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## House of Representatives

PERMISSION TO OFFER AMENDMENT NO. 3 OUT OF ORDER AND LIMITING DEBATE ON AMENDMENT NO. 3 DURING CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that during consideration in the Committee of the Whole of H.R. 5005 pursuant to House Resolution 502, the gentleman from California (Mr. WAXMAN), or his designee, be permitted to offer amendment numbered 3 in House Report 107-615 out of the specified order, to be offered at a time designated by the chairman of the Select Committee on Homeland Security pursuant to section 4 of House Resolution 502 and that debate on such amendment be limited to 20 minutes.

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

Ms. PELOSI. Mr. Speaker, reserving the right to object, I have a question for the leader. Mr. Leader, is it my understanding that the Waxman amendment, No. 94, which you just sought unanimous consent to roll until tomorrow with the debate and the vote, would be taken up as the first amendment tomorrow when we come into the House?

Mr. ARMEY. That would be fine with this gentleman. I would think if the gentleman from California (Mr. WAXMAN) is ready, of course, to begin, we would naturally want to take our votes, I think, to kind of get everybody in the body get things going and then move forward with the Waxman amendment.

Ms. PELOSI. I thank the distinguished leader.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

ANNOUNCEMENT REGARDING CONFERENCE REPORT ON BANKRUPTCY BILL

Mr. ARMEY. Mr. Speaker, members of the bankruptcy conference should proceed to H-219 to sign the signature sheets before they retire for the evening. And may I reiterate to our Members, there will be no more recorded votes tonight. Those Members who wish to participate in the general debate and in the amendments through amendment No. 23 will want to stay here for that participation and that debate.

### GENERAL LEAVE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5005, the Homeland Security Act of 2002.

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

There was no objection.

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HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore (Mr. SWEENEY). Pursuant to House Resolution 502 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5005.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas (Mr. ARMEY) and the gentleman from California (Ms. PELOSI) each will control 45 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, as Ronald Reagan once said, "History teaches that wars begin when governments believe the price of aggression is cheap."

President George W. Bush has heeded this call. He has asked us to undertake the most significant transformation of our government in half a century. If we are to do this, it is essential that we understand why it is necessary to do so. We must start with a precise understanding of why an enormous transformation of our government is required.

Mr. Chairman, the world has changed. It is a much different world than it was in 1947 when the last transformation of our government took place. It is a far different place than it was a mere 10 months ago. Our place in the world stage will never be as we have known it.

Mr. Chairman, what will it take to defend freedom under such circumstances? As the greatest, most free Nation the world has ever known, how do we protect our citizens and our culture from the forces who hate us? Do we lock up our doors and bar the windows? Are we perhaps in danger of sacrificing our liberty in the name of security?

The answer is that we are here today to act to defend individual liberty as much as we are here to defend personal safety. The enemies we now face take advantage of our free society to destroy us. They do so precisely because they hate the idea that we have the ability to choose for ourselves. We cannot grant them the victory they seek

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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by relinquishing our freedoms or closing our society.

This is an enemy not constrained by traditional borders. It is not constrained by any moral compass that distinguishes between the lives of civilians, women and children. To fight such an enemy, new solutions are required.

Here at home, the need for new solutions is great. Our ability to deal with foreign terrorists remains limited. Many of our security resources are scattered, our technology is outdated on too many occasions, and the missions of our agencies on the front lines of terrorism are unfocused. This, Mr. Chairman, makes us vulnerable. As long as we are vulnerable, our enemies will believe the price of aggression is one they can afford.

We cannot allow ourselves to forget just how real the threat has become. Although we may find ourselves safe while terrorist cells are confused and on the run, our short-term success should not inspire complacency. In this battle, time is of the essence. We must not take any more time than is absolutely necessary to do this job and to do it right.

The enemies of freedom present a great challenge to our society. Our response must be even greater. They must not win.

Let me close by recalling the words of our Founders. They remind us that the government was established, Mr. Chairman, if I may quote from what I consider the single greatest sentence ever written about America, the first sentence in the preamble to the Constitution, we are told by our Founding Fathers that our purpose is "to provide for the common defense, promote the general welfare and," Mr. Chairman, "to secure the blessings of liberty to ourselves and our posterity."

We are here tonight to heed these words. We all share an important mission, a common mission. Let us work together to make freedom secure as we cast our vote today.

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume, not to exceed 6 minutes.

Mr. Chairman, the preamble to the Constitution that the distinguished majority leader just quoted tells us that providing for the common defense is a primary role of our government, and every elected official takes an oath to protect and defend the Constitution. Clearly our Founding Fathers knew that we could do both, defend our country and protect our liberties.

I want to say at the outset, I want to commend the distinguished majority leader for his vigilance, indeed, his leadership, in protecting our civil liberties in this bill.

For example, I am pleased that he rejected the so-called TIPS program, which would have Americans reporting on Americans. Throughout the debate, throughout the hearings, throughout the markup, he was, as I say, ever-vigilant and a leader in protecting civil

liberties. I want to make that point of commendation and congratulations to the leader at the outset.

We agreed on many things in the bill, but not everything; and I wanted to commend the gentleman for a very important value that all of us in this body share, and many Americans are concerned about at this time.

Thank you, Mr. Leader.

Mr. Chairman, on September 11, the American people suffered a serious blow, the intensity of which we will never forget. Out of respect for those who died and their loved ones, we have a solemn obligation to work together to make our country safer. For some of the families of victims, the sound of a plane flying overhead fills them with terror. Indeed, any warning of a possible terrorist act intensifies their grief.

As the senior Democrat on the Permanent Select Committee on Intelligence, and as the distinguished chairman presiding, where he also serves, we know full well the dangers our country faces from the terrorists. We have before us today a historic opportunity to shape a Department of Homeland Security that will make the American people safer, while also honoring the principles and freedoms of our great Nation.

Unfortunately, we do not have a bill before us today that measures up to the challenge of protecting the American people in the best possible way. There are serious problems with the bill in its current form.

For example, out of the blue, the Republicans attempted to remove altogether the deadline for installation of devices to screen baggage for explosives. When that failed, they needlessly extended the deadline.

Then, ignoring the bipartisan recommendations of the Committee on Government Reform, the Republican bill weakens good government laws and civil service protections. By doing so, it invites problems of corruption, favoritism, and low morale that were the reasons that the civil service was established in the first place. Civil service is a backbone of a democratic government. We must preserve it.

The bill before us also ignores the bipartisan agreement on liability and instead inserts a provision so unprecedented in its sweep that it prompted the Reserve Officers Association of the United States to write yesterday to the gentleman from Texas (Mr. ARMEY), "This is not the time to immunize those who risk the lives of innocent American troops through willful misconduct."

As for the Department itself, it is a 1950s version of the bureaucracy. I had hoped that we could set up a Department that would be lean and agile and of the future, that would maximize the use of technology, that would capitalize on the spirit of innovation and new technologies. But, sadly, it does not.

Instead, we have, as I say, this bloated 1950s bureaucratic Department

which the General Accounting Office says will take between 5 and 10 years for the Department to be up and running, and, in its current form, will cost \$4.5 billion, says the Congressional Budget Office, to set up.

Certainly we will pay any price to protect the American people, but there appears to be an opportunity to cost \$4.5 billion just on management and rearranging Departments, money better spent on truly protecting the American people.

Mr. Chairman, tonight we will have bipartisan amendments to correct the problems in this bill. Unfortunately, though, the rule did not allow us to bring the DeLauro amendment to the floor. That amendment would have prevented those irresponsible businesses that choose profit over patriotism by fleeing into the Bermuda Triangle, going offshore to avoid taxes needed to pay for the war on terrorism. Instead, they are trying to cash in on that war. We had hoped we could have an amendment that would prevent that from happening.

I look forward to the debate and hope that bipartisanship will prevail so that we can vote with pride in the new Department. That bipartisanship will be, as I say, in the form of amendments which have come from the standing committees, in most cases by unanimous vote, certainly bipartisan; and hopefully the House will work its will in support of bipartisanship.

Mr. Chairman, as we debate the bill tonight, we are on hallowed ground, ground broken on September 11. We must do our very best in memory of those who died and as a comfort to their loved ones. In that spirit, I thank the chairman.

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

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Texas (Mr. THORNBERRY), one of the true entrepreneurs and innovators in homeland defense in this body.

(Mr. THORNBERRY asked and was given permission to revise and extend his remarks.)

Mr. THORNBERRY. Mr. Chairman, I thank the majority leader for yielding me time.

Mr. Chairman, since the end of the Cold War, there have been some disturbing trends. One is that chemical, biological, nuclear and radiological weapons are spreading to more and more nations and more and more groups. In addition to that, more and more nations and more and more groups are hostile to the United States and will seem to stop at nothing to attack us. Study after study recognized our vulnerability and urged us to act, and yet it has taken September 11 to give that impetus, to force us to act, and tonight we are acting in important ways.

It is true that organizational reform does not solve all of our problems. We still have to have the best people, we

still have to have resources, we have to give the right authorities. But as the Deutsch Commission found, a cardinal truth of government is that policy without proper organization is effectively no policy at all. That is why this organization is important. It does not guarantee success; but without it, we can guarantee failure.

What we found when we tried to protect our people is dozens of different agencies scattered across Departments all around the government. So the idea was if we can bring some of those key Departments and agencies together under one umbrella, with one chain of command, they will work better together and we will be safer.

Under this legislation, one piece relates to information, so all the cyberterrorism offices scattered around the government will be brought together and will work together. There is a science and technology section where several of the offices around the government will be brought together to identify, develop, and then field technologies that will keep us safer.

The third element is transportation and infrastructure. Ninety percent of the people in the new Department will be devoted to border and transportation security. If somebody thinks that this new Department is bloated, they are going to have to get rid of some of the people on our borders; and I do not think many of us will want to do that.

This brings together Border Patrol, Customs, Coast Guard and Agriculture inspectors, so they actually have the same chain of command. They can actually use the same equipment under the same regulations and working together have better border security.

A fourth element is emergency preparedness and response. Building upon the strengths of FEMA with its regional offices all around the country, this will be the key conduit of communication and training and planning and grants for local responders, and they all support this reorganization.

Mr. Chairman, the world has changed a lot in the last 10 years, and our government institutions must evolve and change in order to meet this new challenge. But this new Department also has to have the tools to meet that challenge, and that is why some of the amendments that we are going to consider, giving them the tools, the management flexibility, for example, to hire computer experts away from Silicon Valley, are so important.

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This bill is not perfect, but it makes us safer and it should be supported.

Mr. Speaker, over the past several days, I have distributed to our colleagues a series of questions and answers about creating a Department of Homeland Security. I am including copies of them in the RECORD at this point because they reflect a number of the issues which have been raised about this proposal and some of the reasons we should support it.

#### ESTABLISHING A DEPARTMENT OF HOMELAND SECURITY

##### QUESTION 1: WHERE DID THIS IDEA COME FROM?

It has been said that the idea of consolidating a number of government agencies into a new Department of Homeland Security was hatched in secret in the middle of the night—and now we're being asked to vote on it less than 2 months after it was first proposed.

Not true. Here are the facts.

As far as I know, the idea to create a new Department of Homeland Security from some of the dozens of different offices and agencies scattered around the Government springs from the U.S. Commission on National Security/21st century, popularly known as the Hart-Rudman Commission. This bipartisan Commission was established by Congress in 1997 and was charged with undertaking a broad, in-depth study of America's national security challenges over the next 25 years.

The quality and experience of those serving on the Commission was extraordinary. The Commission also had a top rate staff.

The Commission issued three reports—one on the threats we face, one on an overall strategy, and finally one with specific recommendations about what should be done. Overall, they spent 3 years carefully looking at the world and our role in it and concluded that "security of the American homeland from the threats of the new century should be the primary national security mission of the U.S. Government." (Just to show you the breadth of the study, their second recommendation dealt with the adequacy of our math and science education.)

The Commission unanimously recommended the creation of a new Department of Homeland Security to consolidate border security agencies, cyber terrorism offices, and emergency response organizations, such as FEMA. Their final report was issued publicly on February 15, 2001.

(In fairness, a number of other commissions in recent years, such as the Marsh Commission (1997), the Deutsch Commission (1999), the Bremer Commission (2000), and the Gilmore Commission (2001), reached similar conclusions about the importance of reorganizing the Government for homeland security. Many of the principles and suggestions from them were also in the Hart-Rudman report or have been incorporated into the various proposals.)

On March 21, 2001, I introduced H.R. 1158, to implement the Hart-Rudman recommendation and create the new Department. The Government Reform Committee, as well as other committees, held hearings on this issue.

After September 11, a number of other proposals were introduced in Congress, and, of course, President Bush appointed Governor Ridge to head a Homeland Security Office in the White House.

Earlier this year, a bipartisan group of House and Senate Members introduced a revised proposal, H.R. 4660, to create a Department of Homeland Security. This bill was introduced by Ms. Harman, Ms. Tauscher, Mr. Gibbons, and me, and was cosponsored by 40 Members. In the Senate, it was S. 2452 by Senators Lieberman, Specter, and Graham. A number of additional hearings were held on these and other proposals. The Senate bill was reported out of the Government Reform Committee on May 22, 2002. The President announced his proposal on June 6, 2002.

In sum, several years of study and work—inside the Congress and out—have gone into this idea. I recommend that you or your staff take a look at the Hart-Rudman report, which set forth the problems and some solutions well before September 11. A complete

copy of the report can be found at <http://www.nssg.gov>.

##### QUESTION 2: NOW DOES CREATING A NEW DEPARTMENT MAKE US SAFER? (PART 1)

Now that you know where the idea came from (see Question 1), let's get right to the heart of the matter: How does this proposal help make us safer? After all, that is what really matters.

One way a Department of Homeland Security can make us safer is by bringing together under one umbrella and one chain of command many of the government agencies responsible for homeland security. The Hart-Rudman Commission found more than 40 government entities with some responsibility for homeland security. After September 11, the Administration said that it is more like 100. There is no way that many organizations spread all around the Federal Government can effectively work together. Their efforts are, at best, fragmented and duplicative, or, at worst, they are at cross-purposes.

The new Department of Homeland Security would bring together those various entities that deal with border security, cyber terrorism, emergency response, and countermeasures for chemical, biological, nuclear, and radiological weapons. Only by bringing them together under one chain of command can they be as effective as we need them to be.

Let's take border security as one example. Currently, at our borders we have the Border Patrol, part of the Immigration and Naturalization Service, which is in the Department of Justice. We also have the Customs Service, which is a part of the Department of the Treasury. We also have the Coast Guard, an entity within the Department of Transportation, along with the new Transportation Security Administration (international airports are like borders). We also have inspectors from the Department of Agriculture's Animal and Plant Health Inspection Service stationed at the border to keep out plant and livestock diseases. All of those entities have different bosses, different equipment, and even different regulations that govern them. No one person or entity, is in charge.

As a side note, over 90 percent of the personnel who will be in the new Department of Homeland Security will be from existing agencies charged with border and transportation security.

As Leon Panetta has said, without "direct line authority over the policies and funding of the agencies involved, it will be very difficult to control and coordinate their efforts." One chain of command, with direct control over budgets, is required to make sure that all of the communications equipment is compatible; to make sure that the dozen or so databases these agencies have can be shared; to have clear, consistent regulations and procedures for border inspections, and to have clear, reliable communications with other government agencies.

Control over our borders is essential to protecting our homeland. We must have those organizations and individuals responsible for border security be as effective as possible. That means they must operate as one integrated, seamless unit. They must have one coach, one playbook, and one quarterback. No team can be effective without a clear chain of command and clear direction.

Another important consideration is that first responders need one federal contact rather than five or 40. Local officials have repeatedly expressed frustration at not knowing which federal agency has the lead and at not knowing who to call in an emergency. This plan would give them one phone number, rather than a phone book.

Now, of course, organizational reform is no silver bullet. We still need more top quality people to manage our borders. We still need the best technology we can field quickly. We still need to review our immigration and other laws. But all of those resources and efforts will not be as effective as they could be without the right organizational structure to get the most out of them.

