of higher education; and

“(B) that submits an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

“(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

“(A) an assurance that the eligible entity has developed plans to engage in the types of activities described in subsection (a);

“(B) a description of the types of activities to be funded by the grant;

“(C) an itemization of how grant funds received under this section will be expended;

“(D) a description of how grant activities will be monitored; and

“(E) an agreement by the eligible entity to report information required by the Secretary to conduct evaluations under this section.

“(c) LIMITATIONS.—The funds provided under subsection (a) shall be available to an eligible entity that receives a grant under this section only to the extent such entity

funds the food safety programs of such entity independently of any grant under this section in each year of the grant at a level equal to the level of such funding in the previous year, increased by the Consumer Price Index. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

“(d) ADDITIONAL AUTHORITY.—The Secretary may—

“(1) award a grant under this section in each subsequent fiscal year without reapplication for a period of not more than 3 years, provided the requirements of subsection (c) are met for the previous fiscal year; and

“(2) award a grant under this section in a fiscal year for which the requirement of subsection (c) has not been met only if such requirement was not met because such funding was diverted for response to 1 or more natural disasters or in other extenuating circumstances that the Secretary may determine appropriate.

“(e) DURATION OF AWARDS.—The Secretary may award grants to an individual grant recipient under this section for periods of not more than 3 years. In the event the Secretary conducts a program evaluation, funding in the second year or third year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

“(f) PROGRESS AND EVALUATION.—

“(1) IN GENERAL.—The Secretary shall measure the status and success of each grant program authorized under the FDA Food Safety Modernization Act (and any amendment made by such Act), including the grant program under this section. A recipient of a grant described in the preceding sentence shall, at the end of each grant year, provide the Secretary with information on how grant funds were spent and the status of the efforts by such recipient to enhance food safety. To the extent practicable, the Secretary shall take the performance of such a grant recipient into account when determining whether to continue funding for such recipient.

“(2) NO DUPLICATION.—In carrying out paragraph (1), the Secretary shall not duplicate the efforts of the Secretary under other provisions of this Act or the FDA Food Safety Modernization Act that require measurement and review of the activities of grant recipients under either such Act.

“(g) SUPPLEMENT NOT SUPPLANT.—Grant funds received under this section shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.”

(b) CENTERS OF EXCELLENCE.—Part P of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

##### “SEC. 399V-5. FOOD SAFETY INTEGRATED CENTERS OF EXCELLENCE.

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the working group described in subsection (b)(2), shall designate 5 Integrated Food Safety Centers of Excellence (referred to in this section as the ‘Centers of Excellence’) to serve as resources for Federal, State, and local public health professionals to respond to foodborne illness outbreaks. The Centers of Excellence shall

be headquartered at selected State health departments.

“(b) SELECTION OF CENTERS OF EXCELLENCE.—

“(1) ELIGIBLE ENTITIES.—To be eligible to be designated as a Center of Excellence under subsection (a), an entity shall—

“(A) be a State health department;

“(B) partner with 1 or more institutions of higher education that have demonstrated knowledge, expertise, and meaningful experience with regional or national food production, processing, and distribution, as well as leadership in the laboratory, epidemiological, and environmental detection and investigation of foodborne illness; and

“(C) provide to the Secretary such information, at such time, and in such manner, as the Secretary may require.

“(2) WORKING GROUP.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food industry, including food retailers and food manufacturers, consumer organizations, and academia to make recommendations to the Secretary regarding designations of the Centers of Excellence.

“(3) ADDITIONAL CENTERS OF EXCELLENCE.—The Secretary may designate eligible entities to be regional Food Safety Centers of Excellence, in addition to the 5 Centers designated under subsection (a).

“(c) ACTIVITIES.—Under the leadership of the Director of the Centers for Disease Control and Prevention, each Center of Excellence shall be based out of a selected State health department, which shall provide assistance to other regional, State, and local departments of health through activities that include—

“(1) providing resources, including timely information concerning symptoms and tests, for frontline health professionals interviewing individuals as part of routine surveillance and outbreak investigations;

“(2) providing analysis of the timeliness and effectiveness of foodborne disease surveillance and outbreak response activities;

“(3) providing training for epidemiological and environmental investigation of foodborne illness, including suggestions for streamlining and standardizing the investigation process;

“(4) establishing fellowships, stipends, and scholarships to train future epidemiological and food-safety leaders and to address critical workforce shortages;

“(5) training and coordinating State and local personnel;

“(6) strengthening capacity to participate in existing or new foodborne illness surveillance and environmental assessment information systems; and

“(7) conducting research and outreach activities focused on increasing prevention, communication, and education regarding food safety.

“(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that—

“(1) describes the effectiveness of the Centers of Excellence; and

“(2) provides legislative recommendations or describes additional resources required by the Centers of Excellence.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

“(f) NO DUPLICATION OF EFFORT.—In carrying out activities of the Centers of Excellence or other programs under this section, the Secretary shall not duplicate other Federal foodborne illness response efforts.”

**SEC. 211. IMPROVING THE REPORTABLE FOOD REGISTRY.**

(a) IN GENERAL.—Section 417 (21 U.S.C. 350f) is amended—

(1) by redesignating subsections (f) through (k) as subsections (i) through (n), respectively; and

(2) by inserting after subsection (e) the following:

“(f) **CRITICAL INFORMATION.**—Except with respect to fruits and vegetables that are raw agricultural commodities, not more than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary may require a responsible party to submit to the Secretary consumer-oriented information regarding a reportable food, which shall include—

“(1) a description of the article of food as provided in subsection (e)(3);

“(2) as provided in subsection (e)(7), affected product identification codes, such as UPC, SKU, or lot or batch numbers sufficient for the consumer to identify the article of food;

“(3) contact information for the responsible party as provided in subsection (e)(8); and

“(4) any other information the Secretary determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food.

“(g) **GROCERY STORE NOTIFICATION.**—

“(1) **ACTION BY SECRETARY.**—The Secretary shall—

“(A) prepare the critical information described under subsection (f) for a reportable food as a standardized one-page summary;

“(B) publish such one-page summary on the Internet website of the Food and Drug Administration in a format that can be easily printed by a grocery store for purposes of consumer notification.

“(2) **ACTION BY GROCERY STORE.**—A notification described under paragraph (1)(B) shall include the date and time such summary was posted on the Internet website of the Food and Drug Administration.

“(h) **CONSUMER NOTIFICATION.**—

“(1) IN GENERAL.—If a grocery store sold a reportable food that is the subject of the posting and such establishment is part of chain of establishments with 15 or more physical locations, then such establishment shall, not later than 24 hours after a one page summary described in subsection (g) is published, prominently display such summary or the information from such summary via at least one of the methods identified under paragraph (2) and maintain the display for 14 days.

“(2) **LIST OF CONSPICUOUS LOCATIONS.**—Not more than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop and publish a list of acceptable conspicuous locations and manners, from which grocery stores shall select at least one, for providing the notification required in paragraph (1). Such list shall include—

“(A) posting the notification at or near the register;

“(B) providing the location of the reportable food;

“(C) providing targeted recall information given to customers upon purchase of a food; and

“(D) other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of the enactment of the FDA Food Safety Modernization Act to provide notice of such recalls to consumers as considered appropriate by the Secretary.”

(b) **PROHIBITED ACT.**—Section 301 (21 U.S.C. 331), as amended by section 206, is amended by adding at the end the following:

“(yy) The knowing and willful failure to comply with the notification requirement under section 417(h).”

(c) **CONFORMING AMENDMENT.**—Section 301(e) (21 U.S.C. 331(e)) is amended by striking “417(g)” and inserting “417(j)”.

**TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD****SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

**“SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.**

“(a) IN GENERAL.—

“(1) **VERIFICATION REQUIREMENT.**—Except as provided under subsections (e) and (f), each importer shall perform risk-based foreign supplier verification activities for the purpose of verifying that the food imported by the importer or agent of an importer is—

“(A) produced in compliance with the requirements of section 418 or section 419, as appropriate; and

“(B) is not adulterated under section 402 or misbranded under section 403(w).

“(2) **IMPORTER DEFINED.**—For purposes of this section, the term ‘importer’ means, with respect to an article of food—

“(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

“(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

“(b) **GUIDANCE.**—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist importers in developing foreign supplier verification programs.

“(c) **REGULATIONS.**—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a).

“(2) **REQUIREMENTS.**—The regulations promulgated under paragraph (1)—

“(A) shall require that the foreign supplier verification program of each importer be adequate to provide assurances that each foreign supplier to the importer produces the imported food in compliance with—

“(i) processes and procedures, including reasonably appropriate risk-based preventive controls, that provide the same level of public health protection as those required under section 418 or section 419 (taking into consideration variances granted under section 419), as appropriate; and

“(ii) section 402 and section 403(w).

“(B) shall include such other requirements as the Secretary deems necessary and appropriate to verify that food imported into the United States is as safe as food produced and sold within the United States.

“(3) **CONSIDERATIONS.**—In promulgating regulations under this subsection, the Secretary shall, as appropriate, take into account differences among importers and types of imported foods, including based on the level of risk posed by the imported food.

“(4) **ACTIVITIES.**—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

“(d) **RECORD MAINTENANCE AND ACCESS.**—Records of an importer related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

“(e) **EXEMPTION OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.**—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

“(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

“(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards). The exemption under paragraph (3) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

“(f) **ADDITIONAL EXEMPTIONS.**—The Secretary, by notice published in the Federal Register, shall establish an exemption from the requirements of this section for articles of food imported in small quantities for research and evaluation purposes or for personal consumption, provided that such foods are not intended for retail sale and are not sold or distributed to the public.

“(g) **PUBLICATION OF LIST OF PARTICIPANTS.**—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.”

(b) **PROHIBITED ACT.**—Section 301 (21 U.S.C. 331), as amended by section 211, is amended by adding at the end the following:

“(zz) The importation or offering for importation of a food if the importer (as defined in section 805) does not have in place a foreign supplier verification program in compliance with such section 805.”

(c) **IMPORTS.**—Section 801(a) (21 U.S.C. 381(a)) is amended by adding “or the importer (as defined in section 805) is in violation of such section 805” after “or in violation of section 505”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

**SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

**“SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.**

“(a) IN GENERAL.—Beginning not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

“(1) establish a program, in consultation with the Secretary of Homeland Security—

“(A) to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program; and

“(B) consistent with section 808, establish a process for the issuance of a facility certification to accompany food offered for importation by importers who have voluntarily agreed to participate in such program; and

“(2) issue a guidance document related to participation in, revocation of such participation in, reinstatement in, and compliance with, such program.

“(b) VOLUNTARY PARTICIPATION.—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program established by the Secretary under subsection (a).

“(c) NOTICE OF INTENT TO PARTICIPATE.—An importer that intends to participate in the program under this section in a fiscal year shall submit a notice and application to the Secretary of such intent at the time and in a manner established by the Secretary.

“(d) ELIGIBILITY.—Eligibility shall be limited to an importer offering food for importation from a facility that has a certification described in subsection (a). In reviewing the applications and making determinations on such applications, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

“(1) The known safety risks of the food to be imported.

“(2) The compliance history of foreign suppliers used by the importer, as appropriate.

“(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards for a designated food.

“(4) The compliance of the importer with the requirements of section 805.

“(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

“(6) The potential risk for intentional adulteration of the food.

“(7) Any other factor that the Secretary determines appropriate.

“(e) REVIEW AND REVOCATION.—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

“(f) FALSE STATEMENTS.—Any statement or representation made by an importer to the Secretary shall be subject to section 1001 of title 18, United States Code.

“(g) DEFINITION.—For purposes of this section, the term ‘importer’ means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.”

**SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.**

(a) IN GENERAL.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: “With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets applicable requirements of this Act, then such article shall be refused admission.”

(b) ADDITION OF CERTIFICATION REQUIREMENT.—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

“(q) CERTIFICATIONS CONCERNING IMPORTED FOODS.—

“(1) IN GENERAL.—The Secretary may require, as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity described in paragraph (3) provide a certification, or such other assurances as the Secretary determines appropriate, that the article of food complies with applicable requirements of this Act. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of

certified facilities that manufacture, process, pack, or hold such food, or in such other form as the Secretary may specify.

“(2) FACTORS TO BE CONSIDERED IN REQUIRING CERTIFICATION.—The Secretary shall base the determination that an article of food is required to have a certification described in paragraph (1) on the risk of the food, including—

“(A) known safety risks associated with the food;

“(B) known food safety risks associated with the country, territory, or region of origin of the food;

“(C) a finding by the Secretary, supported by scientific, risk-based evidence, that—

“(i) the food safety programs, systems, and standards in the country, territory, or region of origin of the food are inadequate to ensure that the article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act; and

“(ii) the certification would assist the Secretary in determining whether to refuse or admit the article of food under subsection (a); and

“(D) information submitted to the Secretary in accordance with the process established in paragraph (7).

“(3) CERTIFYING ENTITIES.—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

“(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by the Secretary; or

“(B) such other persons or entities accredited pursuant to section 808 to provide such certification or assurance.

“(4) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary may—

“(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

“(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is not valid or reliable.

“(5) ELECTRONIC SUBMISSION.—The Secretary shall provide for the electronic submission of certifications under this subsection.

“(6) FALSE STATEMENTS.—Any statement or representation made by an entity described in paragraph (2) to the Secretary shall be subject to section 1001 of title 18, United States Code.