The Deutsch Commission report said that "a cardinal truth of government is that policy without proper organization is effectively no policy at all." President Eisenhower believed that "the right system does not guarantee success, but the wrong system guarantees failure. A defective system will suck the leadership into its cracks and fissures, wasting their time as they seek to manage dysfunction rather than making critical decisions."

Homeland Security is too important to have anyone "manage dysfunction." We need the best odds we can get in order to protect our people.

QUESTION 3: HOW DOES CREATING A NEW DEPARTMENT MAKE US SAFER (PART 21)

Consolidating existing agencies into a new Department of Homeland Security can help make us safer by integrating the work of those agencies into one seamless unit. But it can help make us safer in other ways, too.

One way is by making homeland security a higher priority in the day-to-day operations of the federal government. Today, no federal department has homeland security as its primary mission. Rather than dozens of different agencies with some homeland security duties, we should have:

One department whose primary mission is to protect the homeland;

One department to secure borders, ports, modes of transportation and critical infrastructure;

One department to coordinate communications with state and local governments, private industry, and the American people;

One department to help train and equip first responders; One department to focus research and development and swift fielding of technology;

One department with a seat at the Cabinet table and considerable bureaucratic weight in the inevitable battles over turf and money.

Many of the agencies with responsibility for homeland security are in departments that have other, very different missions. To continue with the example of border security, the Customs Service is in the Department of the Treasury, whose primary mission is managing the financial affairs of the country. Indeed, the primary mission of the Customs Service for much of our history was to enforce trade laws and collect tax revenue to help run the government. And it still needs to do that. But even more important to the country today is the Custom Service's responsibility to keep chemical, biological, nuclear, and radiological weapons out of the country. In light of this new, higher priority which we must all give to homeland security, the Customs Service should be moved into a Department whose primary mission is consistent with that responsibility.

We could go through similar reasoning with the other agencies charged with border and transportation security. Some of them have other important missions besides homeland security which they must perform—the Coast Guard, for example—but if we look at the overall needs and priorities of the country, homeland security must have a greater emphasis. The consequences of not putting homeland security at the top of the list of priorities could certainly be catastrophic.

Another way that the new Department can make us safer is by helping set priorities

within the homeland security mission. We could spend the whole federal budget on homeland security and still not be 100 percent safe. We have to look at our vulnerabilities and set priorities, placing more resources and attention in one area and less in another. That becomes very hard to do when the agencies charged with setting priorities and taking steps to reduce them are scattered around the government.

For border security, what is more important: more people or more technology? What if the Border Patrol decides to emphasize one but Customs decides to emphasize the other? Naturally, Congress plays a key role in sorting out what is more important and what is less, but the Executive Branch must have one coherent, integrated decision process in order to be effective.

In sum, creating a Department of Homeland Security makes us safer by helping make homeland security a higher national priority and by making our homeland security efforts more effective. It is no magic answer, but given all that is at stake, every added measure of security counts.

QUESTION 4: HOW GOES THIS REORGANIZATION AFFECT EMERGENCY RESPONDERS?

If anyone needed a reminder that local emergency responders are at the forefront of our homeland security efforts, September 11 taught us that lesson in ways we will never forget. Local police, firefighters, and emergency medical personnel were first on the scene, and they will always be the first to respond to any terrorist attack.

Local law enforcement are also essential to preventing terrorist attacks. When intelligence information is received about a threat to shopping malls, for instance, it is the local police that will be on higher alert and try to stop an attack.

However we reorganize federal agencies, empowering first responders is tremendously important to making the country safer. Organizations representing them, such as the International Association of Chiefs of Police and the International Association of Fire Chiefs, support creation of a new Department of Homeland Security for very good reasons.

It will provide a "one-stop shop" for state and local officials. I suspect we have all heard from frustrated local officials who need help in finding the appropriate federal office to deal with some problem. Rather than have a whole directory of phone numbers of federal agencies, local officials will have one number to call.

In addition, the Department will build upon the strengths of FEMA, including its existing structure with ten regional offices across the country and its close working relationships with state and local officials.

Building upon that foundation, the new Department will administer grants to help cities and counties acquire needed equipment. It will help provide and set the standards for needed training, consolidating several programs with similar missions. It will assist communities in planning for emergencies. Perhaps most importantly, it will provide the primary channel of communication between the federal government and state and local governments on homeland security—communication that will go both ways.

For instance, if the Department receives information that shopping malls may be a target of attack, it will communicate with the appropriate state and local officials. On the other hand, if several local police departments notice a suspicious pattern of behavior, they could communicate their concerns to the Department, and the Department may take some action. Providing a regular channel of communication between state and

local officials and the federal government will be one of the most important functions of the Department of Homeland Security.

Helping coordinate and provide standards among local responders is another. We have learned that communication difficulties were a key problem on September 11. Helping to ensure that all of the emergency responders in a metropolitan area have compatible communication equipment, for example, will be an important benefit, not just for terrorist attacks, but for emergency response and law enforcement activities of all kinds.

The Department of Homeland Security will empower these local heroes by helping them do their jobs and by being their champion in the federal government. All of our communities will be safer as a result.

QUESTION 5: HOW DO WE KNOW IF THE AGENCIES BEING MOVED WILL STILL PERFORM THEIR OTHER MISSIONS?

Our federal government is big and complex, and a number of government agencies have multiple missions. We expect FEMA to respond to a disaster, whether it is caused by a hurricane or a terrorist. We expect the Coast Guard to perform search and rescue, protect our maritime resources, and guard our coastline. No cabinet department has perfectly clean lines.

Yet, the way we organize ourselves does say something about what we think is important. And given the changes in the world and in technology, we have to put greater focus on protecting Americans here at home. But what about all of those other jobs?

Sometimes it is relatively easy to split an organization. For example, the Animal and Plant Health Inspection Service (APHIS) has a section which helps provide border security. Other sections are devoted to tasks inside the United States. It is possible, and preferable, to move that portion of APHIS which helps protect our border to the new Department of Homeland Security while leaving the rest of it at the Department of Agriculture.

Other agencies are not so easily split. In fact, the commandant of the Coast Guard has said that dividing it would threaten its ability to do any job properly.

The Hart-Rudman Commission called the Coast Guard a "model homeland security agency given its unique blend of law enforcement, regulatory, and military authorities that allow it to operate within, across, and beyond the U.S. border." In fact, if you think about it, the Coast Guard already has a number of varied missions that have little to do with the primary focus of the Department of Transportation. There is no reason it will not continue to perform its many jobs, but its critical role in protecting the United States and its citizens will be enhanced. (Note that the Coast Guard would be moved in the new Department as a separate entity; it would not be merged with other border security organizations.)

A number of the agencies moving into the Department of Homeland Security will be in an even better position to perform their other duties. In order to fulfill its responsibilities for homeland security, the Coast Guard will need new ships and equipment. Those same ships and aircraft are involved in all of the Coast Guard's tasks and will make the entire organization stronger. It is also more likely to get the additional resources it needs as a part of the Department of Homeland Security.

As part of the Department of Homeland Security, FEMA will be the critical link between the federal government and state and local governments. It will provide grants, conduct training, and be the pipeline for communications up and down the line. Those capabilities and those relationships, which

will develop as a part of its homeland security mission, will also enable FEMA to deal even more effectively with natural disasters.

Another reason I feel confident that the various components of the Department of Homeland Security will perform their other important missions is us—the Congress. We provide their funds, and through oversight and direction we can ensure that the important needs of the country are met.

QUESTION 6: HOW MUCH WILL THIS NEW DEPARTMENT COST?

With any significant proposal before Congress, we face the issue of cost. In this case, the Congressional Budget Office has estimated that the President's plan for a Department of Homeland Security will cost about \$3 billion over five years. Some have misinterpreted this amount as the cost of the reorganization. It is not.

In fact, the CBO report states that two-thirds of their \$3 billion estimate is for new programs suggested by the President, such as the National Bio-Weapons Defense Analysis Center, the new intelligence analysis function, and other newly authorized activities. We may agree with the President's recommendation to create these new programs, but they are for new capabilities, not reorganizing existing ones.

According to the CBO estimate, the cost of consolidating agencies and providing centralized leadership, coordination, and support services in the new department is approximately \$1 billion over five years. That figure is an estimate based on the cost of administering other, existing departments, such as the Department of Justice. It does not consider any cost savings from things like consolidating overhead and support services.

The President proposed a dramatic increase in homeland security spending in his budget for fiscal year 2003. He believes that whatever start-up or transition costs there may be can be accommodated within these new, higher levels of spending.

We also have to look at the bigger picture, however. Homeland security should not be used as an excuse to justify new, unnecessary spending. There is no doubt we will be spending significantly more money on real homeland security, as we should. But, we should also do everything we can to make sure that the money is spent wisely and efficiently. That is a primary purpose of the new Department of Homeland Security and should please even the most rigid budget hawk.

QUESTION 7: HOW BIG SHOULD THE NEW DEPARTMENT BE?

When the President first submitted his proposal for a Department of Homeland Security, some complained that it was not big enough because some essential agencies were not included. Others have argued that it has too many people and too many agencies, that it needs to be "leaner and meaner."

What size is just right?

The short answer is that the new Department should be whatever size it takes to do the job. Obviously, we cannot put every function related to homeland security in one cabinet department. We have to choose what job we need the Department to do and then give the Department the agencies and tools it needs to do it.

If we want the Department to be responsible for border security, as most everyone does, then it must have all of the border security agencies. Border and transportation security will, in fact, be the largest component of the new Department. About 90 percent of the employees of the Department of Homeland Security will be in that section. To significantly reduce the size of the Department, you have to either leave one of the

border agencies out or you have to have fewer people on the border. Neither of those options makes us safer.

Most agree that the new Department should take the lead on cyber security. If so, it needs to have the entities in the federal government which deal with that issue.

We all know that state and local emergency responders are on the front lines of homeland security and that we need to assist them in doing their jobs. The new Department not only can provide grants and training; it can also help ensure good communication among different levels of government and even among various emergency responders. But, it needs to build upon the existing FEMA structure and relationships to "hit the ground running."

It is important to remember that this reorganization does not make government bigger. All of the people working for the Border Patrol, Coast Guard, etc., will be federal employees—with or without this new Department. The issue is not the size of the federal workforce; it is how we can best organize that workforce to protect our Nation.

Congressional oversight will be needed to make sure that the bureaucracy inside the new Department is truly "lean and mean" and that resources go where they count the most—on the ground at the front lines.

It boils down to this: we should look at those areas important to homeland security where the federal effort is fragmented, bring them together under one chain of command, and give them the tools they need to protect the country—whatever size it takes to do the job.

QUESTION 8: WHY HAS THE PRESIDENT ASKED FOR MANAGEMENT FLEXIBILITY IN THE NEW DEPARTMENT?

The President's request for "management flexibility" has been interpreted to mean a number of things and raised many fears, some unnecessarily. Here is where we find ourselves:

Terrorists are always probing for weakness. They are seeking out our vulnerabilities. They are watching what we do and adjusting their plans accordingly. We have to be flexible and adaptable in order to be successful. Unfortunately, those characteristics are generally not found in government organizations.

If we receive information that leads us to believe that we should acquire a particular vaccine in a hurry, we need to have a Department that can do that, within limits, without waiting on a bill from Congress or on approval of a reprogramming request. Some funding flexibility will be especially important during the transition phase of the new Department.

We face even bigger challenges with people. It takes far too long to hire qualified personnel. It is very difficult today to reward a federal employee who does an outstanding job and wants to continue in the same position. It is very difficult today to dismiss a federal employee who does not do a satisfactory job. Most managers simply try to shove them out of the way.

To hire people with the background and experience we need to fight cyber attacks, the federal government must compete with industry. The traditional civil service system hinders our ability to do so. New incentives, flexibility in hiring and firing, and greater flexibility in hours and benefits will all help us get and keep the top quality people we need.

The new Department needs other kinds of flexibility as well. Creating a new Department in a time of war, merging various cultures and organizations, and significantly increasing the people and resources involved will be a tremendous management challenge.

The new Secretary should have some ability to reorganize inside the new Department as developments warrant. He or she should also have greater procurement and contracting authority to help identify, develop, and then field technology as rapidly as possible.

The President has been clear that he is not trying to overturn federal employee protections in this bill. He is simply trying to give the new Department every chance to work—and so should we.

QUESTION 9: IF NOT THIS, WHAT?

Creating a new cabinet department, realigning existing agencies, creating new capabilities to fight terrorism—it seems like a lot in one bill. Understandably, some Members are concerned that it is too much too fast.

Well, what are our alternatives?

Of course, the easiest option is to leave things as they are. We could reject the President's proposal and assume that the best we can do to keep our Nation secure is keep the current system with dozens of different agencies—each having some homeland security responsibility.

Another option is to leave the various agencies in their current departments but look to a White House office to coordinate their activities, using the Drug Czar as a model. There is certainly a place for a White House coordinator to help set government-wide policies, in part because a number of agencies involved with homeland security will not be in the new Department. But, as Tom Ridge has learned, a White House coordinator is no substitute for a direct chain of command with day-to-day operational control over—and responsibility for—key functions. A coordinator and 100 people in the White House cannot ensure that communications equipment is compatible, that data bases are interoperable, or that every guard at each border crossing follows the proper procedures.

A third option is to move incrementally—combine just two or three agencies, see how that works, and leave the door open to adding a few more down the road. Unfortunately, we do not have the luxury of time before we act. We need safer borders today, and the governmental entity charged with responsibility for our borders must have all of the pieces of border security under one chain of command. We need to strengthen federal support for emergency responders today, and we need better cyber security today. We cannot wait.

We must avoid setting up the new Department to fail. If we assign it the job of border security but do not give it direct control over all of the people and resources at the border, it simply cannot be effective. Going half-way is not fair to the employees in the new agency or to the American people.

Just as when we looked at our welfare system a few years ago, no one can credibly argue that the present system is as good as we can do. We must also resist the temptation to tamper around the edges in ways that may score political points but not count for much in dealing with future attacks. We must do what is right.

QUESTION 10: HOW SHOULD I VOTE ON CREATING THE NEW DEPARTMENT OF HOMELAND SECURITY?

Over the past few days, I have tried to answer some of the key questions and concerns about the new Department of Homeland Security. If there is any additional information I can provide, please let me or my office know.

As we discuss and debate all of the details involved in realigning so many government agencies, we should also remember the bigger picture and what is at stake.

Our country was suddenly and savagely attacked on September 11. Yet, we all recognize that the horrible tragedy of that day

may be only a taste of much greater tragedy to come. I hope not. But I also know that chemical, biological, nuclear, and radiological weapons are spreading to more and more nations and groups. I also know that many of those nations and groups are hostile to the United States and have little regard for innocent human life.

As the Gilmore Commission has said: "The tragic attacks of September 11, 2001, the subsequent anthrax attacks, and persistent threats clearly demonstrate the importance of continuing to prepare our nation to counter more effectively the threats of terrorism. These attacks underscore the urgency by which we must act to implement fully a comprehensive national approach to preparedness."

September 11 must serve as our wake-up call. We must act, and we should not be timid about it. We will all be judged by the adequacy of our response.

Unfortunately, it is always easier to attack and criticize than it is to formulate specific proposals and take responsible action. Some of the criticisms of creating the new Department are genuine; others may be excuses to prevent reform. We cannot let turf protection trump real security.

Of course, there are uncertainties with any new endeavor. Even with perfect legislation, the management of this new Department will be an enormous challenge. And even if it is managed perfectly, there are no guarantees that future attacks will not be successful. But, we must do everything we can to be ready.

This reorganization will help us to be ready and to be safer. But our work will not end there. Everyone of us will have a continuing duty, through our committees and individually, to pursue a host of issues related to homeland security.

We are at war. Many lives and our vital freedoms are at stake. Those trying to hurt us are always probing for vulnerabilities and will stop at nothing, using any method of attack they can get their hands on. We have no silver bullets in this war. But it seems to me that we owe the people we represent, those who came before, and those who will come after us our very best efforts to preserve and secure this great country and its people.