“(7) ASSESSMENT OF FOOD SAFETY PROGRAMS, SYSTEMS, AND STANDARDS.—If the Secretary determines that the food safety programs, systems, and standards in a foreign region, country, or territory are inadequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act, the Secretary shall, to the extent practicable, identify such inadequacies and establish a process by which the foreign region, country, or territory may inform the Secretary of improvements made to such food safety program, system, or standard and demonstrate that those controls are adequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act.”

(c) CONFORMING TECHNICAL AMENDMENT.—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking “with respect to an article included within the provision of the fourth sentence of subsection (a)”

and inserting “with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761.”

(d) NO LIMIT ON AUTHORITY.—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

**SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.**

(a) IN GENERAL.—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting “any country to which the article has been refused entry;” after “the country from which the article is shipped;”

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart I of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

**SEC. 305. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD SAFETY.**

(a) IN GENERAL.—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory food safety capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) CONSULTATION.—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, the Secretary of Homeland Security, the United States Trade Representative, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) PLAN.—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for secure electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations on whether and how to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and testing and detection techniques.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the regulation of dietary supplements under the Dietary Supplement Health and Education Act of 1994 (Public Law 103-417).

**SEC. 306. INSPECTION OF FOREIGN FOOD FACILITIES.**

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by inserting at the end the following:

**“SEC. 807. INSPECTION OF FOREIGN FOOD FACILITIES.**

“(a) INSPECTION.—The Secretary—  
“(1) may enter into arrangements and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

“(2) shall direct resources to inspections of foreign facilities, suppliers, and food types, especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

“(b) EFFECT OF INABILITY TO INSPECT.—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign factory, warehouse, or other establishment of which the owner, operator, or agent in charge, or the government of the foreign country, refuses to permit entry of United States inspectors or other individuals duly designated by the Secretary, upon request, to inspect such factory, warehouse, or other establishment. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge does not permit an inspection of a factory, warehouse, or other establishment during the 24-hour period after such request is submitted, or after such other time period, as agreed upon by the Secretary and the foreign factory, warehouse, or other establishment.”

(b) INSPECTION BY THE SECRETARY OF COMMERCE.—

(1) IN GENERAL.—The Secretary of Commerce, in coordination with the Secretary of Health and Human Services, may send 1 or more inspectors to a country or facility of an exporter from which seafood imported into the United States originates. The inspectors shall assess practices and processes used in connection with the farming, cultivation, harvesting, preparation for market, or transportation of such seafood and may provide technical assistance related to such activities.

(2) INSPECTION REPORT.—

(A) IN GENERAL.—The Secretary of Health and Human Services, in coordination with the Secretary of Commerce, shall—

(i) prepare an inspection report for each inspection conducted under paragraph (1);

(ii) provide the report to the country or exporter that is the subject of the report; and

(iii) provide a 30-day period during which the country or exporter may provide a rebuttal or other comments on the findings of the report to the Secretary of Health and Human Services.

(B) DISTRIBUTION AND USE OF REPORT.—The Secretary of Health and Human Services shall consider the inspection reports described in subparagraph (A) in distributing inspection resources under section 421 of the Federal Food, Drug, and Cosmetic Act, as added by section 201.

#### SEC. 307. ACCREDITATION OF THIRD-PARTY AUDITORS.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 306, is amended by adding at the end the following:

#### “SEC. 808. ACCREDITATION OF THIRD-PARTY AUDITORS.

“(a) DEFINITIONS.—In this section:

“(1) AUDIT AGENT.—The term ‘audit agent’ means an individual who is an employee or agent of an accredited third-party auditor and, although not individually accredited, is qualified to conduct food safety audits on behalf of an accredited third-party auditor.

“(2) ACCREDITATION BODY.—The term ‘accreditation body’ means an authority that performs accreditation of third-party auditors.

“(3) THIRD-PARTY AUDITOR.—The term ‘third-party auditor’ means a foreign government, agency of a foreign government, foreign cooperative, or any other third party, as the Secretary determines appropriate in accordance with the model standards described

in subsection (b)(2), that is eligible to be considered for accreditation to conduct food safety audits to certify that eligible entities meet the applicable requirements of this section. A third-party auditor may be a single individual. A third-party auditor may employ or use audit agents to help conduct consultative and regulatory audits.

“(4) ACCREDITED THIRD-PARTY AUDITOR.—The term ‘accredited third-party auditor’ means a third-party auditor accredited by an accreditation body to conduct audits of eligible entities to certify that such eligible entities meet the applicable requirements of this section. An accredited third-party auditor may be an individual who conducts food safety audits to certify that eligible entities meet the applicable requirements of this section.

“(5) CONSULTATIVE AUDIT.—The term ‘consultative audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act and with applicable industry standards and practices; and

“(B) the results of which are for internal purposes only.

“(6) ELIGIBLE ENTITY.—The term ‘eligible entity’ means a foreign entity, including a foreign facility registered under section 415, in the food import supply chain that chooses to be audited by an accredited third-party auditor or the audit agent of such accredited third-party auditor.

“(7) REGULATORY AUDIT.—The term ‘regulatory audit’ means an audit of an eligible entity—

“(A) to determine whether such entity is in compliance with the provisions of this Act; and

“(B) the results of which determine—

“(i) whether an article of food manufactured, processed, packed, or held by such entity is eligible to receive a food certification under section 801(q); or

“(ii) whether a facility is eligible to receive a facility certification under section 806(a) for purposes of participating in the program under section 806.

“(b) ACCREDITATION SYSTEM.—

“(1) ACCREDITATION BODIES.—

“(A) RECOGNITION OF ACCREDITATION BODIES.—

“(i) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors to certify that eligible entities meet the applicable requirements of this section.

“(ii) DIRECT ACCREDITATION.—If, by the date that is 2 years after the date of establishment of the system described in clause (i), the Secretary has not identified and recognized an accreditation body to meet the requirements of this section, the Secretary may directly accredit third-party auditors.

“(B) NOTIFICATION.—Each accreditation body recognized by the Secretary shall submit to the Secretary a list of all accredited third-party auditors accredited by such body and the audit agents of such auditors.

“(C) REVOCATION OF RECOGNITION AS AN ACCREDITATION BODY.—The Secretary shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

“(D) REINSTATEMENT.—The Secretary shall establish procedures to reinstate recognition of an accreditation body if the Secretary determines, based on evidence presented by such accreditation body, that revocation was inappropriate or that the body meets the requirements for recognition under this section.

“(2) MODEL ACCREDITATION STANDARDS.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop model standards, including requirements for regulatory audit reports, and each recognized accreditation body shall ensure that third-party auditors and audit agents of such auditors meet such standards in order to qualify such third-party auditors as accredited third-party auditors under this section. In developing the model standards, the Secretary shall look to standards in place on the date of the enactment of this section for guidance, to avoid unnecessary duplication of efforts and costs.

“(c) THIRD-PARTY AUDITORS.—

“(1) REQUIREMENTS FOR ACCREDITATION AS A THIRD-PARTY AUDITOR.—

“(A) FOREIGN GOVERNMENTS.—Prior to accrediting a foreign government or an agency of a foreign government as an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of food safety programs, systems, and standards of the government or agency of the government as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that the foreign government or agency of the foreign government is capable of adequately ensuring that eligible entities or foods certified by such government or agency meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import into the United States.

“(B) FOREIGN COOPERATIVES AND OTHER THIRD PARTIES.—Prior to accrediting a foreign cooperative that aggregates the products of growers or processors, or any other third party to be an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of the training and qualifications of audit agents used by that cooperative or party and conduct such reviews of internal systems and such other investigation of the cooperative or party as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity or food meets the requirements of this Act.

“(2) REQUIREMENT TO ISSUE CERTIFICATION OF ELIGIBLE ENTITIES OR FOODS.—

“(A) IN GENERAL.—An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) may not accredit a third-party auditor unless such third-party auditor agrees to issue a written and, as appropriate, electronic food certification, described in section 801(q), or facility certification under section 806(a), as appropriate, to accompany each food shipment for import into the United States from an eligible entity, subject to requirements set forth by the Secretary. Such written or electronic certification may be included with other documentation regarding such food shipment. The Secretary shall consider certifications under section 801(q) and participation in the voluntary qualified importer program described in section 806 when targeting inspection resources under section 421.

“(B) PURPOSE OF CERTIFICATION.—The Secretary shall use certification provided by accredited third-party auditors to—

“(i) determine, in conjunction with any other assurances the Secretary may require under section 801(q), whether a food satisfies the requirements of such section; and

“(ii) determine whether a facility is eligible to be a facility from which food may be offered for import under the voluntary qualified importer program under section 806.

“(C) REQUIREMENTS FOR ISSUING CERTIFICATION.—

“(i) IN GENERAL.—An accredited third-party auditor shall issue a food certification under section 801(q) or a facility certification described under subparagraph (B) only after conducting a regulatory audit and such other activities that may be necessary to establish compliance with the requirements of such sections.

“(ii) PROVISION OF CERTIFICATION.—Only an accredited third-party auditor or the Secretary may provide a facility certification under section 806(a). Only those parties described in 801(q)(3) or the Secretary may provide a food certification under 301(g).

“(3) AUDIT REPORT SUBMISSION REQUIREMENTS.—

“(A) REQUIREMENTS IN GENERAL.—As a condition of accreditation, not later than 45 days after conducting an audit, an accredited third-party auditor or audit agent of such auditor shall prepare, and, in the case of a regulatory audit, submit, the audit report for each audit conducted, in a form and manner designated by the Secretary, which shall include—

“(i) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

“(ii) the dates of the audit;

“(iii) the scope of the audit; and

“(iv) any other information required by the Secretary that relates to or may influence an assessment of compliance with this Act.

“(B) RECORDS.—Following any accreditation of a third-party auditor, the Secretary may, at any time, require the accredited third-party auditor to submit to the Secretary an onsite audit report and such other reports or documents required as part of the audit process, for any eligible entity certified by the third-party auditor or audit agent of such auditor. Such report may include documentation that the eligible entity is in compliance with any applicable registration requirements.

“(C) LIMITATION.—The requirement under subparagraph (B) shall not include any report or other documents resulting from a consultative audit by the accredited third-party auditor, except that the Secretary may access the results of a consultative audit in accordance with section 414.

“(4) REQUIREMENTS OF ACCREDITED THIRD-PARTY AUDITORS AND AUDIT AGENTS OF SUCH AUDITORS.—

“(A) RISKS TO PUBLIC HEALTH.—If, at any time during an audit, an accredited third-party auditor or audit agent of such auditor discovers a condition that could cause or contribute to a serious risk to the public health, such auditor shall immediately notify the Secretary of—

“(i) the identification of the eligible entity subject to the audit; and

“(ii) such condition.

“(B) TYPES OF AUDITS.—An accredited third-party auditor or audit agent of such auditor may perform consultative and regulatory audits of eligible entities.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—An accredited third party auditor may not perform a regulatory audit of an eligible entity if such agent has performed a consultative audit or a regulatory audit of such eligible entity during the previous 13-month period.

“(ii) WAIVER.—The Secretary may waive the application of clause (i) if the Secretary determines that there is insufficient access to accredited third-party auditors in a country or region.

“(5) CONFLICTS OF INTEREST.—

“(A) THIRD-PARTY AUDITORS.—An accredited third-party auditor shall—

“(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

“(iii) annually make available to the Secretary disclosures of the extent to which such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

“(B) AUDIT AGENTS.—An audit agent shall—

“(i) not own or operate an eligible entity to be audited by such agent;

“(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be audited by such agent; and

“(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

“(C) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to implement this section and to ensure that there are protections against conflicts of interest between an accredited third-party auditor and the eligible entity to be certified by such auditor or audited by such audit agent. Such regulations shall include—

“(i) requiring that audits performed under this section be unannounced;

“(ii) a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors; and

“(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agents of such auditor and any person that owns or operates an eligible entity to be certified by such auditor, as described in subparagraphs (A) and (B).

“(6) WITHDRAWAL OF ACCREDITATION.—

“(A) IN GENERAL.—The Secretary shall withdraw accreditation from an accredited third-party auditor—

“(i) if food certified under section 801(q) or from a facility certified under paragraph (2)(B) by such third-party auditor is linked to an outbreak of foodborne illness that has a reasonable probability of causing serious adverse health consequences or death in humans or animals;

“(ii) following an evaluation and finding by the Secretary that the third-party auditor no longer meets the requirements for accreditation; or

“(iii) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.

“(B) ADDITIONAL BASIS FOR WITHDRAWAL OF ACCREDITATION.—The Secretary may withdraw accreditation from an accredited third-party auditor in the case that such third-party auditor is accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked, if the Secretary determines that there is good cause for the withdrawal.

“(C) EXCEPTION.—The Secretary may waive the application of subparagraph (A)(i) if the Secretary—

“(i) conducts an investigation of the material facts related to the outbreak of human or animal illness; and

“(ii) reviews the steps or actions taken by the third party auditor to justify the certification and determines that the accredited third-party auditor satisfied the requirements under section 801(q) of certifying the food, or the requirements under paragraph (2)(B) of certifying the entity.