Creating a Department of Homeland Security will make us safer—not perfectly safe, but safer. Please vote "yes" on H.R. 5005.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from New Jersey (Mr. MENENDEZ), the vice chair of our Democratic Caucus and a valued member of the Select Committee on Homeland Security.

(Mr. MENENDEZ asked and was given permission to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Chairman, I thank the gentlewoman for her leadership on the Select Committee on Homeland Security on our side of the aisle in leading us on some of the key issues that we wanted to pursue.

Mr. Chairman, in the work of securing the homeland, there are no Democrats or Republicans, there are only patriots. America has never been so powerful. Our culture, our government, our commerce, our ideals, our humanity, virtually everything we do and all that we stand for has a global reach that is unprecedented in the history of civilization. Yet, America has never been so vulnerable as it was on September 11. I will never forget that day; it will be seared in my memory forever, that I

visited Ground Zero at the World Trade Center with the President and my colleagues from the tri-State area.

Winston Churchill once said, "You can always rely on America to do the right thing, once it has exhausted the alternatives."

Let me suggest that the gravity of the challenges we face in the wake of September 11 impels us to prove Churchill wrong on his latter sentiment. As we seek to protect the American people, as we work to establish the new Department of Homeland Security, we must get this right the first time.

Let us get this right for Kelly Colasanti of Hoboken, New Jersey, whose husband was killed in the attack on the World Trade Center. Let us not forget Kelly and the more than 100 constituents from my congressional district in northern New Jersey who were killed, and all of the other victims of the horrific attacks of September 11.

How we project American power abroad determines our success as a global power. It defines us in the eyes of others. America now faces the awesome responsibility to protect her people from terrorism.

How we project American power domestically is an entirely different matter. The establishment of this new Department will have profound implications. Let us keep that in mind as we proceed to establish a very powerful domestic security agency. Let us also refrain from questioning or impugning the motives of those who have a different view as to how we protect the American people and, yes, American workers.

Let me underscore a few items.

A Nation that can put a man on the moon and lead the information age can surely figure out a way to get the bomb detection technology we need in just 400 airports. Secretary Mineta testified before the Committee on Transportation and Infrastructure 2 days ago that the TSA would meet the deadlines. He said the same before the Select Committee on Homeland Security. The Department's Inspector General testified that it was premature to say TSA would not be able to meet the deadlines. As a Congress, we need to speak with one voice that excuses and delays will not be tolerated, and that is why I will offer an amendment with the gentleman from Minnesota (Mr. OBERSTAR) to make sure the traveling public keeps safe and we keep the TSA's feet to the fire.

Secondly, the most glaring problem, even crisis, I would say, with government performance leading up to September 11 was an unacceptable lack of coordination and information-sharing among Federal intelligence and law enforcement agencies and between the agencies and State and local authorities, first responders, and the private sector. This bill must include mechanisms that guarantee that such coordination and information-sharing indeed will occur. The minute that this De-

partment goes on line, the new Secretary should have, in real-time, all of the intelligence and law enforcement information that he or she needs. The Chambliss-Shays-Harman-Menendez amendment should be adopted.

Finally, Governor Ridge has repeatedly said that if the hometown is secure, the homeland is secure. He is right. After September 11, we are in a new national security paradigm where Main Street is the frontline. We must fortify that frontline. We must provide our first responders the resources, training, and guidance they need to protect America's communities.

Now, we were asked repeatedly to provide flexibility for the Secretary in setting up this Department. As we provide some flexibility for the 107,000 employees about to be transferred by an act of Congress to a new department, homeland security should not mean the insecurity of those employees.

Yes, life in America has forever changed since September 11. Main Street is now the frontline of a new war. But American values have not changed and must not change. We continue to value liberty and freedom and justice and fairness. It is in that spirit of providing for security and preserving liberty that we will debate and offer amendments towards this goal. Together, together, I hope, if there are open minds and open hearts, we can provide for an even safer America, and we can do it in a bipartisan way.

Mr. ARMEY. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. TAUZIN), the distinguished chairman of the Committee on Energy and Commerce.

Mr. TAUZIN. Mr. Chairman, I rise in support of H.R. 5005 which represents the President's ambitious and historic proposal to create the new Department of Homeland Security. I believe the President's proposal represented a great framework for congressional consideration, but I think the majority leader and the Select Committee on Homeland Security chairman, the gentleman from Texas (Mr. ARMEY), deserve so much better. He has really done a yeoman's job in not only building this program as the President requested, but creating a much stronger bill as a result of the way he has gone about his work. His leadership and his consultation with the committees of jurisdiction has been tremendous, and I know he has consulted so well with those on the other side as we process this bill.

I want to praise Governor Ridge and the administration for their flexibility and consideration of our concerns, and I think we all owe him and his department a debt of gratitude for the protection that he has given our country since 9-11 and the work he is doing to ensure homeland security as we go forward.

Ever since the anthrax attacks in this country, the threat of bioterrorism has become much more of a reality to our people, and the importance

of biomedical research activities at the Department of Health and Human Services and NIH and the CDC has never been greater than today. This bill literally builds upon those great research agencies, and rather than destroying their work and taking it over and redoing it, the bill makes it clear that NIH and CDC will remain with primary responsibility over human health-related research, and that the new Department itself will not engage in R&D efforts, but rather will collaborate and coordinate with these two agencies.

More importantly, the bill retains all of the legal and budgetary authority for these research programs within HHS. The Committee on Energy and Commerce recommended this approach because of the terrorism-related research currently being performed at NIH and at the CDC, which is really dual-purpose in nature. It serves the priority and needs of both counterterrorism, but also, traditionally, the needs of public health. So I want to thank the gentleman from Texas (Mr. ARMEY) and the administration for working with us on this important change.

We also want to make clear that the bill adopts recommendations that our committee made with respect to not only bioterrorism and public health operations at NIH and HHS, but also the public health emergency grant programs run by those agencies. I am pleased that the committee adopted our committee's recommendations in this area as well.

The bill also will improve the efforts by our country's top scientists at national laboratories to develop new methods of detecting and preventing terrorist attacks, such as improved sensors to detect radiological devices and new scanners to screen luggage and cargo, a critical need as we move forward. Our Nation's ability today to screen for radiological and nuclear materials entering our ports is woefully inadequate. We are going to do something about it with this bill.

To address those needs, our committee recommended the bill adopt a provision that will establish at the new Department a central technology clearinghouse that will assist Federal agencies, State and local governments and, even more importantly, the private sector in evaluating, implementing, and sending out information about key homeland security technologies such as radiation and bio-weapon detectors.

I particularly want to thank the gentleman from North Carolina (Mr. BURR) of our committee, the gentlewoman from New Mexico (Mrs. WILSON), and the gentlewoman from California (Ms. HARMAN) for their help in this regard during the committee's deliberations.

I also want to point out that, indeed, we also recommended, and the committee adopted in the print, within the Department a Federal cybersecurity program that will begin to provide computer security expertise to other

Federal and civilian agencies to help improve protection of their critical information systems.

Our committee did work in this area, and what we learned about the vulnerability of Federal agencies to cyberattack was astounding. Today, the business software lines told us the private sector is in similar shape. This bill will turn it around. The cybersecurity section is a critical component.

Mr. Chairman, I want to commend this bill to all of my colleagues and recommend its passage.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from California (Mr. WAXMAN), the ranking member of the Committee on Government Reform.

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, while I agree that we need homeland security legislation, it is clear that the Federal departments are not working together as they should to protect our Nation. The recent revelations of missed signals and failure to communicate at the FBI and the CIA illustrate how serious this problem is.

Unfortunately, the bill we are considering today has serious flaws. In fact, I think it may well cause more problems than it solves.

I want to show a chart to the right. Here is how our homeland security agencies are organized today, and I have a second chart. This is how they will be organized after the new Department is created. We are getting more bureaucracy and we are doing so at a tremendous cost to the taxpayers.

According to the Congressional Budget Office, just creating and managing a new department will cost \$4.5 billion, and this does not include additional spending that may be necessary to prevent terrorist attacks, reduce the Nation's vulnerability to attacks, and recover from any attacks.

Now, if this money were used at the front lines of fighting terrorism instead of paying for a new bureaucracy, think how much better off we might be. There is an old adage that those who do not remember the past are condemned to repeat it, but we may do exactly this in our headlong rush to create this new department.

The history of past reorganizations is not reassuring. Here is what Petronius the arbiter, an advisor to the Roman Emperor Nero, said nearly 2000 years ago, and I quote: "We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any situation by reorganizing, and a wonderful method it can be for creating the illusion of progress, while producing confusion, inefficiency, and demoralization."

The committees were able to work in a bipartisan way to achieve some substantial improvements to the President's bill. Unfortunately, the Select Committee on Homeland Security chose to simply reverse many of these gains. Even worse, the Select Committee on Homeland Security added entirely new provisions that weaken our national security. One provision delays deadlines for improving airline safety. Another exempts defense contractors and other large campaign contributors from liability, even for intentional wrongdoing. This is the ultimate anti-corporate responsibility provision imaginable.

One major defect in this bill is that it would transfer a vast array of responsibilities that have nothing to do with homeland security such as administering the national flood insurance program and cleaning up oil spills at sea.

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This bloats the size of the bureaucracy and dilutes the new department's counterterrorism mission.

Another major defect is the bill lacks a strong mechanism to coordinate the activities of the many Federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective, but this bill does not give the White House Office of Homeland Security the budgetary powers it needs to do its job. I will be offering an amendment later to address this deficiency.

Another problem is the President's proposal include broad exemptions from our Nation's most basic good government laws, such as civil services laws and the Freedom of Information Act.

We fixed many of these loopholes in our committee, but the Select Committee ignored our work. As a result, I will be offering an amendment with the gentleman from Texas (Mr. FROST) to restore to the employees of the new department basic civil service rights.

There are many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and, for the sake of our national security, finally address them as we move forward with this legislation.

I agree we need homeland security legislation. It is clear that federal departments are not working together as they should to protect our nation. Revelations of missed signals and failures to communicate at the Federal Bureau of Investigation and the Central Intelligence Agency illustrate how serious the problem is.

Unfortunately, the bill we are considering today has serious flaws. In fact, I think it may well cause more problems than it solves.

Fundamentally, reorganization is a bureaucratic exercise. The bill before us addresses organizational flow charts, the creation of five new undersecretaries, and the appointment of 12 new assistant secretaries. But as a professor of management at Columbia University recently remarked, "To think that a structural solution can bring about a major improvement in performance is a major mistake."

According to the Administration, "responsibilities for homeland security are dispersed among more than 100 different government organizations." Indeed, this organizational chart from the White House lists 153 different agencies, departments, and offices with a role in homeland security.

The President's proposal will not simplify this patchwork and may even make it worse. Even after all of the proposed changes, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to this chart, prepared by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President's proposal, from 153 to 160.

We are getting more bureaucracy, not less. And we are doing so at a tremendous cost to the taxpayer.

The Administration has asserted that this new Department "would not 'grow' government," and that any costs would be paid for by "eliminating redundancies." According to the Congressional Budget Office (CBO), however, just creating and managing the new Department will cost \$4.5 billion. And this does not include "additional spending that may be necessary to prevent terrorist attacks, reduce the nation's vulnerability to attacks, and recover from any attacks," CBO says.

If this money were used at the front lines of fighting terrorism—instead of paying for a new bureaucracy—think how much better off we might be.

The committees of jurisdiction were able to work in a bipartisan way to achieve some substantial improvements to the President's bill. Unfortunately, the Select Committee chose to simply reverse many of these gains. Even worse, the Select Committee added entirely new provisions that weaken our national security.

One provision added by the Select Committee delays deadlines for improving airline safety. Under current law, the Transportation Security Administration is required to take all necessary action to ensure that all United States airports have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002. But under the Select Committee bill, air passengers must wait another full year before all bags are checked for bombs.

Another new Select Committee provision exempts defense contractors and other large campaign contributors from liability—even for intentional wrongdoing. The Select Committee added a provision to exempt corporations from liability when they make products the Secretary deems "qualified anti-terrorism technologies." For these products, which could include pharmaceutical products such as the anthrax vaccine, the Select Committee limited corporate liability, exempted companies from punitive damages even when the companies are fraudulent or negligent, and gave them complete immunity in state courts. This is the ultimate anti-corporate responsibility provision imaginable.

Yesterday, we received a letter from the Reserve Officers of the United States opposing this provision. In their letter, the reserve officers stated that this section "is inconsistent with pursuing the highest quality product for use by our armed forces as they fight ter-

rorism." Yet today, we will hear additional proposals to expand this broad corporate exemption even further. Mr. ARMEY will introduce an amendment to extend these liability exemptions to an even wider range of potentially defective products and services.

On July 9, 2002, I joined with Representative DAVID OBEY, the Ranking Member of the Appropriations Committee, in sending a letter to Governor Ridge outlining a number of serious problems with the bill (attached). This letter raised concerns with ten different areas related to the establishment of the new Department. I ask unanimous consent that this letter be inserted in the RECORD.

As the letter explains, one major defect in this bill is that it would transfer to the new Department a vast array of responsibilities that have nothing to do with homeland security, such as administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new Department's counterterrorism mission.

Another major defect is that the bill lacks a strong mechanism to coordinate the activities of the many federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective, but this bill does not give the White House Office of Homeland Security the budgetary powers it needs to do its job. I will offer an amendment later today that addresses this deficiency.

A third problem is that the President's proposal included broad exemptions from our nation's most basic "good government" laws. The bill allowed the new Secretary to waive civil service laws that prohibit patronage, protect whistleblowers, provide for collective bargaining rights, and ensure health and retirement benefits. Under the President's proposal, the Secretary could also ignore cornerstone procurement principles, such as open and competitive bidding, and basic government in sunshine laws, such as the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act (FACA).

We fixed many of these loopholes in the Committee on Government Reform, but the Select Committee ignored our work. As a result, I will be offering an amendment with Mr. FROST later today to restore to the employees of the new Department basic civil service rights. I will also be strongly supporting the amendment by Representative MORELLA to protect collective bargaining rights, and I will be supporting an amendment to fully restore FOIA and FACA protections.

Let me make that I am not opposed to reorganization. I am convinced there are steps we can take that will make sense and improve the functioning of our government. But it has to be done in a way that minimizes disruption and bureaucracy and maximizes our ability to confront the terrorism threats that we face. Simply rushing to reorganize is not the solution.

A better approach would be to create a leaner, more focused Department of Homeland Security and to strengthen the authority of the existing White House Office of Homeland Security. The new Department should be limited to the Immigration and Naturalization Service, the Customs Service, and the Transportation Security Administration. Such a new Department would have less than half of the

employees of the proposal before us. Even more important, it would have a narrow, focused mission of protecting our borders and transportation systems.

At the same time, we need to develop a detailed homeland security strategy and to ensure that all federal agencies coordinate in implementing the strategy. This needs to be done at the White House level. Currently, there is an office in the White House that is supposed to be providing this coordinating function, but it does not have enough power to be effective. As part of a streamlined, less bureaucratic approach to homeland security, Congress should be codifying the White House Office of Homeland Security in statute and giving the director of the office budgetary authority sufficient to make agencies pay attention to the office.

There is an old adage that those who do not remember the past are condemned to repeat it. But we may do exactly this in our headlong rush to create the new Department. The history of past reorganizations is not reassuring. Here is what Petronius Arbiter, an advisor to Roman Emperor Nero, said nearly 2,000 years ago: We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

The Department of Energy was created 25 years ago and it is still dysfunctional. The Department of Transportation was created 35 years ago, yet as the National Journal reported, it "still struggles to make its components cooperate, share information, and generally play nice."

The model we are supposed to be emulating is the creation of the Department of Defense 50 years ago. But for over 35 years, the Defense Department was riven with strife. In 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they couldn't figure out how to cooperate. It was not until the Goldwater-Nichols Act of 1986 that the problems created in the 1947 reorganization were finally addressed.