“(7) REACCREDITATION.—The Secretary shall establish procedures to reinstate the accreditation of a third-party auditor for which accreditation has been withdrawn under paragraph (6)—

“(A) if the Secretary determines, based on evidence presented, that the third-party auditor satisfies the requirements of this section and adequate grounds for revocation no longer exist; and

“(B) in the case of a third-party auditor accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked—

“(i) if the third-party auditor becomes accredited not later than 1 year after revocation of accreditation under paragraph (6)(A), through direct accreditation under subsection (b)(1)(A)(ii) or by an accreditation body in good standing; or

“(ii) under such conditions as the Secretary may require for a third-party auditor under paragraph (6)(B).

“(8) NEUTRALIZING COSTS.—The Secretary shall establish by regulation a reimbursement (user fee) program, similar to the method described in section 203(h) of the Agriculture Marketing Act of 1946, by which the Secretary assesses fees and requires accredited third-party auditors and audit agents to reimburse the Food and Drug Administration for the work performed to establish and administer the accreditation system under this section. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism. Fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriation Acts. Such fees are authorized to remain available until expended.

“(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—An eligible entity shall apply for annual recertification by an accredited third-party auditor if such entity—

“(1) intends to participate in voluntary qualified importer program under section 806; or

“(2) is required to provide to the Secretary a certification under section 801(q) for any food from such entity.

“(e) FALSE STATEMENTS.—Any statement or representation made—

“(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

“(2) by an accredited third-party auditor to the Secretary,

shall be subject to section 1001 of title 18, United States Code.

“(f) MONITORING.—To ensure compliance with the requirements of this section, the Secretary shall—

“(1) periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

“(2) periodically, or at least once every 4 years, evaluate the performance of each accredited third-party auditor, through the review of regulatory audit reports by such auditors, the compliance history as available of eligible entities certified by such auditors, and any other measures deemed necessary by the Secretary;

“(3) at any time, conduct an onsite audit of any eligible entity certified by an accredited

third-party auditor, with or without the auditor present; and

“(4) take any other measures deemed necessary by the Secretary.

“(g) PUBLICLY AVAILABLE REGISTRY.—The Secretary shall establish a publicly available registry of accreditation bodies and of accredited third-party auditors, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies and auditors.

“(h) LIMITATIONS.—

“(1) NO EFFECT ON SECTION 704 INSPECTIONS.—The audits performed under this section shall not be considered inspections under section 704.

“(2) NO EFFECT ON INSPECTION AUTHORITY.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.”.

#### SEC. 308. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall establish offices of the Food and Drug Administration in foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

(b) CONSULTATION.—In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Homeland Security, and the United States Trade Representative.

(c) REPORT.—Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices, the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

#### SEC. 309. SMUGGLED FOOD.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Secretary shall, in coordination with the Secretary of Homeland Security, develop and implement a strategy to better identify smuggled food and prevent entry of such food into the United States.

(b) NOTIFICATION TO HOMELAND SECURITY.—Not later than 10 days after the Secretary identifies a smuggled food that the Secretary believes would cause serious adverse health consequences or death to humans or animals, the Secretary shall provide to the Secretary of Homeland Security a notification under section 417(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350f(k)) describing the smuggled food and, if available, the names of the individuals or entities that attempted to import such food into the United States.

(c) PUBLIC NOTIFICATION.—If the Secretary—

(1) identifies a smuggled food;

(2) reasonably believes exposure to the food would cause serious adverse health consequences or death to humans or animals; and

(3) reasonably believes that the food has entered domestic commerce and is likely to be consumed,

the Secretary shall promptly issue a press release describing that food and shall use

other emergency communication or recall networks, as appropriate, to warn consumers and vendors about the potential threat.

(d) EFFECT OF SECTION.—Nothing in this section shall affect the authority of the Secretary to issue public notifications under other circumstances.

(e) DEFINITION.—In this subsection, the term “smuggled food” means any food that a person introduces into the United States through fraudulent means or with the intent to defraud or mislead.

#### TITLE IV—MISCELLANEOUS PROVISIONS

##### SEC. 401. FUNDING FOR FOOD SAFETY.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration such sums as may be necessary for fiscal years 2011 through 2015.

(b) INCREASED NUMBER OF FIELD STAFF.—

(1) IN GENERAL.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(A) 4,000 staff members in fiscal year 2011;

(B) 4,200 staff members in fiscal year 2012;

(C) 4,600 staff members in fiscal year 2013;

and

(D) 5,000 staff members in fiscal year 2014.

(2) FIELD STAFF FOR FOOD DEFENSE.—The goal under paragraph (1) shall include an increase of 150 employees by fiscal year 2011 to—

(A) provide additional detection of and response to food defense threats; and

(B) detect, track, and remove smuggled food (as defined in section 309) from commerce.

##### SEC. 402. EMPLOYEE PROTECTIONS.

Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.), as amended by section 209, is further amended by adding at the end the following:

##### “SEC. 1012. EMPLOYEE PROTECTIONS.

“(a) IN GENERAL.—No entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee’s initiative or in the ordinary course of the employee’s duties (or any person acting pursuant to a request of the employee)—

“(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any order, rule, regulation, standard, or ban under this Act, or any order, rule, regulation, standard, or ban under this Act;

“(2) testified or is about to testify in a proceeding concerning such violation;

“(3) assisted or participated or is about to assist or participate in such a proceeding; or

“(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act, or any order, rule, regulation, standard, or ban under this Act.

“(b) PROCESS.—

“(1) IN GENERAL.—A person who believes that he or she has been discharged or other-

wise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the ‘Secretary’) alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

“(2) INVESTIGATION.—

“(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary’s findings.

“(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

“(C) DISMISSAL OF COMPLAINT.—

“(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

“(3) FINAL ORDER.—

“(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

“(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

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

“(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

“(iii) to provide compensatory damages to the complainant.

“(C) PENALTY.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

“(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys’ fee, not exceeding \$1,000, to be paid by the complainant.

“(4) ACTION IN COURT.—

“(A) IN GENERAL.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

“(B) RELIEF.—The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

“(ii) the amount of back pay, with interest; and

“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(5) REVIEW.—

“(A) IN GENERAL.—Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall

conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

“(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

“(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

“(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

“(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys’ and expert witness fees) to any party whenever the court determines such award is appropriate.

“(C) EFFECT OF SECTION.—

“(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

“(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

“(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity’s agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.”

#### SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding voluntary inspection of non-amenable species under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the

day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act;

(4) alter or limit the authority of the Secretary of Agriculture under the laws administered by such Secretary, including—

(A) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(B) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(C) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(D) the United States Grain Standards Act (7 U.S.C. 71 et seq.);

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(F) the United States Warehouse Act (7 U.S.C. 241 et seq.);

(G) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

(H) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with the amendments made by the Agricultural Marketing Agreement Act of 1937; or

(5) alter, impede, or affect the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or any other statute, including any authority related to securing the borders of the United States, managing ports of entry, or agricultural import and entry inspection activities.

#### SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

#### SEC. 405. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

#### NOTICES OF INTENT TO SUSPEND THE RULES

Mr. COBURN. Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend rule XXII, for the purpose of proposing and considering amendment no. 4696 to S. 501, including germaneness requirements.

Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to suspend rule XXII, for the purpose of proposing and considering amendment no. 4697 to S. 510, including germaneness requirements.

Mr. JOHANNIS. Mr. President, in accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend rule XXII, including any germaneness requirements, for the purpose of proposing and considering amendment no. 4702 to S. 510 or

any related substitute amendment to S. 510.

Mr. BAUCUS. Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend rule XXII, paragraph 2, for the purpose of proposing and considering the amendment no. 4713 to bill S. 510.

Mr. REID. Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend rule XXII, paragraph 2, for the purpose of proposing and considering the following amendment: Amendment no. 4714 to S. 510.

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#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON ARMED SERVICES

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on November 18, 2010, at 9:30 a.m.

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

##### COMMITTEE ON FINANCE

Mr. BURRIS. Mr. President I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on November 18, 2010, at 1 p.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled "International Trade in the Digital Economy."

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

##### COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled "The State of the American Child: Securing Our Children's Future" on November 18, 2010. The hearing will commence at 10:30 a.m. in room 430 of the Dirksen Senate Office Building.

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

##### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on November 18, 2010, at 3 p.m.

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

##### COMMITTEE ON INDIAN AFFAIRS

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on November 18, 2010, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building.

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

##### COMMITTEE ON THE JUDICIARY

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on November 18, 2010, at 10 a.m., in SD-226 of the Dirksen Senate Office Building, to conduct an executive business meeting.

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

##### COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Small Business and Entrepreneurship be authorized to meet during the session of the Senate on November 18, 2010, at 10 a.m. to conduct a hearing entitled "Assessing the Regulatory and Administrative Burdens on America's Small Businesses."

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

##### COMMITTEE ON VETERANS' AFFAIRS

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on November 18, 2010. The Committee will meet in room 418 of the Russell Senate Office Building beginning at 10 a.m.

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

##### AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT

Mr. BURRIS. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Contracting Oversight of the Committee on Homeland Security and Governmental Affairs be

authorized to meet during the session of the Senate on November 18, 2010, at 3:30 p.m. to conduct a hearing entitled, "Oversight of Reconstruction Contracts in Afghanistan and the Role of the Special Inspector General."

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

##### NEAR EASTERN AND SOUTH AND CENTRAL ASIAN AFFAIRS SUBCOMMITTEE

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on November 18, 2010, at 4:30 p.m., to hold a Near Eastern and South and Central Asian Affairs Subcommittee hearing entitled, "Jamming the IED Assembly Line: Impeding the flow of Ammonium Nitrate in South and Central Asia."

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

##### SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. BURRIS. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, on November 18, 2010, at 2 p.m., in room SD-226 of the Dirksen Senate Office Building, to conduct a hearing entitled "Women's Rights Are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)."

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

##### SELECT COMMITTEE ON INTELLIGENCE

Mr. BURRIS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on November 18, 2010 at 2:30 p.m.

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

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#### PRIVILEGES OF THE FLOOR

Mr. BURRIS. Mr. President, I ask unanimous consent that my chief of staff, Brady King, and other members of my staff be granted floor privileges during my remarks.

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

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#### FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Anne Hazlett:									
United States	Dollar				9,453.50				9,453.50
Kenya	Shilling		1,444.62						1,444.62
Uganda	Shilling		625.41						625.41
Stephanie Mercier:									
United States	Dollar				9,527.90				9,527.90
Kenya	Shilling		1,926.00						1,926.00
Uganda	Shilling		1,164.00						1,164.00
Total			5,160.03		18,981.40				24,141.43

SENATOR BLANCHE L. LINCOLN,  
Chairman, Committee on Agriculture, Nutrition, and Forestry, Oct. 29, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Arlen Specter:									
Syria	Pound		80.25						80.25
Israel	Shekel		91.30						91.30
Croatia	Kuna		61.46						61.46
Czech Republic	Koruna		225.20						225.20
France	Euro		64.37						64.37
Scott Hoeflich:									
Syria	Pound		104.00						104.00
Israel	Shekel		242.00						242.00
Croatia	Kuna		334.00						334.00
Czech Republic	Koruna		233.00						233.00
France	Euro		155.00						155.00
United Kingdom	Pound		133.00						133.00
Senator Richard Shelby:									
United Kingdom	Pound		4,412.00						4,412.00
Senator Tom Harkin:									
United Kingdom	Pound		4,412.00						4,412.00
Senator Thad Cochran:									
United Kingdom	Pound		4,412.00						4,412.00
Charles Houy:									
United Kingdom	Pound		4,412.00						4,412.00
Stewart Holmes:									
United Kingdom	Pound		4,412.00						4,412.00
Elizabeth Schmid:									
United Kingdom	Pound		4,412.00						4,412.00
Brian Potts:									
United Kingdom	Pound		4,412.00						4,412.00
Jenny Wing:									
United Kingdom	Pound		4,412.00						4,412.00
Anne Caldwell:									
United Kingdom	Pound		4,412.00						4,412.00
Kay Webber:									
United Kingdom	Pound		4,412.00						4,412.00
Lula Davis:									
United Kingdom	Pound		4,412.00						4,412.00
Dave Schiappa:									
United Kingdom	Pound		4,412.00						4,412.00
Senator Byron Dorgan:									
Germany	Euro		1,350.00						1,350.00
France	Euro		1,497.00		130.00				1,627.00
United States	Dollar				8,633.50				8,633.50
Nicole Manatt:									
United Arab Emirates	Dirham		177.86						177.86
Afghanistan	Dollar		46.16						46.16
United States	Dollar				3,184.50				3,184.50
Senator Arlen Specter:									
China	RMB		212.79						212.79
Vietnam	Dong		725.96						725.96
Taiwan	Dollar		702.26						702.26
United States	Dollar				9,648.00				9,648.00
Christopher Bradish:									
China	RMB		347.00						347.00
Vietnam	Dong		738.20						738.20
Taiwan	Dollar		997.10						997.10
United States	Dollar				9,648.00				9,648.00
Gary Reese:									
Turkey	Lire		1,717.00						1,717.00
United States	Dollar				8,467.10				8,467.10
Elizabeth Schmid:									
Turkey	Lire		1,717.00						1,717.00
United States	Dollar				8,467.10				8,467.10
Janet Stormes:									
Kenya	Schillings		756.00						756.00
Rwanda	Francs		897.00						897.00
United States	Dollar				10,520.29				10,520.29
United States	Dollar						35.00		35.00
Paul Grove:									
Haiti	Gourde		136.00						136.00
United States	Dollar				794.80				794.80
Michele Wymer:									
Haiti	Gourde		236.00						236.00
United States	Dollar				794.80				794.80
Total			66,920.91		60,288.09		35.00		127,244.00

SENATOR DANIEL K. INOUE,  
Chairman, Committee on Appropriations, Sept. 30, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Adam J. Barker:									
United States	Dollar				11,082.80				11,082.80
Lebanon	Dollar		394.00						394.00
Brooke Buchanan:									
Kuwait	Dollar		159.00						159.00
Afghanistan	Dollar		78.00						78.00
Israel	Dollar		588.00						588.00
Senator Lindsey Graham:									
Kuwait	Dollar		50.00						50.00
Afghanistan	Dollar		22.00						22.00
Israel	Dollar		288.00						288.00
Richard S. Perry:									
Kuwait	Dollar		50.00						50.00
Afghanistan	Dollar		22.00						22.00
Israel	Dollar		288.00						288.00
Daniel A. Lerner:									
United States	Dollar				14,915.00				14,915.00
Australia	Dollar		2,117.14						2,117.14
Senator John McCain:									
Kuwait	Dollar		50.00						50.00
Afghanistan	Dollar		22.00						22.00
Israel	Dollar		543.00						543.00
Michael J. Nobilet:									
United States	Dollar				11,155.00				11,155.00
Lebanon	Dollar		390.00						390.00
Michael J. Kuiken:									
United States	Dollar				11,082.00				11,082.00
Lebanon	Dollar		432.00						432.00
Michael V. Kostiw:									
United States	Dollar				15,591.09				15,591.09
Australia	Dollar		2,314.00						2,314.00
Senator Joseph I. Lieberman:									
Kuwait	Dinar		50.00						50.00
Afghanistan	Afghani		22.00						22.00
Israel	Shekel		986.27						986.27
Christopher J. Griffin:									
Kuwait	Dinar		50.00			80.75			130.75
Afghanistan	Afghani		22.00			44.00			66.00
Israel	Shekel		100.00			953.15			1,053.15
Vance Serchuk:									
Kuwait	Dinar		50.00			30.00			80.00
Afghanistan	Afghani		22.00			23.00			45.00
Israel	Shekel		100.00			912.00			1,012.00
Senator Jack Reed:									
United States	Dollar				8,560.76				8,560.76
Afghanistan	Dollar		5.00						5.00
Carolyn Chuhata:									
United States	Dollar				9,198.10				9,198.10
Afghanistan	Dollar		5.00						5.00
Senator Lindsey Graham:									
United Kingdom	Dollar		639.00						639.00
Andrew King:									
United Kingdom	Dollar		637.00						637.00
Christian Brose:									
Kuwait	Dollar		136.00						136.00
Afghanistan	Dollar		67.00						67.00
Israel	Dollar		537.00						537.00
Victor M. Cervino:									
Colombia	Peso		92.73						92.73
Senator Lindsey Graham:									
United States	Dollar				7,934.70				7,934.70
Qatar	Dollar		188.00						188.00
Senator James M. Inhofe:									
United Kingdom	Pound		195.34		57.35				252.69
Anthony Lazarski:									
United Kingdom	Pound		153.92		30.80				184.72
William K. Sutey:									
United States	Dollar				7,223.60				7,223.60
Kuwait	Dollar		31.00						31.00
Iraq	Dollar		27.25						27.25
John W. Health, Jr.:									
United States	Dollar				7,168.00				7,168.00
Kuwait	Dollar		49.00						49.00
Iraq	Dollar		11.00						11.00
Adam J. Barker:									
United States	Dollar				11,898.50				11,898.50
Ethiopia	Birr		215.00						215.00
Djibouti	Franc		22.00						22.00
Kenya	Shilling		190.00						190.00
Uganda	Shilling		220.00						220.00
David M. Morriss:									
United States	Dollar				11,328.50				11,328.50
Ethiopia	Birr		323.00						323.00
Djibouti	Franc		136.00						136.00
Kenya	Shilling		240.00						240.00
Michael J. Nobilet:									
United States	Dollar				11,994.00				11,994.00
Ethiopia	Birr		165.00						165.00
Djibouti	Franc		175.00						175.00
Kenya	Shilling		95.00						95.00
Uganda	Shilling		488.00						488.00
Russell L. Shaffer:									
United States	Dollar				7,866.00				7,866.00
Japan	Yen		516.00						516.00
Republic of Korea	Won		591.00						591.00
Jay Maroney:									
United States	Dollar				7,865.51				7,865.51
Japan	Yen		575.00						575.00
Republic of Korea	Won		610.00						610.00
William G.P. Monahan:									
United States	Dollar				9,163.10				9,163.10
United Arab Emirates	Dollar		692.00						692.00
Pakistan	Dollar		255.00						255.00
Senator Lindsey O. Graham:									
Canada	Dollar		5.25						5.25

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Michael J. Kуйken:									
United States	Dollar				11,898.00				11,898.00
Ethiopia	Birr		245.00						245.00
Djibouti	Franc		190.00						190.00
Kenya	Shilling		180.00						180.00
Uganda	Shilling		595.00						595.00
Senator Kay R. Hagan:									
Canada	Dollar		39.49						39.49
Perrin Cook:									
Canada	Dollar		5.25						5.25
Senator Saxby Chambliss:									
Canada	Dollar		5.25						5.25
Tyler Stephens:									
Canada	Dollar		23.00						23.00
Dana W. White:									
United States	Dollar				7,866.00				7,866.00
Japan	Yen		649.83						649.83
Republic of Korea	Won		553.32						553.32
Matt Rimkunas:									
Canada	Dollar		106.00						106.00
Pablo E. Carrillo:									
United States	Dollar				7,133.60				7,133.60
Kuwait	Dollar		57.00						57.00
Iraq	Dollar		15.00						15.00
Madelyn R. Crendon:									
United States	Dollar				14,915.00				14,915.00
Australia	Dollar		1,588.14						1,588.14
Senator George LeMieux:									
United States	Dollar				12,814.90				12,814.90
Yemen	Rial		70.00						70.00
Pakistan	Rupee		6.00						6.00
India	Rupee		579.00						579.00
Brian W. Walsh:									
United States	Dollar				12,375.80				12,375.80
India	Rupee		413.00						413.00
Vivian Myrtetus:									
United States	Dollar				12,375.80				12,375.80
Yemen	Rial		42.00						42.00
Pakistan	Rupee		6.00						6.00
India	Rupee		405.00						405.00
Christian D. Brose:									
United States	Dollar				5,876.20				5,876.20
Kuwait	Dollar		131.00						131.00
Republic of Korea	Dollar		817.00						817.00
Japan	Dollar		879.00		62.00				941.00
Senator Carl Levin:									
United States	Dollar				9,163.00				9,163.00
United Arab Emirates	Dollar		370.00						370.00
Pakistan	Dollar		361.00						361.00
Afghanistan	Dollar		73.00						73.00
Richard D. DeBobes:									
United States	Dollar				9,163.00				9,163.00
United Arab Emirates	Dollar		370.00						370.00
Pakistan	Dollar		361.00						361.00
Afghanistan	Dollar		73.00						73.00
<b>Total</b>			<b>26,705.18</b>		<b>267,758.11</b>		<b>2,042.90</b>		<b>296,506.19</b>

SENATOR CARL LEVIN,  
Chairman, Committee on Armed Services, Oct. 8, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Christopher J. Dodd:									
India	Rupee		835.00						835.00
United States	Dollar				9,871.00				9,871.00
Joshua Blumenfeld:									
India	Rupee		825.00						825.00
United States	Dollar				8,490.50				8,490.50
Michael McKiernan:									
India	Rupee		845.00						845.00
United States	Dollar				8,490.50				8,490.50
Senator Christopher J. Dodd:									
United Kingdom	Pound		832.00						832.00
Joshua Blumenfeld:									
United Kingdom	Pound		832.00						832.00
United States	Dollar				3,521.10				3,521.10
Kirstin Brost:									
United Kingdom	Pound		486.00						486.00
Laura Friedel:									
United Kingdom	Pound		832.00						832.00
Senator Christopher J. Dodd:									
Spain	Euro		436.00						436.00
United States	Dollar				1,597.00				1,597.00
Julie Chon:									
United Kingdom	Pound		430.00		137.00				567.00
France	Euro		964.00		190.00				1,154.00
Belgium	Euro		850.00						850.00
Spain	Euro		500.00						500.00
United States	Dollar				6,614.00				6,614.00
Amy Friend:									
United Kingdom	Pound		288.00		137.00				425.00
France	Euro		664.00		190.00				854.00
Belgium	Euro		630.00						630.00
Spain	Euro		332.00						332.00
United States	Dollar				6,614.40				6,614.40

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Marc Jarsulic:									
United Kingdom	Pound				138.31				138.31
Belgium	Euro		913.11						913.11
Spain	Euro		309.62						309.62
United States	Dollar				6,514.71				6,514.71
Jonathan Miller:									
United Kingdom	Pound		184.00						321.00
France	Euro		753.00		190.00				943.00
Belgium	Euro		523.00						523.00
Spain	Euro		478.00						478.00
United States	Dollar				6,614.40				6,614.40
Edward Silverman:									
Belgium	Euro		937.03						937.03
Spain	Euro		522.74						522.74
United States	Dollar				6,514.71				6,514.71
Total			15,201.50		65,961.63				81,163.13

SENATOR CHRISTOPHER J. DODD,  
Chairman, Committee on Banking, Housing, and Urban Affairs,  
Oct. 21, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON THE BUDGET FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Allison Parent:									
Belgium	Euro		1,400.44		128.47				1,528.91
United States	Dollar				1,476.40				1,476.40
Total			1,400.44		1,604.87				3,005.31

SENATOR KENT CONRAD,  
Chairman, Committee on the Budget, Oct. 12, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Claire McCaskill:									
United States	Dollar				9,523.40				9,523.40
China	Renminbi		155.00						155.00
Tod Martin:									
United States	Dollar				10,923.40				10,923.40
China	Renminbi		185.00						185.00
Total			340.00		20,446.80				20,786.80

SENATOR JOHN D. ROCKEFELLER IV,  
Chairman, Committee on Commerce, Science, and Transportation,  
Oct. 8, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Gabriel Adler:									
Brazil	Real		647.19						647.19
United States	Dollar				2,970.60				2,970.60
Total			647.19		2,970.60				3,617.79

SENATOR MAX BAUCUS,  
Chairman, Committee on Finance, Nov. 10, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Robert Casey, Jr.:									
Kuwait	Dollar		27.63						27.63
Israel	Dollar		74.08						74.08
United States	Dollar				9,036.19				9,036.19
Senator Bob Corker:									
United States	Dollar				1,672.80				1,672.80