To avoid the mistakes of the past, we have to do a careful job. But the process we are following is not encouraging. The reorganization plan was released before the Administration completed its work on the national strategy for homeland security. Moreover, the White House proposal we are considering today was put together by a handful of political appointees working in secret. The agencies with expertise were excluded from the process. In fact, there was so little communication between the White House and the agencies that one important agency had to call my staff to find out how it fared under the plan.

These days there seems to be a lot of self-congratulation going on, which makes us all feel good. But the time for congratulations and elaborate ceremonies comes when we have captured Osama bin Laden and the other al Qaeda leaders, when we have arrested the criminal who launched the anthrax attacks, and when Americans from California to New York go to bed at night knowing that our intelligence agencies are in the best position possible to thwart terrorism.

Our job today is not to congratulate ourselves for creating another bureaucracy, but to

address the many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and—for the sake of our national security—produce legislation that actually makes sense.

HOUSE OF REPRESENTATIVES,  
Washington, DC, July 9, 2002.

Hon. TOM RIDGE,  
Director, Office of Homeland Security, The  
White House, Washington, DC.

DEAR GOVERNOR RIDGE: Congress is considering the President's proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has received the legislative language that would implement the President's plan, many issues have arisen about the details of the proposal. We are writing in the hope that you will be able to provide expeditious responses to these concerns.

The issues fall into ten main areas. First, the new Department will inherit a vast array of responsibilities that have nothing to do with homeland security. These include administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new Department's counterterrorism mission.

Second, the legislation lacks an effective mechanism to coordinate the activities of the many federal agencies that have major homeland security functions. The President's submission to Congress listed 153 different agencies, departments, and offices involved with homeland security. After the creation of the proposed new Department, this number actually will increase to 160 agencies, departments, or offices with security roles. But the draft bill does not include a mechanism for developing and implementing a unified homeland security strategy across the entire government.

Third, there are inefficiencies and coordination problems that will arise when parts of agencies are removed from their existing departments and moved to the new Department. The goal of the legislation is to make government more efficient, but some of the proposed changes could have exactly the opposite effect. For example, GAO has testified that programs transferred from the Department of Health and Human Services include "essential public health functions that, while important for Homeland Security, are critical to basic public health core capacities.

Fourth, despite prior assurances that the Administration supported reforms of the Immigration and Naturalization Service (INS) that were passed by the House, the President's proposal would import the INS into the new Department of Homeland Security wholly intact and without these needed internal reforms.

Fifth, the legislation includes broad exemptions from our nation's most basic "good government" laws. The legislative language would allow the new Secretary, in conjunction with the Office of Personnel Management, to waive all provisions of our civil service laws. These laws have evolved over many decades to ensure that our government has a professional civil service hired on the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these protections, including those that prohibit patronage, protect whistle-blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach has been taken with procurement and the management of real property. Under the proposal, the Secretary

does not have to comply with cornerstone procurement principles, such as open and competitive bidding. Moreover, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, have been limited in their application to the new Department.

Sixth, the President's proposal would give the new Department extraordinary powers to avoid meaningful congressional oversight. Not only would the new Department be able to exempt itself from civil service, procurement, and property laws, it would also be able to rearrange functions, eliminate offices, and transfer large amounts of appropriated funds without having to seek prior congressional approval.

Seventh, the proposal does not address the potential for disruption in the nation's war against terrorism. According to David Walker, the Comptroller General of GAO: "[R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism." Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, that reorganization was not attempted until after the war was over, and even then it caused confusion and inefficiencies for decades.

Eighth, there is no comprehensive national strategy for combating terrorism to guide the new Department. Logically, a major bureaucratic reorganization like this should be proposed as part of a comprehensive national strategy for providing homeland security. But in this case, the reorganization is occurring in a vacuum. There is no national strategy that identifies the major threats the nation, faces and explains how the new Department will meet them. Nor is there a comprehensive threat and risk assessment that identifies and prioritizes threats in a coherent manner.

Ninth, the costs of this proposal have not been identified. Although the Administration has stated that the creation of this new Department "would not 'grow' government," this is not credible. According to the non-partisan Congressional Budget Office, even the less ambitious reorganization proposed by Senator Lieberman will cost taxpayers over \$1 billion over the next five years. Costs for the Administration's plan inevitably will be higher.

Finally, the Administration's proposal was developed in secret by a small group of White House advisors, without substantive input from the agencies that handle homeland security. It is being rushed through Congress on an accelerated schedule. This is not normally an approach that produces sound policy. The potential for making grave mistakes as a result of this truncated process should be a serious concern for all Americans.

We need to work together to address the concerns raised in this letter and to make improvements in the legislation. Your response to the issues and questions raised in the body of this letter will be an important step in this process. For this reason—and given the short time frame Congress has for consideration of the legislation—we urge you to respond by July 15, 2002.

#### I. TRANSFER OF FUNCTIONS NOT RELATED TO HOMELAND SECURITY

According to the White House briefing document issued on June 7, 2002, the Department of Homeland Security "must be an agile, fast-paced, and responsive organiza-

tion." Transferring functions that do not involve homeland security to the new Department, however, interferes with this goal. Giving the new Department unnecessary responsibilities inevitably will expand the size of its bureaucracy and dilute its counterterrorism mission.

At the same time, giving vital but unrelated government responsibilities to the Department creates the risk that these responsibilities will be neglected and performed poorly. As GAO has concluded, many of the unrelated functions being given to the new Department "represent extremely important functions executed by the federal government that, absent sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs and other significant government functions."

Despite these risks, many important government functions that are not related to homeland security are being transferred to the new Department. In fact, the new Department will have to carry out over three dozen completely unrelated missions under the President's proposal.

Section 402(3) of the President's proposal would transfer the Animal Plant Health Inspection Service (APHIS), which is now currently part of the Department of Agriculture, into the new Department. APHIS has nearly 8,000 full-time employees (FTEs), but few have responsibility for inspecting plants and animal products at the border. The other APHIS employees perform functions that are critical to various sectors of the economy, but are not related to homeland security. For example, APHIS is responsible for:

Eradicating pests, such as the boll weevil, the citrus canker, the gypsy moth, and various noxious weeds through detection and control strategies throughout the United States;

Approving animal drugs that are made from biological materials, such as animal vaccines;

Approving field trials of genetically modified crops; and

Maintaining the missing pet network at [www.missingpet.net](http://www.missingpet.net).

Section 502(1) of the President's proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. To date, however, FEMA has had a limited role in counterterrorism. According to former FEMA director James Lee Witt, "[o]ver the last decade FEMA has responded to more than 500 emergency and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City)." In Mr. Witt's view, "[f]olding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards." Major FEMA responsibilities that are unrelated to homeland security include:

Providing flood insurance and mitigation services (including pre-disaster mitigation, the Hazard Mitigation Grant Program, and flood mapping);

Conducting various programs to mitigate the effects of natural disasters, such as programs to assist states in preparing for hurricanes and the National Earthquake Hazards Reduction Program;

Providing temporary housing and food for homeless people; and

Operating the National Fire Data Center and the National Fire Incident Reporting System to reduce the loss of life from fire-related incidents.

Section 402(4) of the President's proposal would transfer the United States Coast Guard out of the Department of Transportation and into the new Department. The

Coast Guard describes itself as a “multi-mission, military, maritime” agency. Although it performs some security-related functions, it also conducts many others unrelated to homeland security. For example, Coast Guard responsibilities include:

Providing navigational tools to ensure that vessels can navigate the nation’s waterways;

Promulgating and enforcing boating regulations to ensure that oceangoing vessels are safe;

Protecting the nation’s fishery resources, as well as its endangered species, by enforcing prohibitions against illegal and excess fishing;

Protecting the maritime environment by preventing oil spills in the nation’s waters and ensuring that spills are cleaned up expeditiously if they happen; and

Maintaining a fleet of ships that is capable of breaking ice in order to maintain maritime mobility and monitors the movement of glaciers.

These Coast Guard functions are essential, but they could be jeopardized by the transfer to a new Department focused on homeland security. Indeed, the effects of the shift in the Administration’s priorities are already being felt. According to the Administration’s homeland security budget justification for fiscal year 2003, “[a]fter September 11, the Coast Guard’s port security mission grew from approximately 1–2 percent of daily operations to between 50–60 percent today.” Without a sustained commitment to its core marine and fishery functions, the Coast Guard’s ability to protect boaters and the marine environment will be jeopardized.

There are many other examples of unrelated functions being transferred to the new Department. The transfer of the Environmental Measurements Laboratory from the Department of Energy (DOE), for example, will make the new Department responsible for maintaining the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, as well as the program that assesses the quality of 149 private laboratories that measure radiation levels. Radiation measurement quality control undoubtedly will seem like a small item to the new Department of Homeland Security, but assuring that the laboratories make accurate measurements is important, as mistakes potentially could affect public health and cause large unnecessary public expenditures at DOE facilities.

Appendix A contains a list of 40 unrelated functions that would be transferred to the new Department by the President’s proposal. While it may be impossible to create a new Department without transferring some unrelated functions, there would seem to be serious dangers inherent in the wholesale transfer of unrelated functions as contemplated in the Administration’s proposal.

#### II. LACK OF EFFECTIVE COORDINATING MECHANISMS

At the same time that the Administration’s proposal transfers numerous unrelated functions to the new Department, the proposal also falls to include provisions that would ensure the coordination of the more than 100 federal entities that will continue to have significant homeland security functions.

According to the Administration, “responsibilities for homeland security are dispersed among more than 100 different government organizations.” Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security. The White House argues that the President’s proposal would solve this problem by “transforming

and realigning the current confusing patchwork of government activities into a single department.

In fact, however, the President’s proposal will not simplify this patchwork and may even make it worse. Even after all of the changes proposed in the President’s legislative language, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President’s proposal, from 153 to 160.

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration: “Currently, if a chemical or biological attack were to occur, Americans could receive warnings and health care information from a long list of government organizations, including HHS, FEMA, EPA, GSA, DOJ, OSHA, OPM, USPS, DOD, USAMRIID, and the Surgeon General—not to mention a cacophony of local agencies.”

But under the President’s proposal, all but one of these 11 federal agencies (FEMA) would continue to exist, and this one agency would be replaced by the new Department. The potential for confusion—and the need for effective coordination—remains as great after the creation of the new Department as before.

In fact, in some cases, the reorganization will actually create confusion. Currently, three separate federal agencies are in charge of protecting the food supply: the Food and Drug Administration (FDA), which prevents adulteration of fruits, vegetables, processed foods, and seafood; the Environmental Protection Agency (EPA), which regulates environmental contaminants, such as pesticides; and the Department of Agriculture, which regulates the safety of meat and poultry for human consumption, as well as the spread of plant and animal pests through food products. Leading experts, such as the National Academy of Sciences, have called for consolidating these diffuse authorities into a single agency.”

The Administration’s proposal, however, would further fragment regulation of the food supply by transferring some of Agriculture’s responsibilities to the new Department, creating a fourth food safety agency. APHIS, which is charged with inspecting imports to ensure that pests and bugs that could harm crops or livestock do not enter the United States, would become part of the new Department. But the Food Safety Inspection Service of the Department of Agriculture, which inspects domestic and imported meat and poultry for threats to human health, would remain at Agriculture. The nonsensical result, as GAO has observed, is that “the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole.”

One area in which coordination is urgently needed is among law enforcement and intelligence agencies, in particular the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). How the new Department would relate to these agencies is not clear, however. One of the primary missions of the new Department is to “[p]revent terrorist attacks within the United States.” The Administration says that a new department with this mission is needed because “[t]oday no one single government agency has homeland and security as its primary mission.” But the FBI has also just undergone a major reorganization. Now, its primary mission is also “[p]rotecting the United States from terrorist attack”—iden-

tical to that of the new Department of Homeland Security. As a result, rather than having no single federal agency with homeland security as its mission, the Administration seems to be proposing two.

Under the Administration’s proposal for a new Department of Homeland Security, there will be a new office for intelligence and threat analysis. This office will assist in “pulling together information and intelligence from a variety of sources.” Similarly, under FBI Director Mueller’s reorganization proposal, there will be a new office in the FBI called the Office of Intelligence that will also assist in “pulling together bits and pieces of information that often comes from separate sources.” The Department of Homeland Security’s intelligence office would “have the ability to view the dangers facing the homeland comprehensively, ensure that the President is briefed on relevant information, and take necessary protective action.” Similarly, the FBI’s intelligence office will be charged with “providing analytic products to policy makers and investigators that will allow us to prevent terrorist acts.” This does not appear to be a recipe for a unified approach.

The investigation of the September 11 attacks has already revealed serious lapse in the analysis and sharing of intelligence information. In July 2001, as FBI special agent in Phoenix reported to this supervisors that followers of Osama bin Laden might be training at U.S. aviation schools and suggested a nationwide canvass of the schools. But this warning was apparently ignored. As early as January 2001, the CIA obtained information that two of the September 11 assailants—Nawaz al-Hazmi and Khalid al-Midhar—met with al-Qaeda agents in Malaysia. But this information was not provided to the INS until August 2001, by which time al-Hazmi and al-Midhar had already entered the United States.

The Administration’s proposed bill, however, does not adequately address these problems. Although the bill gives the Secretary of Homeland Security rights of access to reports, assessments, and analytical information from other agencies that relate to threats and vulnerabilities, the Department remains primarily a “consumer” of intelligence information collected by agencies outside its control after that information is already processed by those agencies. This passive role will not ensure that the new Department obtains access to information that the collecting agencies deem insignificant, such as the warning from the FBI agent about flight schools. Although the Administration’s bill allows for the transmittal of “raw” intelligence from outside agencies to the Department of Homeland Security, the Department is not given the resources to cope with the volume and complexity of this information. Moreover, the new Department has no “tasking” authority to direct what intelligence is collected, making it difficult for the new Department to ensure that possible threats it identifies are properly pursued.

Another concern is the potential for confusion and interference in the actual response to bioterrorist incidents. The FBI will bring a law enforcement focus to the scene of a bioterrorist event, while the new Department will be concerned with the emergency response. Under the President’s proposal, it is unclear which will prevail. Under Presidential Decision Directive 62, which was signed during the previous Administration, the FBI was designated as the lead agency for “crisis management,” which included efforts to anticipate, prevent, and resolve terrorist attacks. FEMA was designated the lead agency for “consequence management,” which included broader measures to protect

public health and safety. The President's proposal seeks to "clarify" these responsibilities by "eliminating the artificial distinction between 'crisis management' and 'consequence management.'" But it does not describe how the new Department and the FBI will handle the scene of a bioterrorist attack if they both arrive at the same time with fundamentally conflicting interests and goals.

There are many other instances of coordination problems that the President's proposal does not address. It is unclear in the President's proposal, for instance, how the Department of Homeland Security would organize and coordinate the various different police forces that exist among federal agencies. The Administration's proposal would transfer some of those forces (the Federal Protective Service, which protects buildings belonging to the General Services Administration (GSA)), but not others (the security forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, removing the Federal Protective Service from GSA creates its own problems because, as GAO has observed, "security needs to be integrated into the decisions about location, design and operation of federal facilities."

What is urgently needed is an effective entity at the White House level that can unify the disparate federal agencies with homeland security functions behind a comprehensive national strategy. This is supposed to be the mission of the White House Office of Homeland Security, which President Bush created in October 2001, and which you head. But the proposal does nothing to give the head of the office the kinds of authority needed to succeed.

### III. PROBLEMS WITH EXTRACTING CERTAIN AGENCIES

The sections above have raised concerns with transferring functions unrelated to homeland security and the lack of coordinating mechanisms regardless of whether agencies are inside or outside the structure of the new Department. Also of concern are the potential effects of removing certain functions from their home agencies.

This is a particular problem for the functions being transferred from the Department of Health and Human Services (HHS). Section 502(5) of the President's proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and "the functions of the Secretary of Health and Human Services related thereto" to the new Department of Homeland Security. This provision makes little sense. In the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Congress created the Office of the Assistant Secretary for Public Health Emergency Preparedness in recognition of the need to have a central office in HHS to coordinate how the various agencies within the Department respond to public health emergencies. Moving this office to another department will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HHS that Congress was attempting to fix.