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95—384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Kaufman:									
Kuwait	Dollar		145.00						145.00
Israel	Dollar		236.97						236.97
Egypt	Dollar		5.95						5.95
United States	Dollar				8,595.89				8,595.89
Senator John Kerry:									
Afghanistan	Dollar		6.92						6.92
United States	Dollar				9,198.10				9,198.10
Senator Jeanne Shaheen:									
Israel	Dollar		72.60						72.60
United States	Dollar				9,514.69				9,514.69
Senator Jim Webb:									
Vietnam	Dong		1,002.00						1,002.00
United States	Dollar				9,806.30				9,806.30
Fulton Armstrong:									
United Arab Emirates	Dirham		180.00						180.00
Afghanistan	Dollar		76.00						76.00
United States	Dollar				9,850.10				9,850.10
Fulton Armstrong:									
El Salvador	Dollar		613.00						613.00
United States	Dollar				1,526.56				1,526.56
Jonah Blank:									
United Arab Emirates	Dirham		6.00						6.00
Pakistan	Rupee		4.00						4.00
Afghanistan	Afghani		7.00						7.00
United States	Dollar				9,198.10				9,198.10
Jay Branegan:									
China	Renminbi		1,587.00		205.00				1,792.00
United States	Dollar				15,039.30				15,039.30
Shellie Bressler:									
Kenya	Shilling		1,825.00						1,825.00
Rwanda	Franc		570.00						570.00
United States	Dollar				9,857.40				9,857.40
Steve Feldstein:									
Liberia	Dollar		1,716.10						1,716.10
United States	Dollar				4,460.30				4,460.30
Paul Foldi:									
China	Renminbi		396.00						396.00
Hong Kong	Dollar		292.00						292.00
Korea	Won		946.00						946.00
United States	Dollar				10,749.80				10,749.80
Douglas Frantz:									
United Arab Emirates	Dirham		234.00						234.00
Afghanistan	Afghani		100.00						100.00
United States	Dollar				10,959.50				10,959.50
Frank Jannuzi:									
China	Renminbi		2,987.00		1,605.00				4,592.00
United States	Dollar				15,594.70				15,594.70
Garrett Johnson:									
Bangladesh	Taka		200.00						200.00
Pakistan	Rupee		180.00		2,014.90				2,194.90
India	Rupee		2,555.00						2,555.00
United States	Dollar				12,789.40				12,789.40
Andrew Keller:									
China	Renminbi		440.00						440.00
Chad Kreikemeier:									
United States	Dollar				1,830.90				1,830.90
Kuwait	Dinar		8.00						8.00
Israel	Shekel		152.00						152.00
Lebanon	Pound		14.00						14.00
Egypt	Pound		31.00						31.00
United States	Dollar				8,609.89				8,609.89
Robin Lerner:									
United Arab Emirates	Dirham		349.00						349.00
Afghanistan	Dollar		48.00						48.00
United States	Dollar				6,350.10				6,350.10
Robin Lerner:									
Colombia	Peso		394.00						394.00
United States	Dollar				1,564.70				1,564.70
Frank Lowenstein:									
Afghanistan	Dollar		114.08						114.08
Pakistan	Rupee		40.00						40.00
United States	Dollar				9,198.10				9,198.10
Keith Luse:									
Singapore	Dollar		463.12						463.12
Indonesia	Rupiah		1,103.32						1,103.32
United States	Dollar				5,796.30				5,796.30
Nicholas Ma:									
China	Renminbi		1,550.00		205.00				1,755.00
United States	Dollar				4,013.30				4,013.30
Marta McEllan-Ross:									
Vietnam	Dong		568.00						568.00
United States	Dollar				9,806.00				9,806.00
Carl Meacham:									
Brazil	Rial		404.90						404.90
Argentina	Peso		433.00						433.00
Chile	Peso		322.00						322.00
United States	Dollar				3,278.70				3,278.70
Emily Mendrala:									
Colombia	Peso		708.00						708.00
United States	Dollar				1,370.00				1,370.00
Damian Murphy:									
Israel	Dollar		95.87						95.87
Egypt	Dollar		188.37						188.37
United States	Dollar				8,676.19				8,676.19
Melanie Nakagawa:									
Uzbekistan	Sum		650.00						650.00
Tajikistan	Somoni		200.00						200.00
India	Rupee		1,514.00						1,514.00
United States	Dollar				4,984.50				4,984.50
Stacie Oliver:									
United States	Dollar				794.80				794.80
Sherman Patrick:									
Israel	Dollar		81.63						81.63
Lebanon	Dollar		30.00						30.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95—384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Egypt	Dollar		5.95						5.95
United States	Dollar				8,842.89				8,842.89
Nillmini Rubin:									
Jordan	Dinar		665.00						665.00
Cape Verde	Escudo		293.00						293.00
United States	Dollar				15,325.10				15,325.10
Joel Starr:									
China	Renminbi		1,663.00		205.00				1,868.00
United States	Dollar				15,039.30				15,039.30
Mark String:									
Azerbaijan	Manat		425.90						425.90
Austria	Euro		525.00						525.00
Moldova	Leu		294.00						294.00
United States	Dollar				12,132.40				12,132.40
Atman Trivedi:									
India	Rupee		1,533.00						1,533.00
Thailand	Baht		942.00						942.00
Bangladesh	Taka		297.00						297.00
United States	Dollar				4,416.00				4,416.00
Laura Winthrop:									
Liberia	Dollar		1,925.00						1,925.00
United States	Dollar				4,460.30				4,460.30
Bryan Wright:									
United Kingdom	Pound		3,397.00						3,397.00
United States	Dollar				1,439.70				1,439.70
Debbie Yamada:									
Norway	Kroner		505.00						505.00
Total			38,418.39		276,734.50				314,830.89

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95—384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—FOURTH QUARTER 2008 FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2008

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Russia	Ruble		368.47						368.47
Ukraine	Hryvnia		248.00						248.00
Azerbaijan	New Manat		346.00						346.00
United States					14,241.32				14,241.32
Todd Womack:									
Russia	Ruble		368.47						368.47
Ukraine	Hryvnia		345.98						345.98
Azerbaijan	New Manat		346.00						346.00
United States					14,241.32				14,241.32
Total			2,022.92		28,482.64				30,505.56

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95—384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—SECOND QUARTER 2009 FOR TRAVEL FROM APR. 1 TO JUNE 30, 2009

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Kenya	Shilling		105.00						105.00
Tanzania	Shilling		200.00						200.00
Rwanda	Franc		11.50						11.50
United States					6,689.63				6,689.63
Stacie Oliver:									
Kenya	Shilling		255.00						255.00
Tanzania	Shilling		250.00						250.00
Rwanda	Franc		154.50						154.50
United States					6,719.91				6,719.91
Total			976.000		13,409.54				14,385.54

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95—384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—THIRD QUARTER 2009 FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2009

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Israel	New Shekel		210.00						210.00
United States	Dollar				10,078.51				10,078.51
Todd Womack:									
Israel	New Shekel		515.00						515.00
United States	Dollar				10,078.51				10,078.51

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—THIRD QUARTER 2009 FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2009—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Afghanistan	Afghani		55.00						55.00
Pakistan	Rupee		31.00						31.00
United States	Dollar				9,685.71				9,685.71
Stacie Oliver:									
United Arab Emirates	Dirham		150.00						150.00
Afghanistan	Afghani		115.00						115.00
Pakistan	Rupee		349.00						349.00
United States	Dollar				4,089.10				4,089.10
<b>Total</b>			<b>1,425.00</b>		<b>33,931.83</b>				<b>35,356.83</b>

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—FIRST QUARTER 2010 FOR TRAVEL FROM JAN. 1 TO MAR. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Panama	Dollar		132.00						132.00
Costa Rica	Colon		132.00						132.00
El Salvador	Colon		132.00						132.00
Honduras	Lempira		132.00						132.00
Stacie Oliver:									
Panama	Dollar		157.75						157.75
Costa Rica	Colon		157.75						157.75
El Salvador	Colon		157.75						157.75
Honduras	Lempira		157.75						157.75
Paul Foldi:									
United Arab Emirates	Dirham		1,101.00						1,101.00
Czech Republic	Koruna		932.00						932.00
United States	Dollar				9,198.23				9,198.23
<b>Total</b>			<b>3,192.00</b>		<b>9,198.23</b>				<b>12,390.23</b>

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS—AMENDED REPORT—SECOND QUARTER 2010 FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
United States	United States				10,779.60				10,779.60
<b>Total</b>					<b>10,779.60</b>				<b>10,779.60</b>

SENATOR JOHN F. KERRY,  
Chairman, Committee on Foreign Relations, Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS—AMENDED REPORT—SECOND QUARTER 2010 FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lisa Powell:									
United States	Dollar				4,573.25				4,573.25
New Zealand	Dollar		33.96						33.96
Samoa	Tala		663.48						663.48
Sean Stiff:									
United States	Dollar				4,552.99				4,552.99
New Zealand	Dollar		16.20						16.20
Samoa	Tala		579.02		70.10				649.12
Jessica Nagasako:									
United States	Dollar				4,573.25				4,573.25
New Zealand	Dollar		34.17						34.17
Samoa	Tala		622.71						622.71
Benjamin Billings:									
United States	Dollar				4,573.25				4,573.25
Samoa	Tala		688.00						688.00
David Andrew Olson:									
United States	Dollar				4,538.15				4,538.15
Samoa	Tala		898.00						898.00
Ryan Tully:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		56.37						56.37
Pakistan	Rupee		37.31		2,498.67				2,535.98
Senator John Ensign:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		39.88						39.88
Pakistan	Rupee		27.31		2,498.67				2,525.98
Senator Thomas R Carper:									
United States	Dollar				8,214.10				8,214.10

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS—AMENDED REPORT—SECOND QUARTER 2010 FOR TRAVEL FROM APR. 1 TO JUNE 30,  
2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United Arab Emirates	Dirham		343.09						343.09
Afghanistan	Afghani		78.00						78.00
Pakistan	Rupee		422.10		2,498.67				2,920.77
Wendy R Anderson:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		446.09						446.09
Afghanistan	Afghani		78.00						78.00
Pakistan	Rupee		547.10		2,498.67				3,045.77
Seamus Hughes:									
United States	Dollar				4,463.59				4,463.59
Denmark	Kronin		210.00						210.00
Germany	Euro		957.99						957.99
London	Pound		922.00						922.00
Israel	Shekel		361.99						361.99
Bradford D Belzak:									
United States	Dollar				4,463.59				4,463.59
Denmark	Kronin		210.00						210.00
Germany	Euro		958.00						958.00
United Kingdom	Pound		922.00						922.00
Israel	Shekel		300.00						300.00
Vance Serchuk:									
United States	Dollar				5,987.40				5,987.40
Singapore	Dollar		1,195.00						1,195.00
Jeffrey E Greene:									
United States	Dollar				4,229.69				4,229.69
Denmark	Kronin		210.00						210.00
Germany	Euro		957.99						957.99
London	Pound		922.00						922.00
Israel	Shekel		361.99						361.99
Christian Beckner:									
United States	Dollar				4,463.59				4,463.59
Denmark	Kronin		210.00						210.00
Germany	Euro		957.99						957.99
United Kingdom	Pound		922.00						922.00
Israel	Shekel		361.99						361.99
Senator Scott Brown:									
United States	Dollar				8,214.00				8,214.00
United Arab Emirates	Dirham		505.00						505.00
Afghanistan	Afghani		78.00						78.00
Pakistan	Rupee		920.00						920.00
Steven Schrage:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		485.00						485.00
Afghanistan	Afghani		35.00						35.00
Pakistan	Rupee		930.10						930.10
Delegation Expenses*:									
Israel	Shekel						791.10		791.10
Afghanistan	Afghani						749.00		749.00
Pakistan	Rupee						2,948.55		2,948.55
<b>Total</b>			<b>19,504.83</b>		<b>105,768.03</b>		<b>4,488.65</b>		<b>129,761.51</b>

\* Delegation expenses include payments and reimbursements to the Department of State and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95-384, and S. Res. 179 agreed to May 25, 1977.

SENATOR JOSEPH I. LIEBERMAN,  
Chairman, Committee on Homeland Security and Governmental Affairs,  
Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Scott Brown:									
United States	Dollar				7,243.49				7,243.49
Jordan	Dinar		1,075.00						1,075.00
Israel	Shekel		2,162.00						2,162.00
William Wright:									
United States	Dollar				7,243.49				7,243.49
Jordan	Dinar		1,085.00						1,085.00
Israel	Shekel		2,180.00						2,180.00
Vance Serchuk:									
United States	Dollar				11,422.20				11,422.20
Kuwait	Dinar		75.00						75.00
Republic of Korea	Won		680.00						680.00
Japan	Yen		958.00						958.00
Elise Bean:									
United States	Dollar				3,070.20				3,070.20
Norway	Krone		1,120.15						1,120.15
Blas Nunez-Neto:									
United States	Dollar				2,324.80				2,324.80
Belgium	Euro		887.00						887.00
Sweden	Kroner		246.00						246.00
United Kingdom	Pound		838.00						838.00
Elyse Greenwald:									
United States	Dollar				1,534.55				1,534.55
Belgium	Euro		892.00						892.00
Sweden	Kroner		721.25						721.25
Delegation Expenses*:									
Sweden	Kroner						2,841.49		2,841.49
United Kingdom	Pound						1,660.13		1,660.13
<b>Total</b>			<b>12,919.40</b>		<b>32,838.73</b>		<b>4,501.62</b>		<b>50,259.75</b>

\* Delegation expenses include payments and reimbursements to the Department of State and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95-384, and S. Res. 179 agreed to May 25, 1977.

SENATOR JOSEPH I. LIEBERMAN,  
Chairman, Committee on Homeland Security and Governmental Affairs,  
Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Durbin:									
Norway	Krone		2,016.00		5,715.00				7,731.00
Total			2,016.00		5,715.00				7,731.00

SENATOR PATRICK J. LEAHY,  
Chairman, Committee on the Judiciary, Oct. 14, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jon Kyl:									
Qatar	Rial		176.69						176.69
Austria	Euro		46.66						46.66
France	Euro		116.16						116.16
Great Britain	Pound		90.22						90.22
The Netherlands	Euro		107.77						107.77
Timothy Morrison:									
Qatar	Rial		129.63						129.63
Austria	Euro		83.66						83.66
France	Euro		126.61						126.61
Great Britain	Pound		144.33						144.33
The Netherlands	Euro		153.77						153.77
Total			1,175.50						1,175.50

SENATOR PATRICK J. LEAHY,  
Chairman, Committee on the Judiciary, Aug. 2, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Harkin:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		682.56						682.56
Senator Bernie Sanders:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		468.78						468.78
Senator Al Franken:									
Vietnam	Dong		1,034.13		1,006.04				2,040.17
Laos	Kip		164.00		2,816.50		222.05		3,202.55
Japan	Yen		682.56						682.56
Tom Larkin:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		468.78						468.78
Rosemary Gutierrez:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		468.78						468.78
Pam Smith:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		468.78						468.78
Jenelle Krishnamoorthy:									
Vietnam	Dong		1,349.16						1,349.16
Japan	Yen		468.78						468.78
Jeff Lomanaco:									
Vietnam	Dong		1,034.13		1,006.04				2,040.17
Laos	Kip		164.00		2,816.50		222.05		3,202.55
Japan	Yen		468.78						468.78
Delegation Expenses*:									
Vietnam	Dong				10,000.00		12,411.31		22,411.31
Japan	Yen				1,260.00		1,862.61		3,122.61
Total			14,669.02		18,905.08		14,718.02		48,292.12

\*Delegation expenses include payments and reimbursements to the Department of State under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95-384, and S. Res. 179 agreed to May 25, 1977.