Richard Falkenrath, director of policy at the White House Office of Homeland Security, was asked about this problem during a briefing for staff on July 1, 2002. He answered that the challenge of coordinating emergency preparedness and response activities within HHS could be handled by "a couple of people" in the Secretary's office. Obviously, this cavalier attitude is seriously misinformed.

Section 505 is also problematic. It transfers control over HHS programs to provide assistance for state and local preparedness from HHS to the new Department. These funds,

which total over \$1 billion, allow states and localities to enhance their surveillance, communication, and laboratory abilities all of which are essential for responding to numerous public health threats, including threats that are not related to terrorism. As GAO has stated, these programs "Include essential public health functions that, while important for homeland security, are critical to basic public health core capacities." As a result, GAO made the following conclusions: "We are concerned that this approach may disrupt the synergy that exists in these dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to difficulty in balancing priorities. Although the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that both the goals of homeland security and public health will be met."

Section 403 also creates uncertainties by transferring to the new Department vague authorities over visa processing. Currently, approving and denying visas is an important activity of the State Department, which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. To perform this function, the State Department employs thousands of foreign service officers skilled in hundreds of languages. Section 403(1) transfers to the Secretary of Homeland Security "exclusive authority" over this function, but this authority would be exercised "through" the Secretary of State. As a result, it is unclear whether the State Department must concur in policy decisions, or whether this is merely an administrative function. Additional statements by the Administration have not clarified this provision. The Administration has stated that consular officers will remain employed by the State Department, but that the new Secretary of Homeland Security will delegate back to the Secretary of State some visa functions unrelated to security.

Similar problems affect the provisions transferring portions of the Department of Energy. The provisions in the bill are ambiguous and potentially very broad. For example, section 302(2)(G) of the President's proposal would transfer "the advanced scientific computing research program and activities" at Lawrence Livermore Laboratory to the new Department. Although the exact scope of this provision is unclear, it appears to encompass parts of the Lawrence Livermore Laboratory's Computation Directorate, which supports other programs at the laboratory by providing computing capacity and capability, as well as research, advanced development, and operations and support related to computing, computer science, and information technologies. Such a transfer could harm the laboratory's ability to support its key mission—safeguarding this stockpile of nuclear weapons—as well as other core laboratory activities.

Section 302(2)(E) gives, the President authority to transfer from DOE to the new Department any life science activity within the biological and environmental research program that is related to microbial pathogens. The result would be that ongoing DNA sequencing of harmful microbes could be transferred to the new Department, while virtually identical work on microbes with beneficial uses (such as microbes that break down pollution) would stay at DOE. Splitting this highly specialized work risks weakening the effectiveness of both.

### IV. LACK OF RECOGNITION OF DISPARATE IMMIGRATION FUNCTIONS

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration services function and an enforcement function. As part of this reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice. The legislation aimed to correct longstanding and widely-recognized systemic problems within the INS by separating out its distinct and often conflicting service and enforcement functions.

When the House immigration bill was being considered, the Administration expressed its support. In addition, when the White House issued its briefing document regarding the new Department of Homeland Security, that support was reiterated. The briefing document stated the following: "The new Department of Homeland Security would include the INS and would, consistent with the President's long-standing position, separate immigration services from immigration law 32 enforcement."

Despite these assurances, however, the legislative language proposed by the President would import the INS into the new Department of Homeland Security intact and unrefined. There are no details whatsoever regarding the structure of the INS after it is transferred to the new Department. As a result, the Administration's proposal fails to address internal structural and coordination problems that hamper the effectiveness of the INS.

### V. EXEMPTIONS FROM "GOOD GOVERNMENT" LAWS

The Administration's proposal would create broad exemptions to the nation's "good government" laws. It would make the civil service, procurement, and property acquisition and disposal laws essentially optional for the new Department. In addition, the President's proposal would weaken valuable sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act. The bill would also create a weak management and oversight structure by not fully applying the Chief Financial Officers Act, the law governing Chief Information Officers, and the Inspector General Act.

#### A. Exemption From Civil Service Protections

The nation's civil service laws have evolved over many decades to ensure that the government has a professional civil service hired on the basis of merit rather than political favoritism. Section 730 of the President's proposal, however, would give the Secretary the authority to create an alternative personnel system. The only limitation in the statute is that the system should be "flexible, contemporary and grounded in the public employment principles of merit and fitness."

Under the President's proposal, employees of the new Department could be exempted from essential provisions of title 5 of the United States Code. No rationale has been offered to explain why affording these basic protections for federal workers and their families would undermine the mission of the new Department. The civil service provisions that become optional include the following:

The prohibition on discrimination against employees on the basis of political affiliation and on coercing political activity (anti-patronage protection);

The prohibition on hiring or promoting a relative (anti-nepotism protection);

The prohibition on reprisal against employees for the lawful disclosure of information about illegal and wasteful government activity (whistleblower protection);

The preferences for veterans in hiring and in reductions-in-force;

The protection from arbitrary dismissal or demotion through due process appeal rights to the Merit Systems Protection Board;

The right to organize, join unions, and bargain collectively with management over working conditions;

Sick and annual leave for federal employees and family and medical leave;

Retirement benefits, such as the Civil Service Retirement System and the Federal Employees' Retirement System; and

Health insurance through the Federal Employees' Health Benefits Program.

Moreover, important programs for ensuring diversity in the federal workforce, such as the requirement to recruit minorities, would also become optional under the proposed legislation.

Another potential threat to the civil service laws is section 732(b), which allows the Secretary to hire an unlimited number of employees through "personal service" contracts rather than through the civil service system. Although the rationale for this provision seems to be to allow the new Department to obtain certain specialized services in an emergency, there do not appear to be any limits on its use. For example, current law requires these types of contracts to be temporary (no longer than one year) and subject to salary caps (no higher than the GS-15 level). The President's proposal would allow these contracts to go on indefinitely and at any rate. In effect, the section provides an alternative vehicle for bypassing the protections and requirements of the civil service system.

#### *B. Exemption From Procurement Rules*

Under section 732(c) of the President's proposal, the new Secretary could waive any and all procurement statutes and regulations, and the Secretary would not be required to comply with the cornerstone procurement principles of open and competitive bidding. In a section-by-section analysis provided by the White House, the Administration asserts that "normal procurement operations would be subject to current government-wide procurement statutes and regulations." To the contrary, however, the legislative language would add the new Department to the list of entities listed in 40 U.S.C. 474, such as the Postal Service, which would exempt entirely the Department from the federal government's normal acquisition laws.

As a result, there is no guarantee that the new Department would be getting the lowest prices, the best quality, or the best deals. Fundamental principles of federal procurement such as the following would not apply:

The requirement that acquisitions be publicly advertised;

The requirement that sufficient notice be given to allow companies to respond;

The requirement that all responsible bidders be given the chance to compete for a given acquisition; and

The requirement that all contractors be rated on the same criteria when competing for a given contract.

These bedrock principles have helped to maintain competition in federal contracting, which history has proven to be the best way to ensure the best quality at the lowest prices while maintaining a system free of favoritism or abuse. In addition, long-standing preferences for small- and minority-owned businesses designed to encourage their development and access to federal contracts would no longer be guaranteed.

Section 732(a) of the President's proposal would explicitly grant the new Department so-called "other transactions authority" for research and development contracts. This

authority was given to the Defense Department to eliminate the open and competitive bidding process in order to attract nontraditional contractors. In fact, however, it has been used mainly by traditional contractors to negotiate contracts that waive the federal government's rights to review financial management and cost information, as well as its rights to use new inventions discovered through research funded by the federal taxpayer. In reviewing the use of this authority by the Defense Department, the Inspector General found that these types of contracts "do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud."

#### *C. Exemption From Property Rules*

The new Department will acquire a considerable inventory of federal property, particularly through the Coast Guard, which owns valuable real estate across the country. Sections 732(d) and (f) of the President's proposal, however, would give the new Department broad authority to acquire and dispose of both real and personal property. Specifically, the Department could acquire replacement real property through exchange or transfer with other agencies or through the sale or long-term lease to the private sector. In addition, the Department would be authorized to retain the proceeds of such transactions.

Currently, under the 1949 Property Act, federal agencies must determine whether they own "excess" property they no longer need. GSA then screens this excess property for other federal uses. If there are no federal uses for the property, GSA declares the property "surplus" and screens it for "homeless" or "public benefit" uses, such as for schools, correctional institutions, airports, and other entities. If no beneficial public use is found for the property, GSA may sell the property through negotiated sales at fair market value without restrictions on use. The property may also be sold to the public through a bidding process if a negotiated sale does not occur. Under the Administration's proposal, however, none of these procedures will apply.

The Government Reform Committee reported a comprehensive reform of federal property laws earlier this year (H.R. 3947). This reform gave agencies more flexibility to manage their property, but it also included safeguards to ensure that agencies respond to community input, consider local zoning laws, and receive fair market value. None of these safeguards are incorporated into the Administration's proposal.

#### *D. Exemption From Freedom of Information Act*

Section 204 of the President's proposal would exempt the new Department from complying fully with the Freedom of Information Act (FOIA). If nonfederal entities or individuals provide information voluntarily to the new Department that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism, that information would not be subject to FOIA. This exemption would apply to information that "is or has been in the possession of the Department."

FOIA was designed to preserve openness and accountability in government. In order to protect sensitive information, FOIA already contains sufficient exemptions from disclosure. These exemptions cover critical infrastructure information. FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). Therefore, new exemptions to its provisions do not appear necessary.

The danger in creating new exemptions to FOIA is that important information about

health and safety issues could be withheld from the public. In fact, the provision is drafted so broadly that it could be used to "launder" embarrassing information through the new Department and thereby prevent public disclosure.

One particular target of the new FOIA exemption appears to be the "Risk Management Plans" that chemical plants are required to file under the Clean Air Act. These plans inform communities about the dangers they would face in the event of an explosion or chemical accident in a nearby plant. Chemical industry officials argued that Congress should restrict public access to this information because the information could be used by terrorists to target facilities.

Congress addressed this issue by carefully balancing the goal of informing emergency responders and the public about potential risks of chemical accidents with the goal of keeping sensitive information away from terrorists. In the Chemical Safety Information Site Security Act of 1999, Congress concluded that information about potential "worst case" scenarios should remain available to the public, but with certain restrictions to prevent a searchable database from being readily posted on the Internet. Congress ensured public access to basic information about the risk management plans, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President's proposal, however, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

#### *E. Exemption From Federal Advisory Committee Act*

Section 731 of the President's proposal would exempt advisory committees established by the Secretary of the new Department from the Federal Advisory Committee Act (FACA). FACA requires that any committee formed to provide advice to the federal government, and which consists of members who are not federal employees, must follow certain rules in order to promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes of the meetings, and provide the opportunity for divergent viewpoints to be represented.

To protect sensitive information, FACA includes exemptions for information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense, currently operate under FACA without difficulty. The President's proposal contains no explanation why the new Department could not also comply with FACA. In fact, the only two agencies that are exempt from FACA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department under the President's proposal. These existing advisory committees, which are currently subject to FACA, include the Navigational Safety Advisory Committee at the Coast Guard, the Advisory Committee of the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Customs Service, and the Advisory Committee on Foreign Animal and Poultry Diseases at APHIS. When rechartered under the Homeland Security Department, none of these advisory committees will be subject to the FACA requirement on balance and openness.

In addition, the President's proposal waives important conflict of interest laws that apply to individuals serving on advisory committees. Under section 731, if an individual serves on an advisory committee, the individual will be exempt from the provisions of sections 203, 205, or 207 of Title 18, United States Code. These sections contain important protections. Section 207, for example, provides that a person who serves on a committee that is advising an agency on a specific matter cannot lobby the agency about the same matter after leaving the advisory committee. No rationale is provided for exempting members of advisory committees from these protections against conflicts of interest.

#### *F. Exemption From Chief Financial Officer Act*

Section 103(d)(4) of the President's proposal would authorize the President to appoint the Department's Chief Financial Officer (CFO) without Senate confirmation. Current law requires that a CFO of a cabinet department either be: (1) appointed by the President with Senate confirmation; or (2) designated by the President from among agency officials who are Senate-confirmed. In either case, current law requires that CFOs be Senate-confirmed.

In addition, the President's proposal contains no language making the CFO Act applicable to the new Department. The CFO Act contains core financial management, accountability, and reporting requirements that are at least as important for the new Department as they are for other covered agencies, which include all existing cabinet departments. Moreover, section 602 of the President's proposal provides that the CFO shall report to the Secretary or to another official of the Department as the Secretary may direct. This section is inconsistent with the CFO Act, which requires that the CFO report directly to the agency head regarding financial management matters.

These exemptions from financial management requirements make little sense. According to GAO, "[i]t is important to re-emphasize that the department should be brought under the Chief Financial Officers (CFO) Act and related financial management statutes."

#### *G. Exemption From Chief Information Officer Legislation*

The proposal does not appear to give the Chief Information Officer (CIO) of the new Department the same status and responsibilities as CIOs at other agencies. Section 603 of the President's proposal provides that the CIO shall report to the Secretary or to another official of the Department as the Secretary may direct. The Clinger-Cohen Act, however, requires that the CIO report directly to the agency head.

In addition, the Clinger-Cohen Act specifies numerous responsibilities for CIOs. These include developing an accounting, financial, and asset management system that is reliable, consistent, and timely; developing and maintaining information systems; and assessing and reporting on progress made in developing information technology systems. The President's legislative language, however, does not specify any responsibilities for the CIO. In fact, the bill would assign responsibility for information technology systems to an Under Secretary for Management at the new Department, a responsibility assigned to the CIO under the Clinger-Cohen Act.

#### *H. Limits on Access to Information by Inspector General*

Section 710 of the President's proposal would subject the Inspector General (IG) of the new Department to the Secretary's control and would authorize the Secretary to prevent the IG from doing work in areas in-

volving certain information. These areas are quite broad and extend to information concerning any "matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security." Under the President's proposal, the Secretary could prohibit the IG from doing work "if the Secretary determines that such prohibition is necessary . . . to preserve the national security or to prevent a significant impairment to the interests of the United States."

IGs at certain other agencies (such as the Defense Department and the Justice Department) have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. In the case of the IG for the new Department, this important check on Secretarial interference has been eliminated. Instead, the proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest in full reporting.

#### VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT

In addition to creating exemptions to many of the nation's good government laws, the President's proposal would substantially undercut Congress' ability to conduct oversight of the new Department. Through several broad and sweeping provisions in the President's proposal, the Secretary of the new Department would have new powers to rewrite enacted legislation and override budgetary decisions made by Congress.

The President's proposal would give the Secretary of the new Department the equivalent of a lump-sum appropriation of more than \$30 billion. In transferring the various existing agencies to the new Department, several provisions of the President's proposal allow the Secretary to transfer agency balances to the new Department. Section 803(e) of the President's proposal allows the new Secretary to allocate those funds as the Secretary sees fit, and it expressly overrides the provision of permanent law that requires funds transferred to be used only for the purposes for which they were originally appropriated. Taken together, these provisions allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

Section 733(b) creates for the new Secretary a permanent blanket grant of authority to transfer between appropriations accounts up to 5 percent of the appropriations made each year for agencies within the new Department, so long as the Appropriations Committees are given 15 days notice. This provision could allow the Secretary to transfer \$2 billion or more per year rather than addressing potential funding misallocations through the annual congressional appropriations process.

In addition, section 733(a) allows the Secretary to "establish, consolidate, alter, or discontinue" any organizational unit in the new Department, including those established by statute, upon 90 days notice to Congress. Although the Coast Guard and the Secret Service are exempt from this provision, all other agencies transferred to the new Department could be abolished entirely with no input from Congress.

#### VII. POTENTIAL FOR SERIOUS DISRUPTION IN THE WAR ON TERROR

The Administration asserts that the "current components of our homeland security structure will continue to function as normal and there will be no gaps in protection as planning for the new Department moves forward." Unfortunately, this is a difficult

goal to achieve, and the proposal submitted to Congress contains no implementation plan that shows how disruptions will be avoided.