SENATOR TOM HARKIN,  
Chairman, Committee on Health, Education, Labor, and Pensions,  
Oct. 25, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mary L. Landrieu:									
United States	Dollar				12,408.09				12,408.09
United Kingdom	Pound		544.54						544.54
Ethiopia	Birr		1,905.37						1,905.37
									0.00
Alicia Williams:									
United States	Dollar				10,011.09				10,011.09



CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95-384—22  
U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United Kingdom	Pound		1,967.00						1,967.00
United States	Dollar				781.80				781.80
Janice Helwig:									
Austria	Euro		1,121.00						1,121.00
United States	Dollar				1,125.70				1,125.70
Erika Schlager:									
Kazakhstan	Tenga		2,546.24						2,546.24
United States	Dollar				10,206.40				10,206.40
Winsome Packer:									
Kazakhstan	Tenge		1,110.83						1,110.83
Austria	Euro				1,805.99				1,805.99
<b>Total</b>			<b>39,416.25</b>		<b>15,244.09</b>				<b>54,660.34</b>

SENATOR BENJAMIN L. CARDIN,  
Chairman, Commission on Security and Cooperation in Europe,  
Oct. 19, 2010.

**AUTHORIZING A SINGLE FISHERIES COOPERATIVE**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 520, S. 1609.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1609) to authorize a single fisheries cooperative for the Bering Sea Aleutian Islands longline catcher processor subsector, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, that the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1609

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Longline Catcher Processor Subsector Single Fishery Cooperative Act”.

**SEC. 2. AUTHORITY TO APPROVE AND IMPLEMENT A SINGLE FISHERY COOPERATIVE FOR THE LONGLINE CATCHER PROCESSOR SUBSECTOR IN THE BSAI.**

(a) IN GENERAL.—Upon the request of eligible members of the longline catcher processor subsector holding at least 80 percent of the licenses issued for that subsector, the Secretary is authorized to approve a single fishery cooperative for the longline catcher processor subsector in the BSAI.

(b) LIMITATION.—A single fishery cooperative approved under this section shall include a limitation prohibiting any eligible member from harvesting a total of more than 20 percent of the Pacific cod available to be harvested in the longline catcher processor subsector, the violation of which is subject to the penalties, sanctions, and forfeitures under section 308 of the Magnuson-Stevens Act (16 U.S.C. 1858), except that such limitation shall not apply to harvest amounts from quota assigned explicitly to a

CDQ group as part of a CDQ allocation to an entity established by section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(c) CONTRACT SUBMISSION AND REVIEW.—The longline catcher processor subsector shall submit to the Secretary—

(1) not later than November 1 of each year, a contract to implement a single fishery cooperative approved under this section for the following calendar year; and

(2) not later than 60 days prior to the commencement of fishing under the single fishery cooperative, any interim modifications to the contract submitted under paragraph (1).

(d) DEPARTMENT OF JUSTICE REVIEW.—Not later than November 1 before the first year of fishing under a single fishery cooperative approved under this section, the longline catcher processor sector shall submit to the Secretary a copy of a letter from a party to the contract under subsection (c)(1) requesting a business review letter from the Attorney General and any response to such request.

(e) IMPLEMENTATION.—The Secretary shall implement a single fishery cooperative approved under this section not later than 2 years after receiving a request under subsection (a).

(f) STATUS QUO FISHERY.—If the longline catcher processor subsector does not submit a contract to the Secretary under subsection (c) then the longline catcher processor subsector in the BSAI shall operate as a limited access fishery for the following year subject to the license limitation program in effect for the longline catcher processor subsector on the date of enactment of this Act or any subsequent modifications to the license limitation program recommended by the Council and approved by the Secretary.

**SEC. 3. HARVEST AND PROHIBITED SPECIES ALLOCATIONS TO A SINGLE FISHERY COOPERATIVE FOR THE LONGLINE CATCHER PROCESSOR SUBSECTOR IN THE BSAI.**

A single fishery cooperative approved under section 2 may, on an annual basis, collectively—

(1) harvest the total amount of BSAI Pacific cod total allowable catch, less any amount allocated to the longline catcher processor subsector non-cooperative limited access fishery;

(2) utilize the total amount of BSAI Pacific cod prohibited species catch allocation, less any amount allocated to a longline catcher processor subsector non-cooperative limited access fishery; and

(3) harvest any reallocation of Pacific cod to the longline catcher processor subsector during a fishing year by the Secretary.

**SEC. 4. LONGLINE CATCHER PROCESSOR SUBSECTOR NON-COOPERATIVE LIMITED ACCESS FISHERY.**

(a) IN GENERAL.—An eligible member that elects not to participate in a single fishery cooperative approved under section 2 shall operate in a non-cooperative limited access fishery subject to the license limitation program in effect for the longline catcher processor subsector on the date of enactment of this Act or any subsequent modifications to the license limitation program recommended by the Council and approved by the Secretary.

(b) HARVEST AND PROHIBITED SPECIES ALLOCATIONS.—Eligible members operating in a non-cooperative limited access fishery under this section may collectively—

(1) harvest the percentage of BSAI Pacific cod total allowable catch equal to the combined average percentage of the BSAI Pacific cod harvest allocated to the longline catcher processor sector and retained by the vessel or vessels designated on the eligible members license limitation program license or licenses for 2006, 2007, and 2008, according to the catch accounting system data used to establish total catch; and

(2) utilize the percentage of BSAI Pacific cod prohibited species catch allocation equal to the percentage calculated under paragraph (1).

**SEC. 5. AUTHORITY OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL.**

(a) IN GENERAL.—Nothing in this Act shall supersede the authority of the Council to recommend for approval by the Secretary such conservation and management measures, in accordance with the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) as it considers necessary to ensure that this Act does not diminish the effectiveness of fishery management in the BSAI or the Gulf of Alaska Pacific cod fishery.

(b) LIMITATIONS.—

(1) Notwithstanding the authority provided to the Council under this section, the Council is prohibited from altering or otherwise modifying—

(A) the methodology established under section 3 for allocating the BSAI Pacific cod total allowable catch and BSAI Pacific cod prohibited species catch allocation to a single fishery cooperative approved under this Act; or

(B) the methodology established under section 4 of this Act for allocating the BSAI Pacific cod total allowable catch and BSAI Pacific cod prohibited species catch allocation to the non-cooperative limited access fishery.

(2) No sooner than 7 years after approval of a single fisheries cooperative under section 2

of this Act, the Council may modify the harvest limitation established under section 2(b) if such modification does not negatively impact any eligible member of the longline catcher processor subsector.

(c) PROTECTIONS FOR THE GULF OF ALASKA PACIFIC COD FISHERY.—The Council may recommend for approval by the Secretary such harvest limitations of Pacific cod by the longline catcher processor subsector in the Western Gulf of Alaska and the Central Gulf of Alaska as may be necessary to protect coastal communities and other Gulf of Alaska participants from potential competitive advantages provided to the longline catcher processor subsector by this Act.

**SEC. 6. RELATIONSHIP TO THE MAGNUSON-STEVENS ACT.**

(a) IN GENERAL.—Consistent with section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)), a single fishery cooperative approved under section 2 of this Act is intended to enhance conservation and sustainable fishery management, reduce and minimize bycatch, promote social and economic benefits, and improve the vessel safety of the longline catcher processor subsector in the BSAI.

(b) TRANSITION RULE.—A single fishery cooperative approved under section 2 of this Act is deemed to meet the requirements of section 303A(i) of the Magnuson-Stevens Act (16 U.S.C. 1853a(i)) as if it had been approved by the Secretary within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, unless the Secretary makes a determination, within 30 days after the date of enactment of this Act, that application of section 303A(i) of the Magnuson-Stevens Act to the cooperative approved under section 2 of this Act would be inconsistent with the purposes for which section 303A was added to the Magnuson-Stevens Act.

(c) COST RECOVERY.—Consistent with section 304(d)(2) of the Magnuson-Stevens Act (16 U.S.C. 1854(d)(2)), the Secretary is authorized to recover reasonable costs to administer a single fishery cooperative approved under section 2 of this Act.

**SEC. 7. COMMUNITY DEVELOPMENT QUOTA PROGRAM.**

Nothing in this Act shall affect the western Alaska community development program established by section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)), including the allocation of fishery resources in the directed Pacific cod fishery.

**SEC. 8. DEFINITIONS.**

In this Act:

(1) BSAI.—The term “BSAI” has the meaning given that term in section 219(a)(2) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2886).

(2) BSAI PACIFIC COD TOTAL ALLOWABLE CATCH.—The term “BSAI Pacific cod total allowable catch” means the Pacific cod total allowable catch for the directed longline catcher processor subsector in the BSAI as established on an annual basis by the Council and approved by the Secretary.

(3) BSAI PACIFIC COD PROHIBITED SPECIES CATCH ALLOCATION.—The term “BSAI Pacific cod prohibited species catch allocation” means the prohibited species catch allocation for the directed longline catcher processor subsector in the BSAI as established on an annual basis by the Council and approved by the Secretary.

(4) COUNCIL.—The term “Council” means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G)).

(5) ELIGIBLE MEMBER.—The term “eligible member” means a holder of a license limita-

tion program license, or licenses, eligible to participate in the longline catcher processor subsector.

(6) GULF OF ALASKA.—The term “Gulf of Alaska” means that portion of the Exclusive Economic Zone contained in Statistical Areas 610, 620, and 630.

(7) LONGLINE CATCHER PROCESSOR SUBSECTOR.—The term “longline catcher processor subsector” has the meaning given that term in section 219(a)(6) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2886).

(8) MAGNUSON-STEVENS ACT.—The term “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(9) SECRETARY.—The term “Secretary” means the Secretary of Commerce.

**AUTHORIZING USE OF THE  
CAPITOL ROTUNDA**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Con. Res. 75.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 75) authorizing the use of the Rotunda of the Capitol for an event marking the 50th anniversary of the inaugural address of President John F. Kennedy.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution and the preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, and that any statements related to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 75) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

**S. CON. RES. 75**

Whereas John Fitzgerald Kennedy was elected to the United States House of Representatives and served from January 3, 1947, to January 3, 1953, until he was elected by the Commonwealth of Massachusetts to the Senate where he served from January 3, 1953, to December 22, 1960;

Whereas on November 8, 1960, John Fitzgerald Kennedy was elected as the 35th President of the United States; and

Whereas on January 20, 1961, President Kennedy was sworn in as President of the United States and delivered his inaugural address at 12:51 pm, a speech that served as a clarion call to service for the Nation: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),*

**SECTION 1. USE OF THE ROTUNDA OF THE CAPITOL FOR AN EVENT HONORING PRESIDENT KENNEDY.**

The rotunda of the United States Capitol is authorized to be used on January 20, 2011, for a ceremony in honor of the 50th anniversary of the inaugural address of President John F. Kennedy. Physical preparations for the conduct of the ceremony shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

**RECOGNIZING AND HONORING THE COMMITMENT AND SACRIFICES OF MILITARY FAMILIES OF THE UNITED STATES**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 76.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 76) to recognize and honor the commitment and sacrifices of military families of the United States.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the matter be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 76) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

**S. CON. RES. 76**

Whereas the month of November marks Military Family Month;

Whereas the freedom and security the citizens of the United States enjoy today are a result of the continued dedication and vigilance of the Armed Forces throughout the history of the United States;

Whereas the security of the United States depends on the readiness and retention of the men and women of the Armed Forces, a force comprised of active, National Guard, and Reserve personnel;

Whereas military families are an integral source of strength for the Soldiers, Sailors, Marines, Airmen, and Coastguardsmen of the United States, and have continually proven their dedication, service, and willingness to make great sacrifices in support of service members of the United States;

Whereas military families often endure unique circumstances that are central to military life, including long separations from their loved ones, the uncertainty and demands of multiple deployments, school and job transfers, and frequent moves from communities where they have established roots and relationships;

Whereas military family members have become the central support system for each other as they reinforce units through family readiness efforts and initiatives, support service members within the units, and reach out to the families whose loved ones have been deployed; and

Whereas it is important to recognize the sacrifices, support, and dedication of the families of the men and women who serve in the Armed Forces; Now, therefore be it

*Resolved by the Senate (the House of Representatives concurring), That Congress—*

(1) recognizes the commitment and ever-increasing sacrifices military families make every day during the current era of protracted conflict;

(2) honors the families of the Armed Forces and thanks the families for their dedication and service to the United States; and

(3) encourages the citizens of the United States to recognize, commemorate, and

honor the role and contribution of the military family, including selfless service that ensures freedom and preserves the quality of life in the United States.

#### SUPPORTING GOALS OF NATIONAL ADOPTION DAY AND NATIONAL ADOPTION MONTH

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of S. Res. 647 and that the Senate proceed to its immediate consideration.