In fact, the history of corporate and government reorganizations is not encouraging. As a management professor from Columbia University recently remarked, "[t]o think that a structural solution can bring about a major improvement in performance is a major mistake." In the corporate world, more mergers fail than succeed." According to one expert, "[p]rivate-sector data show that productivity usually drops by 50 percent in the first four to eight months following the initial announcement of a merger, largely because employees are preoccupied with their now uncertain future.

The model most often cited by the Administration is the creation of the Department of Defense in 1947. But that reorganization was not undertaken until after World War II was over. Moreover, the newly created Defense Department was riven with strife for decades after its creation. As recently as 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they could not figure out how to cooperate. The original 1947 reorganization required four different amendments, the last being the Goldwater-Nichols Act of 1986, before the problems created by the 1947 reorganization were finally addressed.

GAO has closely tracked the history of government reorganizations. According to David Walker, the Comptroller General of GAO: "Often it has taken years for the consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades. . . . [R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending the country against terrorism."

Given this history, the burden should be on the Administration to show how this bureaucratic reorganization can be accomplished successfully. But virtually no detail has been provided to Congress that addresses these serious implementation issues.

#### VIII. LACK OF NATIONAL STRATEGY

Most experts recommend three concrete steps for developing an approach to homeland security: First, evaluate the threats posed to the country; second, develop a plan for dealing with those threats; and third, implement that plan through whatever reorganization and realignment of resources is necessary. It appears, however, that the Administration has taken exactly the opposite approach: White House officials proposed the reorganization first; they will come out with a strategy second; and they may eventually do a comprehensive assessment of the threats facing the country.

Experts have consistently criticized the United States for failing to have a comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly." The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that "no overarching strategic framework guides U.S. national security policymaking or resource allocations." Likewise, the independent panel headed by Governor James Gilmore concluded that "the United States has no coherent, functional national strategy for combating terrorism."

Nine months ago, in October 2001, the White House agreed with this assessment. In

the executive order creating the White House Office of Homeland Security, President Bush recognized that developing a national strategy was essential in the fight against terrorism. The executive order establishing the Office provided that: "The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to secure The United States from terrorist threats or attacks."

When you assumed your position, you also recognized that developing this strategy was your top assignment, calling it your "main mission" and your "very first mission." In a speech in April, you said, "I take every word of that executive order seriously," and you promised that the strategy would be "guided by an overarching philosophy: risk management—focusing our resources where they will do the most good, and achieve the maximum protection of lives and property."

Since that time, the national strategy has been promised repeatedly. In the budget justification for fiscal year 2003, the Administration made this statement: "The United States has never had a national blueprint for securing itself from the threat of terrorism. This year, with the publication of the National Strategy for Homeland Security, it will."

Unfortunately, this strategy has not been developed. As a result, Congress still does not have a list of priorities set forth in a clear way and cannot gauge whether your reorganization proposal best serves the nation's security goals. Moreover, the new Department will have no clear strategy to implement after it is created. As John R. Brinkerhoff, civil defense director at FEMA under President Reagan, has stated: "The Bush Administration is doing the wrong thing for the wrong reasons. . . . What worries me the most is that we've put the cart before the horse: We're organizing, and then we're going to figure out what to do."

#### IX. COST

The Administration has stated that the creation of this new Department "would not 'grow' government." According to the Administration: "The cost of the new elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as the department-wide management and Administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure."

This is not a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2452). According to CBO, the Lieberman bill "would cost about \$1.1 billion over the 2003–2007 period." CBO writes: "[A] new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, and Congressional affairs for the new department." In addition, CBO states that the new Department would require additional funding for "centralized leadership, coordination, and support services," and that "new departmental staff would be hired over the first two years following enactment of the legislation."

The Administration's proposal is significantly more ambitious and costly than Senator Lieberman's. It includes more agencies, such as the Transportation Security Administration with over 40,000 employees. Moreover, it requires the new Department to take on a host of new functions, including:

A new office for "Intelligence and Threat Analysis" to "fuse and analyze intelligence and other information pertaining to threats to the homeland from multiple sources," including a new "system for conveying action-

able intelligence and other information" and a new system to "consolidate the federal government's lines of communication with state and local public safety agencies and with the private sector";

A new "state-of-the-art visa system, one in which visitors are identified by biometric information";

A new "automated entry-exit system that would verify compliance with entry conditions, student status such as work limitations and duration of stay, for all categories of visas";

New "interoperable communications," including "equipment and systems" for the "hundreds of offices from across the government and the country" that make up the "emergency response community" (this would be a "top priority" of the new Department); and

A new "national system for detecting the use of biological agents within the United States," including a new "national public health data surveillance system," and a new "sensor network to detect and report the release of bioterrorist pathogens in densely populated areas."

In addition to these new functions, the President's proposal would establish an entirely new bureaucracy, complete with a management hierarchy and accompanying staff. According to the President's legislative language, the new Department would have up to 22 Deputy, Under, and Assistant Secretaries. This is more than the number of Deputy, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the proposed budget of the new Department of Homeland Security.

Like CBO, GAO has also concluded that the new Department will impose costs on the taxpayer. According to GAO, "[n]umerous complicated issues will need to be resolved in the short term, including a harmonization of information technology systems, human capital systems, the physical location of people and other assets, and many other factors." As a result, GAO concludes that the President's reorganization proposal "will take additional resources to make it fully effective."

Mark Everson, Controller at the Office of Federal Financial Management within the White House Office of Management and Budget, was asked about these costs at a staff briefing on July 1, 2002. He said that the Administration had no estimate of the transition costs of creating the new Department and no estimate of the level of savings to be achieved by combining agencies. The only thing he said he knew was that these unknown costs would exactly equal these unknown savings.

Obviously, Congress needs more concrete information about budget costs before it can legislate intelligently.

#### X. PROCESS

When the President made his nationally televised address on June 6, 2002, announcing his proposal for a new Department of Homeland Security, it came as a surprise not only to Congress and the American people, but also to the agencies, departments, and offices affected by the proposal. The plan was put together with so much secrecy that "[n]o Cabinet secretary was directly consulted about a plan that would strip 170,000 employees and \$37 billion in funding from existing departments. In fact, there was so little communication between the White House and the agencies that at least one major agency had to call the minority staff of the Committee on Government Reform to learn whether it was affected by the reorganization plan.

This closed process utilized by the Administration is ill-suited to ensuring that all po-

tential problems are identified and addressed beforehand. Moreover, the risk of making policy mistakes is compounded by the rushed process being used in Congress to consider the legislation. It is not clear how in this process the time and opportunity will be found to make sure the legislation is done correctly

#### XI. CONCLUSION

The issues raised in this letter exemplify the serious questions that should be resolved before Congress completes work on this legislation. For this reason, we urge you to respond in detail and in writing to the concerns raised in this letter by July 15, before the House select committee starts its consideration of this bill.

Sincerely,

HENRY A. WAXMAN,  
*Ranking Minority  
Member, Committee  
on Government Reform.*

DAVID R. OBEY,  
*Ranking Minority  
Member, Committee  
on Appropriations.*

#### APPENDIX A—TRANSFERRED FUNCTIONS NOT RELATED TO HOMELAND SECURITY

##### ANIMAL PLANT HEALTH INSPECTION SERVICE

Animal Welfare Act: APHIS enforces the Animal Welfare Act, the act that regulates the exhibition of animals in zoos and circuses and the transportation of animals on commercial airlines.

Biotechnology Regulatory Policy: APHIS regulates the movement, importation, and field testing of genetically engineered plants and microorganisms.

Canadian Geese: APHIS works with state wildlife agencies and local governments to address problems with non-migratory, resident Canadian geese.

Disease and Pest Detection and Eradication: APHIS is responsible for the detection and eradication of pests and diseases that affect crops and livestock. For example, on September 20, 2001, APHIS implemented the accelerated National Scrapie Eradication Program. A few of the other pests and diseases APHIS monitors for and eradicates include: the boll weevil; the fruit fly; rabies; the Asian Longhorned Beetle; the citrus canker program; and the plum pox virus.

Horse Protection Act: APHIS enforces the Horse Protection Act, the act which prohibits horses subjected to a process called soring from participating in exhibitions, sales, shows, or auctions.

Missing Pet: APHIS maintains the missing pets network at [www.missingpet.net](http://www.missingpet.net).

National Poultry Improvement Plan: This is an industry/state/federal program that establishes standards for evaluating poultry breeding stock and hatchery products to ensure they are free from hatchery-disseminated and egg-transmitted diseases.

Noxious weeds: APHIS cooperates with federal, state, and private organizations to detect and respond to infestations of invasive plants, such as branched broomrape and small broomrape.

Screwworm: APHIS is working to ensure that screwworm is not reintroduced into the United States. This eradication program is close to its goal of establishing a permanent sterile screwworm barrier in the eastern third of Panama.

Trade Issue Resolution and Management: APHIS monitors emerging foreign pest and disease threats at their origin before they have an opportunity to reach U.S. ports. APHIS also participates in trade agreements.

Veterinary Biologics: APHIS regulates veterinary biologics including vaccines and diagnostic kits.

## COAST GUARD

International Ice Patrol: The Coast Guard has a fleet of ships designed to break ice in cold regions to ensure that boats are able to navigate the waterways.

Marine Safety: The Coast Guard enforces regulations to ensure that boats and other marine equipment meet safety standards.

Maritime Drug Interdiction: The Coast Guard interdicts drugs illegally brought into this country on the waterways.

Maritime Law Enforcement: The Coast Guard enforces the laws of the waterways.

Maritime Mobility Missions: The Coast Guard provides aids to navigation and bridge administration to ensure that vessels are able to navigate our waterways.

Oil Spill Cleanup: The Coast Guard helps to prevent oil spills in the nation's waters and assists in their cleanup when they occur.

Protection of Natural Resources: The Coast Guard protects our domestic fishery resources and marine environment.

Search and Rescue: The Coast Guard, as one of its primary missions, rescues troubled vessels and people on the nation's waterways.

## CUSTOMS

Border Drug Interdiction: The Customs Service fights against drug smuggling at the United States border.

Copyright Protection: The Customs Service helps to enforce the Copyright Acts.

Enforcement of Health and Safety Laws: The Customs Service checks imports to ensure that they comply with health and safety laws.

Fostering of Trade: The Customs Service works with the trade community and identifies and confronts trade issues facing the country.

Child Pornography Prevention: The Customs Service enforces laws protecting against child pornography.

Fair Trade Protection: The Customs Service enforces a variety of fair trade laws such as the Lanham Trade-Mark Act and the Trade Act of 1974.

Protection of Species at Risk: The Customs Service enforces laws protecting threatened species such as the Bald Eagle Protection Act and the African Elephant Conservation Act as well as the Endangered Species Act of 1973.

Revenue Collection: The Customs Service provides the nation with its second largest source of revenue.

Stolen Antiquities and Art: The Art Recovery Team works to recover stolen pieces of art and antiquities.

Tariff Enforcement: The Customs Service ensures that U.S. tariff laws are enforced.

## DEPARTMENT OF ENERGY

Energy Emergency Support: The DOE Office of Energy Assurance assesses the potential effects of natural disasters such as earthquakes, hurricanes, tornadoes, and floods on energy infrastructure and provides energy emergency support in the case of such disasters.

Human Subjects Research Database: The DOE Environmental Measurements Laboratory (EML) maintains the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, performed by DOE staff, or conducted at DOE facilities. EML also provides direct assistance to the manager of the DOE Protecting Human Subjects Program, such as assisting with production of educational and guidance materials.

Quality Assessment Program for Contractor Labs: EML also runs a quality program for DOE contractor laboratories that measure radiation. The program tests the

quality of 149 private laboratories' environmental radiological measurements.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter: FEMA gives grants to providers of emergency food and shelter for hungry and homeless people.

Hazards Mitigation Program: FEMA provides grants to states and local governments to implement hazard mitigation measures to reduce the loss of life and property resulting from major natural disasters, such as hurricanes.

National Earthquake Hazards Reduction Program: FEMA is the lead agency on programs to improve the understanding, characterization and predictions of earthquake hazards; to improve model building codes and land use practices; to reduce risk through post-earthquake investigations and education; to develop and improve design and construction techniques; to improve mitigation capacity; and to accelerate the application of research results.

National Flood Insurance Program: FEMA administers the National Flood Insurance Program, which provides insurance coverage for events that are not covered by traditional homeowners' policies.

Reduce Loss from Fire: FEMA runs a number of programs to reduce the loss of life from fire-related incidents, including the National Fire Data Center and the National Fire Incident Reporting Systems.

## SECRET SERVICE

Prevention of Counterfeiting: The Counterfeit Division of the Secret Service has exclusive jurisdiction to investigate counterfeiting of United States securities and obligations including items such as food stamps and postage stamps.

Safe School Initiative: The Secret Service has partnered with the Department of Education to help prevent violence in schools.

Telecommunications Fraud: The Secret Service has become a recognized expert in helping to prevent telecommunications fraud such as the cloning of cellular telephones.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATTS), the conference chairman and member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I too want to commend the chairman, the gentleman from Texas (Chairman ARMEY) for I think using exceptional grace and exceptional composure and I think real balance in giving all the Members of the Select Committee a say, and I think as well giving all of the committees of jurisdiction a real voice in this process. Again, I think the gentleman did an exceptional job and he is to be commended for his work on this legislation.

Mr. Chairman, I believe the best way to secure our homeland is to involve all sectors of society. By creating a working relationship between the public and private sectors, the best available technologies and the greatest amount of knowledge can be brought to the table to achieve a common goal of protecting our Nation from those who seek to inflict terror within our borders. We have discussed at length in this process the role of the government in homeland defense and that is good. At the same time, we need to integrate the private sector into an overall agenda of homeland defense.

During the Select Committee hearings last week, my colleagues accepted an amendment I offered to create a position of special assistance for the private sector to be a liaison within the Office of the Secretary of Homeland Security.

The special assistant would be the primary contact for private sector activities and coordination with the Department of Homeland Security. The private sector will help combat terrorism by ensuring that America's protectors have the best available technology to secure and defend our homeland, from the superaccurate sensors that can detect biologic warfare agents, to integrated computer systems that allow government agencies to effectively communicate with State and local officials and each other.

In addition, the special assistant will ensure that federally-funded research and development projects that have homeland security application are not just sitting in the lab, somewhere but are in the lands of our Nation's defenders.

The special assistant for the private sector will play a crucial role in coordinating the security of our nation's critical infrastructure, an important job considering, Mr. Chairman, that 85 percent of our critical infrastructure is owned by the private sector.

By fostering relationships between Federally funded programs and the private sector, new and innovative technologies will help the government and local communities with deterrence, prevention, recovery and response.

The ultimate goal of these efforts is to ensure that our police, firefighters, baggage screeners, cargo inspectors and other front-line defenders have the best anti-terrorism technology America has to offer. The private sector can play a critical role to protect and defend our homeland.

Mr. Chairman, we must do everything possible to promote its work, so together with the government we can better secure our great Nation. I am delighted that we have done this that we are moving forward in this legislation. I encourage all of my colleagues to support it.

Mr. Chairman, I rise today in strong support of H.R. 5005, the Homeland Security Act of 2002. This bill represents a monumental step toward addressing the serious homeland security concerns we currently face in America by creating a new Department of Homeland Security. I also rise to ask the new Secretary of Homeland Security to study the steps currently being taken by the Oklahoma Municipal League to put into place a statewide emergency response network which utilizes the most up-to-date wireless last-mile technology to link federal, state and local officials in the event of a natural disaster or criminal or terrorist activity.

The Oklahoma Municipal League has begun a successful initiative to create a statewide broadband network for municipalities, schools, businesses and residences through a public/private partnership. Utilizing grants and low cost loans from industry, state and federal

sources, the League and member municipalities are creating the base network for public services that will be self-sustaining through commercial subscription services to businesses and residences. Telecommunications fiber links are leased from carriers for backbone links and wireless last-mile technology is used to provide local high-speed access. The network links local governments to each other and to state and federal offices. This network can be utilized to efficiently coordinate the activities of first responders in the event of an emergency.

The officials in Oklahoma have begun discussions with the Federal Emergency Management Agency for implementing this program on a national scale and I urge the Secretary to work with FEMA and other relevant federal agencies to expedite this process and provide any resources available to assist the Oklahoma Municipal League in further developing this network. Recognizing that Homeland Security begins at the local level, I also urge the Secretary to make other states aware of the Oklahoma program and encourage them to use it as a model for implementing similar networks in their own states.

I would also ask the Secretary to study the impacts of terrorism on rural America and develop guidelines for minimizing the effects of these incidents. This study should focus on the difficulties of communication among state and local officials in rural areas, particularly with respect to the ability of municipal government officials and first responders to have real-time transmission of voice, data and video in order to effectively respond to emergency situations. The findings of this study should provide examples of communities that are preparing disaster response plans and educating the public on the steps to take in the event of an emergency.

Mr. Chairman, these two studies should be conducted immediately upon creation of the new Department of Homeland Security. The Secretary should report back to Congress the findings of these studies within 120 days of the creation of the new Department.

Ms. PELOSI. Mr. Chairman, I yield 4 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member Committee on Transportation and Infrastructure.

Mr. OBERSTAR. Mr. Chairman, I thank the gentlewoman for yielding me time.

Mr. Chairman, here we are crafting the first new department of government in many years and I am a little surprised. It is Alice in Wonderland. It is verdict first, evidence later.

A provision in this legislation would extend a deadline for screening of checked luggage aboard aircraft by explosive detection systems out off into the future after last year, just eight months ago in this very Chamber, we voted 410 to 9 to set a deadline of December 31, 2002 to do that very job. Where is the evidence that we need to do that? Where is the evidence that should precede the verdict that this great Nation cannot accomplish that task that we have set forth by an overwhelming vote in this body?

I frankly am offended that we would hardly, as the ink dries on the Transportation Security Administration law,

hardly is the President's pronouncement of a need for a Department of Homeland Security than this body will become and begin to undermine that very security.

I am not a newcomer at this business of aviation security. I have spent about 20 years at it in the Committee on Public Works, and then the Committee on Transportation and Infrastructure. I am proud to say that I held the very first hearings on aviation security as Chair of the Subcommittee on Oversight and Investigations. And in the aftermath of Pan Am 103, as Chair of the Aviation Authorizing Committee with my then-ranking member, the gentleman from Georgia (Mr. Gingrich), fashioned the legislation requested by President Bush to create a Presidential Commission on Aviation Security and Terrorism and served on that commission with our distinguished colleague from Arkansas, Mr. Hammerschmidt.

We wrote a report that made 64 recommendations to improve aviation security, drafted those recommendations into legislative language, to them enacted through this body and the other body and to the president and signed them into law. And I said then, oh, there is such a willingness in the body politic and in the Nation as a whole to strengthen security that never will we have to worry. These provisions will be implemented, and yet we saw the airlines lobby against 10-year criminal background checks for screeners. It took 10 years to get that provision of law implemented by rule. And positive passenger bag match and deployment of explosive detection systems.

That then came September 11 and the new Transportation Security Act, and I said then, This time we will not make a mistake. We will write provisions in law and make them applicable by action of law, not by bureaucratic rule making so that the will of the people and of the Congress cannot be frustrated. And here we are 9 months later, frustrating that will of the Congress and of the people of this country to raise the bar of security. We raised it in law and in this bill it is being lowered again. And lowered to create a one year, at least, window of vulnerability for aviation security. We ought to remove that provision and I will propose the amendment tomorrow to do so.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. LOBIONDO).

Mr. LOBIONDO. Mr. Chairman, I rise in support of H.R. 5005 and I thank the majority leader for yielding me this time.

Since becoming chairman of the Subcommittee on Coast Guard Maritime Transportation 18 months ago, I focused my efforts on making sure that Congress provides the Coast Guard substantial increased monies, additional manpower and more modern assets necessary to carry out their multi-mission charge.

I have worked with many Members of this House from my first days as chair-

man to pursue these goals, and during my tenure, I have developed a set of guiding principles designed to make sure that the Congress is serving the Coast Guard in the same fine way that the Coast Guard is serving America.

As we have considered this bill and examined its effect on our Nation's security, I have, again, had these principles frame my views. First, we must ensure that anything we do in Washington will not negatively effect the Coast Guard's ability to effectively carry out all of its missions, including conducting search and rescue, stopping drug smuggling, interdicting illegal immigration, and all the other maritime safety commissions, as well as the critical homeland security mission.

Congress must also ensure that the Coast Guard stays intact and remains a ready force to meet and handle a wide range of duties, including homeland security.

Fortunately, the Select Committee and the White House have agreed that an intact Coast Guard doing all of its multi mission tasks is the right way to go. I worked hard on this issue and am very pleased it is part of this bill.

Secondly, we must ensure that the Coast Guard continues to receive the resources it needs to keep doing the great job they have done both before and after September 11. The Coast Guard needs substantially more money and more modern assets to meet the challenges of the future and to operate safely, efficiently and effectively to protect America.

The passage earlier this week of over half a billion dollars in a supplemental appropriations bill for the Coast Guard is indeed good news to allow the Coast Guard to continue to meet the increased cost of defending America.

Lastly, the Coast Guard must continue to report directly to the Secretary of Homeland Security, keeping its access at the highest levels of administration. This point was a top priority for me from the very first days the President's proposal was made. I was adamant that the Coast Guard would not be lost in a bureaucratic jungle, and I want to thank the majority leader, the gentleman from Texas (Mr. ARMEY), the gentleman from Alaska (Mr. YOUNG), the gentleman from New Jersey (Mr. MENENDEZ) and the gentleman from Ohio (Mr. PORTMAN) for their efforts in joining me to ensure that the Coast Guard continues to enjoy its open access door to the Secretary.

It is critical that the Coast Guard can report directly to the top decision makers, and this is exactly what this bill specifies that they do.

Mr. Chairman, I believe this legislative proposal is good for the Coast Guard and the right direction for America at this difficult time in our Nation's history, and I urge a strong support of this legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from

Michigan, (Ms. KILPATRICK), an important member of the Committee on Appropriations.

(Ms. KILPATRICK asked and was given permission to revise and extend her remarks.)

Ms. KILPATRICK. Mr. Chairman, I rise and I support the concept of a Department of Homeland Security, but I do not support this concept and let me tell you why.

This concept allows 170,000 Federal employees to be transferred to an agency where they have no rights, a brand new personnel system where they do not have rights. They are not able to bargain collectively. They are not able to have certain rights and are subjugated to the whim of the Secretary.

I rise in opposition because this bill defies the appropriations process set up in our Constitution of checks and balances. I oppose this bill because it eliminates the process, the Congress, the constitutional Congress, that allows our country to exist and to have checks and balances and appropriations process and employee rights that this legislation will take away in the name of terrorism. Yes, we need to do something but this is not the vehicle and I hope it will not pass.

The Secretary can waive various paycheck schedules for these employees. He can move the employees at their whim, 170,000 employees who have dedicated much of their lives to this government.

□ 2115

We need more time; there is no rest for this. Yes, the terrorism is bad. Yes, I believe the terrorists have won. Because what they have done is frighten Americans. We are a better Nation than that. We have an Army. We have people who are committed to this country. I believe it is our responsibility to reject this legislation and then come back and put the practical amendments, the practical balance that we need to make sure that citizens are safe and make sure that our employees have the rights that they deserve.

Mr. Chairman, I rise in opposition to H.R. 5005 because it eliminates the protections and rights of many Federal employees, violates fundamental rights under the Constitution, and defines a well-established appropriations process. These reasons make this a bad bill for the citizens of this nation. It takes away the fundamental rights that we hold dear.

Black American has not enjoyed the fullness of America's Constitutional freedoms, as have most Americans. Black Americans have been explicitly and implicitly limited to many of our basic civil liberties and this bill will potentially further restrict. The limitations that we experience are even greater than most recent immigrants. Perhaps, that is why we tend to be more liberal in defense of them.

Most American generations have enjoyed the freedoms inherent in the Constitution for nearly three hundred years. In the history of nations, that is a very long time. Since 9-11, Terrorists have frightened our nation, and now, we are afraid. For all of our braggadocio stands and speeches, we are afraid. Our fear

is making us overwhelmingly passive to government propaganda and carelessly willing to sacrifice our liberties to those among us who are more than glad to take them. If we pass the Homeland Defense Act, as presently proposed, the terrorists will have won.

The terrorists will have won because we would have destroyed our Constitutional democracy of checks and balances. This Constitutional innovation has stood us in good stead through our own Civil War, through two world wars, numerous undeclared wars, racial hostilities and a number of other internal and external conflicts.

This massive war-like structure we are calling The Department of Homeland Defense will make the country vulnerable by weakening the very regulatory agencies that the last two hundred and fifty years has taught us that we need.

By making the massive shifts of personnel and responsibilities of existing agencies to one Homeland Defense Department, focused exclusively on terrorism, we won't be able to tell whether 19 million pounds of tainted meat is the act of bio-terrorism or the result of corporate misfeasance.

In 1930, France had the largest army in Europe. Watching the rise of fascism in neighboring Germany, they decided to construct an impenetrable defensive wall the entire 300 miles along the Franco-German border. Originally priced at 300 million francs, with only 82 miles completed, the cost had ballooned to 23 times the original budget. Ultimately, the cost of the Maginot Line consumed all of France's defensive budget leaving them with a military unprepared for the German blitzkrieg that ultimately defeated them six years later.

This so-called, Homeland Defense Act, creates for us a bureaucratic Maginot Line, which can be circumvented by anyone who disrespects the rules of warfare which clearly is what terrorist do. The Germans defeated the inflexible Maginot Line by outflanking it. Using a concept of "unrestricted warfare," the Germans, disregarded the neutrality and vulnerability of Switzerland and Belgium, went around the Maginot Line invaded and defeated France in six weeks.

What makes the Department of Homeland Defense as vulnerable as the French of 1940 is the obviousness of it. The ideal target of unconscionable fanatics is anything that resembles static vulnerability. The best offense against terrorism is the stealth of intelligence.

What we need to defend ourselves against terrorism is not another massive, inflexible department but exactly what this country does best. America has the ability to invent, innovate and diffuse its technological creations; and to build networks that multiply human intelligence.

We can leave the departments exactly where they are and doing what they know how to do best. What we ought to do is build inside of all government departments, a responsive and flexible network of units, which can respond to any sort of threat—whether it is an act of terrorism, an accident, negligence or misfeasance. We need this flexibility so that the country does not exist in a permanent "yellow" state. We do need to multiply our intelligence capability one hundred—fold to coordinate our flex-defense network.

I suspect that most Members of Congress are students of history or at least "buffs." as I am. One of my greatest sources of current

history is my eighty-three year old father—a Navy veteran of the Second World War. He often takes the time to give me an historical spin on what looks like something new.

If the history of the Maginot Line is too distant and the analogy too abstract to be instructive, then we should look at a more recent event—The Gulf of Tonkin Resolution. That Resolution appealed to patriotism to respond to an "unprovoked" attack on American Naval forces off the coast of North Vietnam. The resolution gave the President the authority to escalate the war in Vietnam without further authority from Congress. The resolution passed unanimously in the House and with only Senators Morse (D-OR) and Gruening (D-AK) opposing.

With the publication of the Pentagon Papers in the New York Times, in June and July of 1972, the American people learned that the CIA with the full knowledge of the President had contrived the incident at Tonkin.

Only Congress can declare war. With the passage of the Gulf of Tonkin Resolution, Congress relinquished its Constitutional authority to declare war to the President. Fifty thousand American lives were lost in an undeclared war driven by an irrational rush to judgment motivated by anger and fear.

In The Imperial President, Pulitzer Prize-winning historian, Arthur Schlesinger, traced the shifting of congressional powers to the President. Most often, these shifts occurred as the result of a belief that the country was in danger by either internal or external threats. Once the shift was made, Congress never retrieved its relinquished powers.

The values and constitutional liberties of this nation are not only threatened by terrorists, but also, threatened by the possibilities of a federal government without proper checks and balances. For Black Americans, the latter threat is much more conceivable than the former. I want to see the nation combat these despicable terrorists acts, but not by completely centralizing the power of federal government, or trampling on our civil liberties, or not protecting federal employees rights.

My conscious will not permit me to agree with this bill's construction of The Department of Homeland Defense. I will not agree with legislation to strip civil liberties. I will not agree with a contract that will deny workers of their rights and proper recourse for wrong done towards them. I will not be silent to the ills of this bill, even in the midst of a daunting and scary future, which has bred fear through us all.

This bill would give a two-year authority to unilaterally transfer up to two percent of appropriations between department functions. This can be done with only 15 days of prior notice to Congress. There is an effective process to transfer funds with Congressional approval that works well. I will not support this bill, and hope that my colleagues too will understand what is at stake with the passage of this bill. I believe that we can construct a bill that will protect our employees' rights and will not violate proper appropriation procedure or our fundamental rights under the Constitution. For these reasons, Mr. Speaker, I am opposed to H.R. 5005.

Mr. ARMEY. Mr. Chairman, I ask unanimous consent that the gentleman from Ohio (Mr. PORTMAN) be permitted to control the remainder of my time for consideration of this debate.

The CHAIRMAN. Is there objection to the gentleman from Texas?

There was no objection.

Mr. PORTMAN. Mr. Chairman, I yield myself such time as I may consume.

I thank the majority leader, and I want to commend him for the work he has done to put together the bill we have before us today. His leadership on the Select Committee was fair, open, honest. We had some good debates, and it was done in a not just bipartisan but a nonpartisan way and I know that will continue tonight as we get through some of these statements and then later tonight and tomorrow into the amendment process.

Briefly responding to the gentlewoman from Michigan (Ms. KILPATRICK), she will be happy to know that workers' rights are indeed preserved in the underlying legislation. All of title V is included in the legislation. I hope she will read it.

I would also like to say that collective bargaining is explicitly not just permitted but guaranteed. So we are hearing a lot of statements tonight that may be based on some information that is being passed around that is not accurate. I hope people will read the legislation so that we can keep to the facts.

Shaping of this legislation, Mr. Chairman, has been and will continue to be a daunting task. All of America is looking at us to help protect the homeland and produce a Department of Homeland Security that is worthy of the name. It is a challenge, and we had better get it right. This Department will be the keystone of our national strategy to confront a menacing threat and to shut it down.

Its mission as proposed by the President is critical. First, to prevent terrorist attacks; second, to reduce our vulnerabilities to attack, hardening our infrastructure; third, to minimize damage should we be attacked; and, finally, and this is very important in this new agency, to be sure that those functions that are being transferred to this new Department that are not related to homeland security are also not neglected. And we will hear something about that tonight and into the amendments.

This is all a big job, and it results in a very big agency, 170,000 employees. We know it will be a big agency. The question is, and the gentlewoman from California raised it earlier, will it also be a lean and agile agency to be able to respond to the threat that we find ourselves confronting in this new century? Will this thing work? I think we are going to determine that in our votes tonight and tomorrow. We are going to determine whether this new agency is going to have the ability to rationalize and bring together 22 different agencies of Government. It is a difficult task, admittedly. It is necessary to do it. As we have heard so many people speak so well about tonight the necessity of consolidating and streamlining, being

sure that we have real accountability in a system that does not exist now; and I do not think anybody would say it does when there are so many different agencies and Departments of government responsible, nobody is responsible.

We have got to be sure that we take these 22 different agencies and we bring them together as a single team focused on a single mission. This will require managerial, budget, and, yes, personnel flexibility. Without it, the needed consolidation and streamlining just will not happen; it will not work.

Second, beyond this huge organizational challenge, the new Department must be able to meet an agile, deadly, and unpredictable threat, the threat of terrorism. It must be able to do so with cleverness, with speed and with flexibility of its own.