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

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 647) expressing support for the goals of National Adoption Day and National Adoption Month by promoting national awareness of adoption and the children awaiting families, celebrating children and families involved in adoption, and encouraging Americans to secure safety, permanency, and well-being for all children.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I further ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 647) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 647

Whereas there are approximately 463,000 children in the foster care system in the United States, approximately 123,000 of whom are waiting for families to adopt them;

Whereas 55 percent of the children in foster care are age 10 or younger;

Whereas the average length of time a child spends in foster care is over 2 years;

Whereas for many foster children, the wait for a loving family in which they are nurtured, comforted, and protected seems endless;

Whereas the number of youth who "age out" of foster care by reaching adulthood without being placed in a permanent home has continued to increase since 1998, and more than 29,000 foster youth age out every year;

Whereas everyday, loving and nurturing families are strengthened and expanded when committed and dedicated individuals make an important difference in the life of a child through adoption;

Whereas a 2007 survey conducted by the Dave Thomas Foundation for Adoption demonstrated that though "Americans overwhelmingly support the concept of adoption, and in particular foster care adoption . . . foster care adoptions have not increased significantly over the past five years";

Whereas while 4 in 10 Americans have considered adoption, a majority of Americans have misperceptions about the process of adopting children from foster care and the children who are eligible for adoption;

Whereas 71 percent of those who have considered adoption consider adopting children from foster care above other forms of adoption;

Whereas 45 percent of Americans believe that children enter the foster care system because of juvenile delinquency, when in reality the vast majority of children who have entered the foster care system were victims of neglect, abandonment, or abuse;

Whereas 46 percent of Americans believe that foster care adoption is expensive, when in reality there is no substantial cost for adopting from foster care and financial support is available to adoptive parents after the adoption is finalized;

Whereas both National Adoption Day and National Adoption Month occur in November;

Whereas National Adoption Day is a collective national effort to find permanent, loving families for children in the foster care system;

Whereas since the first National Adoption Day in 2000, more than 30,000 children have joined forever families during National Adoption Day;

Whereas in 2009, adoptions were finalized for nearly 5,000 children through 400 National Adoption Day events in all 50 States, the District of Columbia, Puerto Rico, and Guam; and

Whereas the President traditionally issues an annual proclamation to declare November as National Adoption Month, and National Adoption Day is on November 20, 2010: Now, therefore, be it

*Resolved*, That the Senate—

(1) supports the goals and ideals of National Adoption Day and National Adoption Month;

(2) recognizes that every child should have a permanent and loving family; and

(3) encourages the people of the United States to consider adoption during the month of November and all throughout the year.

#### RESOLUTIONS SUBMITTED TODAY

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of the following resolutions, which were submitted earlier today: S. Res. 683, S. Res. 684, and S. Res. 685.

The PRESIDING OFFICER. The clerk will report the resolutions by title.

The legislative clerk read as follows:

A resolution (S. Res. 683) recognizing the recent accomplishments of the people and Government of Moldova, and expressing support for free and transparent parliamentary elections on November 28, 2010.

A resolution (S. Res. 684) recognizing the 35th anniversary of the enactment of the Education for All Handicapped Children Act of 1975.

A resolution (S. Res. 685) commemorating the 100th anniversary of the discovery of sickle cell disease by Dr. James B. Herrick.

There being no objection, the Senate proceeded to consider the resolutions.

Mr. REID. Mr. President, I ask unanimous consent that the resolutions be agreed to, the preambles be agreed to, the motions to reconsider be laid upon the table en bloc, with no intervening action or debate, and any statements relating to the resolutions be printed in the RECORD.

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

The resolutions (S. Res. 683, 684, and 685) were agreed to.

The preambles were agreed to.

The resolutions, with their preambles, read as follows:

#### S. RES. 683

Whereas, since independence 19 years ago, the people of Moldova have made extraordinary progress in transitioning from authoritarian government and a closed market to a democratic government and market economy;

Whereas, for 19 years, the constitution of Moldova has guaranteed its citizens freedom to emigrate confirmed by years of successive Presidential waivers concerning the Jackson-Vanik amendment;

Whereas, on January 12, 2010, the Government of Moldova initiated negotiations with the European Union on an Association Agreement between the European Union and the Republic of Moldova, an important step towards European Union accession;

Whereas, in order to comply with the criteria of the Millennium Challenge Corporation (MCC), the Government of Moldova implemented far-reaching legal reforms to curb corruption, introduce budgetary transparency, and strengthen the capacity of civil society and the media, resulting in the successful conclusion of negotiations and the signing of an MCC Compact on January 22, 2010;

Whereas the Government of Moldova initiated a visa dialogue between the Republic of Moldova and the European Union aiming at visa liberalization on June 15, 2010;

Whereas, on August 26, 2010, Secretary of State Hillary Clinton praised progress in Moldova in "advancing transparent governance, human rights, and economic reform";

Whereas, on October 20, 2010, Reporters Without Borders reported an improvement in the freedom of press in Moldova, with Moldova rising from the 114th position in 2009 to the 75th position in 2010;

Whereas, in November 2010, the Government of Moldova concluded a treaty with Romania important to the assertion of its sovereignty and its future development;

Whereas Assistant Secretary of State for European and Eurasian Affairs Philip H. Gordon noted in testimony before the Subcommittee on Europe of the Committee on Foreign Affairs of the House of Representatives on June 16, 2009, "We will continue to work for a negotiated settlement of the separatist conflict in the Transnistria region that provides for a whole and democratic Moldova and the withdrawal of Russian forces."; and

Whereas the Republic of Moldova has made commitments to the Organization for Security and Cooperation in Europe (OSCE) to conduct elections according to international standards: Now, therefore, be it

*Resolved*, That the Senate—

(1) supports the development of an enduring democratic political system and free market economy in Moldova and a parliamentary election process on November 28, 2010, that comports with international standards of fairness and transparency;

(2) recognizes that the commitment of the Government of Moldova to economic and political reforms since 2009 has resulted in tangible progress towards integration into European institutions;

(3) acknowledges that continued reform and commitment to a free and fair election process will remain necessary for Moldova's full integration into the Western community of nations;

(4) notes that continued reforms in Moldova could provide for an additional basis for the repeal of the Jackson-Vanik trade restrictions;

(5) encourages ongoing negotiations between the European Union and the Republic of Moldova concerning visa liberalization and an Association Agreement;

(6) urges fulfillment by the Government of Moldova of commitments it has made to the OSCE with respect to the free and fair conduct of its upcoming parliamentary elections; and

(7) expresses the belief that the free and fair conduct of parliamentary elections in Moldova will contribute to a strong and stable government that is responsive to the vital needs of its people.

S. RES. 684

Whereas the Education for All Handicapped Children Act of 1975 (Public Law 94-142) was signed into law 35 years ago on November 29;

Whereas the Education for All Handicapped Children Act of 1975 established the Federal policy of ensuring that all children, regardless of the nature or severity of their disability, have available to them a free appropriate public education in the least restrictive environment;

Whereas the Education of the Handicapped Act (Public Law 91-230), as amended by the Education for All Handicapped Children Act of 1975, was further amended by the Education of the Handicapped Act Amendments of 1986 (Public Law 99-457) to create a preschool grant program for children with disabilities 3 to 5 years of age and an early intervention program for infants and toddlers with disabilities from birth through age 2;

Whereas the Education of the Handicapped Act Amendments of 1990 (Public Law 101-476) renamed the Education of the Handicapped Act as the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.);

Whereas IDEA was amended by the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105-17) to ensure that children with disabilities have equal access to, and make progress in, the general education curriculum and are included in all general State and district-wide assessment programs;

Whereas IDEA was amended by the Individuals with Disabilities Education Improvement Act of 2004 (Public Law 108-446) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their individual needs and prepare them for further education, employment, and independent living;

Whereas IDEA currently serves an estimated 342,000 infants and toddlers, 709,000 preschoolers, and 5,890,000 children 6 to 21 years of age;

Whereas IDEA has opened neighborhood schools to students with disabilities and increased the number of children living in their communities instead of institutions;

Whereas the academic achievement of students with disabilities has significantly increased since the enactment of IDEA;

Whereas the number of children with disabilities who complete high school with a standard diploma has grown significantly since the enactment of IDEA;

Whereas the number of children with disabilities who enroll in institutions of higher education has more than tripled since the enactment of IDEA;

Whereas IDEA requires partnership among parents of children with disabilities and education professionals in the design and implementation of the educational services provided to children with disabilities;

Whereas the achievement of students with disabilities is integrally linked with the suc-

cessful alignment of special and general education systems;

Whereas IDEA has increased the quality of research in effective teaching practices for students with disabilities; and

Whereas IDEA continues to serve as the framework to marshal the resources of this Nation to implement the promise of full participation in society of children with disabilities: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the 35th anniversary of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142);

(2) acknowledges the many and varied contributions of children with disabilities and their parents, teachers, related services personnel, and administrators; and

(3) reaffirms its support for the Individuals with Disabilities Education Act so that all children with disabilities have access to a free appropriate public education in the least restrictive environment and the opportunity to benefit from the general education curriculum and be prepared for further education, employment, and independent living.

S. RES. 685

Whereas sickle cell disease is an inherited disorder that affects red blood cells leading to significant morbidity and mortality in nearly 80,000 people in the United States;

Whereas sickle cell disease causes blockage of small blood vessels which can lead to tissue damage resulting in severe pain, infection, or stroke;

Whereas scientific breakthroughs over the past century have improved the lives of millions of people suffering from sickle cell disease;

Whereas scientific advances in treatment for sickle cell disease began with Dr. James B. Herrick, an attending physician at Presbyterian Hospital and professor of medicine at Rush Medical College in Chicago, Illinois, who discovered sickle cell disease and published the first recorded case in Western medical literature in November of 1910 in the journal *Annals of Internal Medicine*;

Whereas the hemoglobin mutation responsible for sickle cell disease was discovered by Linus Pauling in 1950;

Whereas penicillin was proven to be effective as a preventative strategy against pneumococcal infection in 1986, sparing patients with sickle cell disease from contracting this particularly dangerous infection;

Whereas in 1995, the National Heart, Lung, and Blood Institute reported the first effective drug treatment for adults with severe sickle cell disease;

Whereas the anticancer drug hydroxyurea was found to reduce the frequency of painful crises of sickle cell disease and patients taking the drug needed fewer blood transfusions;

Whereas in 1996, bone marrow transplantation was discovered to improve the course of sickle cell disease for select patients;

Whereas in 1997, blood transfusions were found to help prevent stroke in patients with sickle cell disease;

Whereas the introduction of pneumococcal vaccine in 2000 revolutionized the prevention of lethal infections in children and adults with sickle cell disease;

Whereas the first mouse model demonstrating the usefulness of genetic therapy for sickle cell disease was developed in 2001;

Whereas in 2007, scientists from the University of Alabama at Birmingham and the Massachusetts Institute of Technology developed an animal model for curing sickle cell disease;

Whereas improvements in treatments have substantially improved quality of life for patients with sickle cell disease and led to an increase in overall life expectancy from 14

years in 1973 to the mid to late 40s in 2010; and

Whereas the National Institutes of Health sponsored a symposium on November 16 and 17, 2010, to commemorate the 100th anniversary of Dr. James Herrick's initial description of sickle cell disease: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the contributions of the biomedical research community to the improvement in diagnosis and treatment of sickle cell disease; and

(2) commemorates the 100th anniversary of the discovery of sickle cell disease in November 1910.

MEASURE READ THE FIRST TIME—S. 3975

Mr. REID. Mr. President, I am told there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3975) to permanently extend the 2001 and 2003 tax relief provisions, and to permanently repeal the estate tax, and to provide permanent alternative minimum tax relief, and for other purposes.

Mr. REID. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read the second time on the next legislative day.

PROVIDING FOR A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES AND A CONDITIONAL RECESS OR ADJOURNMENT OF THE SENATE

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to H. Con. Res. 332, which is an adjournment resolution, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 332) providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, first I would like to express my appreciation to the Presiding Officer for his patience.

The PRESIDING OFFICER. Absolutely.

Mr. REID. I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 332) was agreed to, as follows:

H. CON. RES. 332

*Resolved by the House of Representatives (the Senate concurring)*, That when the House adjourns on the legislative day of Thursday,

November 18, 2010, or Friday, November 19, 2010, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Monday, November 29, 2010, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on any day from Thursday, November 18, 2010, through Sunday, November 21, 2010, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, November 29, 2010, or such other time on that day as may be specified in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

#### ORDERS FOR FRIDAY, NOVEMBER 19, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10:30 a.m. tomorrow; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

#### PROGRAM

Mr. REID. Mr. President, there will be no rollcall votes during tomorrow's session. The next vote will occur at approximately 6:30 p.m. on Monday, November 29.

#### ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that we adjourn under the previous order.

There being no objection, the Senate, at 10:06 p.m., adjourned until Friday, November 19, 2010, at 10:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

JAMES FRANKLIN JEFFREY, OF VIRGINIA  
NANCY J. POWELL, OF IOWA  
EARL A. WAYNE, OF MARYLAND

##### IN THE COAST GUARD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 271:

##### To be lieutenant commander

JOSEPH B. ABEYTA  
MARC H. AKUS  
NATHAN W. ALLEN  
RYAN J. ALLEN  
CHRISTOPHER M. ARMSTRONG  
CHARLES L. BANKS  
JON T. BARTEL  
ANN M. BASSOLINO  
ANDREW J. BEHNKE  
MICHAEL A. BENSON  
ROBERT J. BERRY  
FRED S. BERTSCH  
JOSHUA N. BLOCKER  
RUBEN E. BOUDREAUX  
KEVIN C. BOYD  
VALERIE A. BOYD  
JEFFREY A. BREWER  
CHAD R. BRICK  
BRYAN J. BURKHALTER  
JESSICA M. BYLSMA  
JOSEPH G. CALLAGHAN  
IAN L. CALLANDER  
BRIAN R. CARROLL  
PAUL R. CASEY  
ERIC M. CASPER  
JACOB L. CASS  
STEVEN J. CHARNON  
RYAN M. CHEVALIER  
MICHAEL P. CHIEN  
THOMAS J. COMBS  
MICHAEL N. COST  
JUSTIN K. COVERT  
MARK W. CRYSLER  
MELISSA J. CURRAN  
HAYES C. DAVIS  
CALLIE DEWEESE  
MICHAEL S. DIPACE  
MATTHEW D. DOORIS  
CHRISTOPHER DOUGLAS  
KEITH M. DOXEY  
KEVIN F. DUFFY  
SAMUEL Z. EDWARDS  
JAMIE M. EMBRY  
TODD L. EMERSON  
DANIEL J. EVERETTE  
JEFFREY P. FERLAUTO  
ROBERT M. FISHER  
JOSHUA FITZGERALD  
FRANK J. FLORIO  
ZACHARY R. FORD  
MATTHEW P. FRAZEE  
GEORGE O. FULENWIDER  
PATRICK J. GALLAGHER  
PATRICK J. GALLAGHER  
ELISA M. GARRITY  
JAMES C. GATZ  
ROBERT H. GOMEZ  
JOHN A. GOSHORN  
ANDREW P. GRANT  
BROOKE E. GRANT  
NAVIN L. GRIFFIN  
STEVEN M. GRIFFIN  
RICHARD O. GUNAGAN  
GREGORY M. HAAS  
JEREMY M. HALL  
RUSSELL S. HALL  
JASON K. HAMBY  
BYRON H. HAYES  
MICHAEL J. HEGEDUS  
KENNETH A. HETTLER  
RICK R. HIPES  
ANDREW J. HOAG  
MORGAN T. HOLDEN  
LAURA K. HOLVECK  
WHITNEY H. HOUCK  
GREGORY A. HOUGHTON  
SAMUEL J. HUDSON  
STEPHANIE K. HURST  
NICOLAS A. JARBOE  
MAX M. JENNY  
CHRISTOPHER D. JOHNS  
DAVID F. JOHNSON  
MAUREN D. JOHNSON  
MATTHEW N. JONES  
MICHAEL A. KARNATH  
KEVIN A. KEENAN  
BRENT G. KENNY  
CHARLOTTE A. KEOGH  
KENNETH M. KEYSER  
SCOTT R. KIRKLAND  
AJA L. KIRKSEY  
JOHN P. KOUSCH  
DAVID J. KOWALCZYK  
KEVIN M. KURCZEWSKI  
CRAIG S. LAWRENCE  
MARK LANIER LAY  
KRISTINA L. LEWIS  
THOMAS S. LOWRY  
COLIN B. MACINNIS  
HECTOR L. MALDONADO  
PAUL J. MANGINI  
JOHN A. MARTIN  
RYAN P. MATFSON  
JOSEPH W. MATTHEWS  
BLAKE A. MCKINNEY  
JAMES D. MCMANUS  
BRAD M. MCNALLY  
JOSEPH W. MCPHERSON  
JOHN M. MCTAMNEY  
JOHNNIE F. MESSER  
FRANCISCO L. MONTALVO  
MARC J. MONTENYERLO  
LEAH F. MOONEY  
KENNETH R. MORTON  
MATTHEW A. MOYER

RYAN T. MURPHY  
MICHAEL A. NALLI  
RICHARD T. NAMENIUK  
MARK R. NEELAND  
DION K. NICELY  
JUSTIN W. NOGGLE  
JAMES M. O'MARA  
ROGER E. OMENHISER  
ANDREA J. PARKER  
JOSEPH B. PARKER  
STACIA F. PARROTT  
CHRISTOPHER M. PASCIUTO  
CHESTER A. PASSIC  
JEFFREY L. PAYNE  
MICHAEL T. PEARSON  
JAMES H. PERSHING  
CATHERINE A. PHILLIPS  
RUSSELL T. PICKERING  
KENNETH B. POOLE  
JORGE PORTO  
MARK B. POTOTSCHNIK  
DAWN N. PREBULA  
KEITH D. PUZZER  
LINEKA N. QUIJANO  
AMANDA M. RAMASSINI  
LISA M. RICE  
ROBB M. ROBLE  
KEVIN ROCKS  
PEYTON H. RUSSELL  
PAUL C. RUSSO  
DENNIS M. RYAN  
JAN A. RYBKA  
PAUL SALERNO  
RACHELLE N. SAMUEL  
DANIEL L. SATTERFIELD  
KEVIN B. SAUNDERS  
BENJAMIN J. SCHLUCKEBIER  
TIMOTHY L. SCHMITZ  
TAZ L. SEARS  
BROOK W. SHERMAN  
ALLYSON M. SHULER  
LAURA J. SMOLINSKI  
JOAN SNAITH  
IAN M. STAL  
ROBIN R. STOTZ  
JESSICA R. STYRON  
BRANDON J. SULLIVAN  
WILLIAM E. TAYLOR  
JAMES K. TERRELL  
EMILY L. THARP  
LAWRENCE W. TINSTMAN  
DEVIN L. TOWNSEND  
MICHAEL A. VENTURELLA  
MATTHEW J. WALKER  
WILLIAM R. WALKER  
SARA A. WALLACE  
CHESTER K. WARREN  
RODNEY P. WERT  
SCOTT O. WHALEY  
CHRISTOPHER A. WHITE  
SCOTT C. WHITE  
BARBARA WILK  
WILLIAM B. WINBURN  
TRACY L. WIRTH  
CHRISTOPHER L. WRIGHT  
DAVID J. YADRICK  
DAVID K. YOUNG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES COAST GUARD UNDER TITLE 14, U.S.C., SECTION 271:

##### To be commander

STEPHEN ADLER  
RYAN D. ALLAN  
EUGENIO S. ANZANO  
JEFF M. APARICIO  
OCTAVIA D. ASHBURN  
CLIFFORD R. BAMBACH  
JOHN F. BARRESI  
CHRISTOPHER M. BARROWS  
JASON L. BEATTY  
PETER L. BEAVIS  
SCOTT D. BENSON  
BENJAMIN D. BERG  
JAMES R. BETZ  
JEFFREY B. BIPPERT  
DANIEL P. BISHOP  
JOHN R. BITTHERMAN  
MARK A. BOTTIGLIERI  
RUSSELL E. BOWMAN  
THOMAS L. BOYLES  
JOHN M. BRANCH  
PAUL BROOKS  
BRUCE C. BROWN  
SUZANNE M. BROWN  
JOHN M. BURNS  
MARIE B. BYRD  
JAMES D. CANNON  
FLIP P. CAPISTRANO  
DARREN J. CAPRARA  
JAY CAPUTO  
CLINTON S. CARLSON  
PETER R. CARROLL  
ERIC P. CARTER  
TRAVIS L. CARTER  
ANTHONY CELLA  
JOHN D. COLE  
ERIC M. COOPER  
JOHN P. DEBOK  
MARYELLEN J. DURLEY  
WILLIAM G. DWYER  
MICHAEL J. ENNIS  
STEPHEN J. FABIAN  
BRIAN D. FALK  
MICHAEL A. FAZIO  
ROSEMARY P. FIRESTINE

KENDALL L. GARRAN  
 KATHLEEN C. GARZA  
 MICHAEL D. GERO  
 FELTON L. GILMORE  
 ARTHUR H. GOMEZ  
 PETER W. GOODING  
 JOHN E. HALLMAN  
 HOLLY R. HARRISON  
 EDWARD J. HAUKKALA  
 RUSSELL F. HELLSTERN  
 ROBERT L. HELTON  
 ROBERT HENGST  
 JOSE L. HERRADOR  
 BRIAN E. HIGGINS  
 SCOTT T. HIGMAN  
 MARK E. HIGEL  
 ERIC E. HOERNEMANN  
 TODD M. HOWARD  
 RICHARD E. HOWES  
 JULIET J. HUDSON  
 HOMER D. HUEY  
 MARK A. JACKSON  
 ERIK J. JENSEN  
 ANTHONY R. JONES  
 KEVIN J. KERNEY  
 TAE J. KIM  
 ERIC P. KING  
 LAURA E. KING  
 DAVID K. KIRKPATRICK  
 SHAWN S. KOCH  
 JASON M. KRAJEWSKI  
 ALAN G. LAPENNA  
 MATTHEW F. LAVIN  
 ERIK A. LEUENBERGER  
 WILLIAM A. LEWIN  
 RALPH R. LITTLE  
 VIVIANNE W. LOUIE  
 STEPHEN A. LOVE  
 JAMES D. MARQUEZ  
 CHRISTOPHER D. MARTIN  
 JORGE MARTINEZ  
 DAVID J. MARTYN  
 CRAIG J. MASSELLO  
 JOSEPH T. MCGILLEY  
 GABRIELLE G. MCGRATH  
 JOSHUA J. MICKEL  
 STEPHEN A. MILLER  
 ADAM B. MORRISON  
 SCOTT W. MULLER  
 PRINCE A. NEAL  
 TIMOTHY M. NEWTON  
 JEFFREY W. NOVAK  
 WILLIAM M. NUNES  
 CRAIG M. OBRIEN  
 TOBIAS M. OLSEN  
 CHRISTOPHER T. O'NEIL  
 LOUIE C. PARKS  
 ANDREW T. PECORA  
 JOSE A. PENNA  
 SCOTT T. PETEREIN  
 RICHARD C. POKROPSKI  
 ANTHONY P. POWELL  
 STEPHEN A. RONCONE  
 MICHAEL R. ROSCHEL  
 JAMES B. RUSH  
 JASON H. RYAN  
 AARON M. SANDERS  
 BERNARD J. SANDY  
 BRIAN S. SANTOS  
 DEREK T. SCHADE  
 MICHAEL SCHOONOVER  
 MARK J. SHEPARD  
 JASON E. SMITH  
 ANNE O. SORACCO  
 LAURINA M. SPOLIDORO  
 SCOTT A. STOERMER  
 SUZANNE M. STOKES  
 JONATHAN THEEL  
 GREGORY L. THOMAS  
 ROBERTO H. TORRES  
 KARRIE C. TREBBE  
 RALPH J. TUMBARELLO  
 MARK W. TURNER

PAUL W. TURNER  
 MARK B. WALSH  
 LINDSAY N. WEAVER  
 DAVID C. WELCH  
 BYRON D. WILLEFORD  
 ERIC A. WILLIAMS  
 JOHN A. WILLIAMS  
 SCOTT A. WOOLSEY

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

PAUL L. SHEROUSE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

GABRIEL C. AVILLA

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

NATHAN P. CHRISTENSEN  
 TUCKER A. DRURY  
 PAIGE C. FURROW  
 JASON P. SHAMES  
 SARA A. WHITTINGHAM

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be major*

KATHLEEN M. FLOCKE

THE FOLLOWING NAMED INDIVIDUAL TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

GARY A. VROEGINDEWEY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

CRAIG S. BROOKS  
 STEVEN J. GILBERT  
 BRIAN J. JAMES  
 ANTHONY V. MOHATT  
 BENNIE W. SWINK

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 531:

*To be major*

BRANDON M. BOLLING  
 CHANTELL M. HIGGINS  
 TRACEY L. HOLTSHIRLEY  
 WILLIAM D. HOOD  
 KURT M. SANGER JR.  
 WYETH M. TOWLE

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

*To be lieutenant commander*

AUNTOWHAN M. ANDREWS  
 ALEXANDER L. BEIN  
 ALBERT L. BENOIT III  
 NICOLAS T. BOGAARD  
 BENJAMIN M. BRUMM  
 JEREMIAH J. CHEATUM  
 SHAWN W. CHRISTMAN  
 STEPHEN M. COL  
 MATTHEW B. COX  
 SCOTT B. CROLY  
 WILLIAM F. CUNNINGHAM  
 JOSHUA M. DISHMOM  
 BRAD A. FANCHER  
 JEFFREY A. FERGUSON  
 TERRENCE E. FROST  
 LUIS A. GONZALEZ  
 BRIAN HEASLEY  
 SAMUEL W. HERBST  
 CLAYTON N. HERBERT  
 CHRISTOPHER G. HOBERT  
 BILLY R. HUNTER  
 KIMBERLY E. JONES  
 EREK A. KASSE  
 SHAWN T. KENADY  
 MARK J. LEVIN  
 ALAN T. MARDEGIAN  
 JAMES R. MCCLURE III  
 FRANCIS R. MONTOJO  
 MICHAEL T. ORELLY  
 WARREN R. OVERTON  
 PATRICIA A. PALMER  
 JOSEPH A. PETRUCCELLI  
 JON B. QUIMBY  
 JULIE M. ROBERTS  
 JEREMY T. RORICK  
 PAUL L. ROULEAU  
 JOHANNAH G. SCHUMACHER  
 JEFFREY T. SERVELLO  
 ADAM C. SOUKUP  
 JOHN M. STUMP  
 CHAD J. TRUBILLA  
 DEREK S. WAISANEN  
 CHRISTOPHER W. WOLFF

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE GRADES INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

*To be captain*

MATTHEW A. MCQUEEN

*To be commander*

RONALD J. KISH

*To be lieutenant commander*

CHARLES E. CLIFFORD  
 JUSTIN C. LOGAN  
 JONATHAN C. MCINTOSH  
 SUYEN M. TERAN  
 CHARLES E. VARSOGEA

CONFIRMATION

Executive nomination confirmed by the Senate, Thursday, November 18, 2010:

EXECUTIVE OFFICE OF THE PRESIDENT

JACOB J. LEW, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.  
 THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.