I believe the Select Committee bill we have before us meets these tests. It does provide us with a 21st century agile Department, and it must not be weakened through the amendment process if we are to properly protect our homeland. The most fundamental responsibility we have as Members of Congress, of course, is to protect our country and to protect our citizens. I strongly believe the bill that we have before us puts the pieces in place to see that with good congressional oversight we can indeed meet that responsibility. As we work through these amendments, I hope my colleagues on both sides of the aisle will continue to focus on the necessity of rising to this daunting challenge without partisanship, without rancor, but with one goal in mind, and that is how best to protect our families.

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

Ms. PELOSI. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin (Mr. OBEY), the very distinguished ranking member of the Committee on Appropriations.

Mr. OBEY. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I want to express my appreciation for the fact that the committee did correct what I thought to be the most fundamental problem associated with the original draft just sent down by the White House. That draft gave unprecedented authority to bureaucrats to spend money without congressional supervision, and I think it would have been a threat to the Constitution itself, and I appreciate the fact that that disastrous proposal has now been removed.

That leaves us with the question of what we think of the organizational structure which is left, and we can have honest differences about that. I happen to think and I happen to fear that the remainder of this product will in fact make it more difficult rather than less difficult for us to respond to terrorist attacks and to prevent them, for two reasons.

First of all, this agency that is created is going to be composed of 170,000

people. That is not going to be a lean, mean, agile agency. It is going to be a slow, cumbersome agency which I think will slow down our ability to react. Secondly, even though some 22 offices and agencies are being pulled into that Department, there are 111 agencies that have something to do with homeland security that will not be tied into that Department, and my question is who is going to coordinate them? In my view what we need is to have a substantially upgraded and strengthened Office of Homeland Security within the White House, and that is the reason I personally favor Senate confirmation. Not because it in any way weakens the occupant of that office, but because it would put them on an equal footing in terms of prestige and clout with the Office of Management and Budget, with the President's science advisor and the like; and I think that is what is needed if we are going to coordinate those 111 agencies outside the tent effectively.

I also believe the FBI needs to be substantially reshaped because right now they simply do not have the analytical capacity that is needed to engage in this kind of analysis as opposed to looking at what is happening with 25,000 separate crimes around the country. It is a very different mindset that is required, and I think the FBI director recognizes that fact.

And, lastly, we have to look at resources. We have to commit substantially more resources to enhancing our translation capacity because right now the hard fact is there are thousands of pages of raw data, raw intercepts lying on floors and sitting on shelves all over the security agencies in this town. No one has ever looked at them because we have not had the personnel and they have not had the focus. That needs to be fixed if we are going to truly improve the security posture of the country.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. CHAMBLISS), a member of the Permanent Select Committee on Intelligence, one of the House's experts on homeland security.

Mr. CHAMBLISS. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise tonight to support this very important bill to establish a Department of Homeland Security. I applaud the work of the gentleman from Texas (Mr. ARMEY), the majority leader, and the gentlewoman from California (Ms. PELOSI), the minority whip, who I work with on the Permanent Select Committee on Intelligence, and the members of the Select Committee on Homeland Security who have worked tirelessly over the past few weeks to ensure the successful implementation of the President's plan to improve the security of our Nation, and to our President. What a great job he has done and what great vision he has for where this country ought to be from a homeland security standpoint,

and he is providing strong leadership in moving us in the direction of that vision.

The world has changed dramatically since September 11 of last year. Winning the war on terror means changing the mindset of our entire government top to bottom and drastically changing the way we do business. The new Department of Homeland Security will centralize and coordinate our efforts to better protect our citizens.

Let me point out that one of the most important aspects of this plan is the effort to improve the sharing of information among our Federal agencies, as well as between Federal, State and local officials.

Last week, the gentlewoman from California (Ms. HARMAN) and I released a summary of our classified report on why our intelligence agencies failed to prevent the terrorist attacks of September 11. Not only did we find that the information technology and agencies such as the FBI could not communicate with itself because they have a completely outdated information infrastructure, but the right people were not getting the right information at the right time.

We must streamline and better coordinate the sharing of information so that our local officials like Wayne Bennett, the sheriff of Glynn County, Georgia, or Bud Watson of the Atlanta Police Department, the people who are on the front lines protecting our communities every day, have the most accurate information so that they can do the best job they can to disrupt terrorist activity and better protect our citizens.

Mr. Chairman, I urge my colleagues to support this landmark legislation.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the very distinguished gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Chairman, I have been watching this debate with some interest for the last couple of hours, and I am one of those that is standing forward tonight to say I am a vote in play on this, and I came over here because I find my questions are not being answered by this debate. I am hearing a lot of superlatives about streamlining and coordination and consolidation, how we are not going to let September 11 occur again. We have got to talk about some details about what good specifically is going to occur by making what is going to be a tremendous change that the GAO says is going to take a decade probably to really work out.

I am a little bit torn because some of my favorite folks and the folks I respect the most in this body are divided on this, the gentleman from Texas (Mr. THORNBERRY), the gentleman from Wisconsin (Mr. OBEY), the gentleman from Ohio (Mr. PORTMAN), some others. But let me just touch on a few points.

First of all, Moses did not come down from the mountaintop with gold tablets that said this bill is the answer.

There are other potential answers out there. I think we ought to try to make our case why in some detail this is the particular answer, what other option to me would have been to do, what we all thought that was going to happen with Governor Ridge from the get-go, which was he was going to be a close confidant, adviser to the President that could have authority and accountability and with laser-like effort could go into agencies and correct where we saw the problems. We have rejected that, and now we are going with the whole hog kind of thing that I am not sure we need to go that far.

The second point I want to make is a funding issue. We had the intelligence bill on the floor yesterday, and several speakers talked about how we are finally going to give additional funding to intelligence, implying that perhaps the problem all along, a lot of it, is we have underfunded intelligence.

Part of the concern in this bill is about visas and how they have been given out; and yet the New York Times had an article, front page story on Monday, how we have terrible personnel policies and problems in the State Department. No wonder we are having problems, and yet we have not addressed the personnel issues nor have we addressed the great infrastructure needs, security infrastructure needs of the State Department.

Another point, as has been said, we have got to be careful about this bigger-is-better argument. When we look at the challenges back home in Arkansas, I do not find anyone saying let us take all the volunteer fire departments and consolidate them into one big fire department, let us take all the sheriff and police agencies and consolidate them into one that that will help our coordination. We need to be, perhaps, more focused.

My final concern is I fear that this could be a distraction. I am just asking these as questions tonight, that in the course of doing this huge consolidation we will forget that we need to focus on the gaps in intelligence and the gaps in specific funding and the gaps in specific coordination personnel needs that may be lost in the massive consolidation that is occurring.

Mr. PORTMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. TOM DAVIS), a member of the Committee on Government Reform and leader on civil service and technology issues.

(Mr. TOM DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. TOM DAVIS of Virginia. Mr. Chairman, I rise in support of the cybersecurity information security language included in the Chairman's en bloc amendment. The events of September 11 and ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security.

From my work on the Committee on Government Reform, it is clear that the state of Federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malignant and benign interruptions.

□ 2130

Title XI in the manager's amendment incorporates the major provisions of the Federal Information Security Management Act of 2002, FISMA, which will strengthen the information security management infrastructure within the Federal Government.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will remove GISRA's sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations on agency information security practices.

Second, it will require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems.

Third, it will streamline and make technical corrections to GISRA to clarify and simplify its requirements.

Fourth, it strengthens the role of the National Institute of Standards and Technology in the standard-setting process; and, finally, it requires OMB to implement minimum and mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

The critical infrastructure information provisions included in H.R. 5005 will promote voluntary information-sharing among our Nation's critical infrastructure and assets. The provisions are supported by every critical infrastructure sector.

Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally these sectors operated in the private sector, largely independently of one another, and coordinated with government to protect themselves against threats posed by traditional warfare. Today the public and private sectors must learn how to protect themselves against unconventional threats, such as terrorist attacks and cyber-intrusions.

In Presidential Decision Directive 63, issued by the previous administration, concerns about the Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information-sharing with the private sector. The provisions in the amendment address these concerns by providing a limited FOIA exemption, civil litigation protection for sharing information, and a new process for resolving potential antitrust concerns for information shared among

private sector companies for the purpose of correcting, avoiding, communicating, or disclosing information about a critical infrastructure threat or vulnerability.

These provisions will enable the private sector, including information-sharing organizations, to move forward without fear from government reprisals, and allow us to have a timely and accurate assessment of the vulnerabilities of each sector to physical and cyberattacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded Federal mandates on the private sector, and I urge its adoption.

We all know that the Federal, State and local governments will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn't simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unevaluated, perhaps denying the Government breakthrough technology.

In February, I held a hearing in my Subcommittee on Technology and Procurement Policy on homeland security challenges facing the Government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process within the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today. Chairman ARMEY at my request included language in a new section 309 which is based on H.R. 4629, legislation I introduced in May. This language will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Chairman ARMEY's Managers' amendment included a new section 309 in the Homeland Security Act to establish within the Department a program to meet the current challenge faced by the Federal Government, as well as by State and local entities, in leveraging private sector innovation in the fight against terror. The amendment would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to terror-fighting technologies for dissemination to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions;

Establishing a technical assistance team to assist in screening proposals for terror-fighting technology to assess their feasibility, scientific and technical merit and cost; and

Providing for the new Department to offer guidance, recommendation and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 309 in this landmark legislation will give the new Department the framework it needs to examine and act on the best innovations the private sector has to offer.

I would also like to offer my thanks to the staff of the Science and Energy and Commerce Committees who collaborated with my staff in crafting this consensus amendment.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the distinguished gentleman from Indiana (Mr. ROEMER), a member of the Permanent Select Committee on Intelligence.

(Mr. ROEMER asked and was given permission to revise and extend his remarks.)

Mr. ROEMER. Mr. Chairman, I think that this country is in dire need of a homeland security department, and I hope and pray that the President's proposal will work. But I think that it will not.

While I do not know what I am going to do yet on final passage, I have very grave concerns about this being too bureaucratic, too big, too cumbersome, and not quick enough and agile enough to deal with the threat of al Qaeda that can move from Yemen to Hamburg to the United States in a matter of 12 hours.

Now, when President Clinton proposed his massive health care proposal in 1993, I thought it was too bureaucratic. I opposed it. I thought it was too slow. When we look at this proposal, to get a decision made from the CIA to homeland security, assess the threat, get it back up to the Secretary, determine the reliability, go back down and then say, yes, we have a real threat, then say should we call Indianapolis, warn them, prevent it, harden the target, we are going from the President to the Secretary to the infrastructure protection to the threat analysis and back. I do not know that this is going to work. I hope it does.

The current system, Mr. Chairman, is the President and then here is Tom Ridge. Here is the President and here is Tom Ridge in the Office of Homeland Security. Right there and right back. Very quick. I think we need quick.

I hope that we will take our time on this. Twenty-two departments, \$38 billion, 180,000 people versus, I think, going more toward what we have, making Tom Ridge a Cabinet secretary, making it lean, agile, technologically connected with e-mail and databases, and able to knock al Qaeda out quickly before they can attack the United States again. Not with a big bureaucracy. I urge my colleagues to go forward with caution.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from New York (Mr. BOEHLERT), the distinguished chairman of the Committee on Science.

(Mr. BOEHLERT asked and was given permission to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Chairman, I rise in strong support of H.R. 5005, and I want to draw particular attention to the bill's appropriate focus on science and technology.

Advancement in science and technology will be critical to the success of every mission of the Department of Homeland Security: Improving intelligence analysis, cybersecurity, border security, and emergency response all will require the invention and deployment of new technologies, ranging from new software to make computer networks more secure, to new standards to make emergency response communications equipment interoperable.

Like the Cold War, the war on terrorism will be won as much in the laboratory as on the battlefield. With that in mind, the Select Committee has followed the recommendation of the Committee on Science and has created an Under Secretary for Science and Technology. With this under secretary, the bill ensures that one senior official in the new Department will be responsible and accountable for the science and technology activities of the entire Department. This approach will ensure that the science and technology activities of the Department have the critical mass and the skilled leadership they need to succeed.

The language of title III gives the Under Secretary for Science and Technology the tools needed to build the scattering of relatively small programs being transferred into the agency into a dynamic science and technology capability.

I want to thank the members and staff of the Select Committee for working with us so cooperatively to ensure that the new departments will have a strong, vigorous, and innovative science and technology capability as called for by the National Research Council and other expert groups. I also want to point out the Committee on Science provisions were approved in our committee on a bipartisan, unanimous vote.

Mr. Chairman, I also want to draw attention briefly to the cybersecurity provisions of the bill which have been strengthened as H.R. 5005 moved through the congressional process. The bill now explicitly focuses on cybersecurity, one of our Nation's most serious vulnerabilities. The manager's amendment will strengthen those provisions even further by providing more tools and direction to ensure the security of Federal, State, local and private sector computer systems, and to help speed recovery if security is ever breached, nonetheless.

I want to thank my colleagues, and I urge full support of H.R. 5005.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 3 minutes to the gentleman from Texas (Mr. HALL), the ranking member on the Committee on Science, a committee which has three

amendments here tonight, and which passed unanimously and, of course, in bipartisan fashion from that committee.

Mr. HALL of Texas. Mr. Chairman, I rise, of course, in support of this bill. This is not to say that I agree with every part of it, but, in balance, I think passage of this legislation will help us better protect our country.

I thank the gentlewoman from California (Ms. PELOSI), our illustrious minority whip, for working me in at this stage of the proceeding, and I thank the chairman of the Committee on Science, the gentleman from New York (Mr. BOEHLERT), who ushered this bill to the present status.

Mr. Chairman, I am pleased to be present and just to be a Member of this body in a day and time at the creation of a Department of Homeland Security. The President of our country deserves a lot of credit for stepping up and accepting the idea that a new department is called for at this time.

The Congress is a deliberative body, and normally we spend years considering an idea before coming to any type of a conclusion. In this instance, though, the threat is great and imminent, making quick action very necessary. I always heard "haste makes waste," but quick action means we will not get everything we want in this bill, exactly like we want it. I know that, and the chairman of the Select Committee, the gentleman from Texas (Mr. ARMEY), knows that. Nevertheless, this good start can be fixed as we go along.

I want to spend a few minutes talking about the ways in which the Committee on Science strengthened the President's initial proposal. I am particularly pleased that the bill before us places a clear focus on the new Department on science and technology, two of our most potent tools in fighting terrorism.

The single most important recommendation that the Committee on Science made was the creation of an Under Secretary for Science and Technology, a provision that was supported bipartisanship and unanimously in the Committee on Science and in the Select Committee. Chairman BOEHLERT is to be commended for his strong leadership on this issue.

I would also note that the President's counterterrorism strategy, published last week, cites science and technology as one of the heralded and one of the homeland security strategy's four foundations, unique American strengths that cut across all mission areas, across all levels of government, and across all sectors of society. Science and technology are too important to be left to chance in this new department. They need to be planned, coordinated, and directed under a strong Under Secretariat.

Our committee made over a dozen constructive changes to the President's proposal and our markup. The Select Committee did not incorporate a few that I want to highlight.

One, the gentleman from Texas (Mr. BARTON) recommended language to ensure that the Department has access to universities through centers of excellence. This is a useful component of the research and development enterprise for the Department. However, the current structure of this provision, with numerous criteria that the applicants must meet and its exclusion of private research institutions, can still be perfected in conference, and I hope that it is.

Also, Mr. Chairman, the gentlewoman from California (Ms. LOFGREN) and the gentleman from Michigan (Mr. EHLERS) led the charge in blocking the transfer of NIST's Computer Security Division to the new Department.

Ms. LOFGREN and Mr. EHLERS led the charge in blocking the transfer of NIST's Computer Security Division to the new Department. Many high-tech organizations have warned that this transfer would actually hurt national security by choking off productive interactions between the government and the private sector on computer security issues.

An amendment in the bill authored by the gentleman from Washington (Mr. BAIRD) explicitly directs the Under Secretary for Emergency Preparedness and Response to treat the psychological consequences of major disasters and to provide appropriate training for mental health workers who must deal with the aftermath of these events.

There were also a number of good ideas accepted by the Science Committee that are not in the base bill but which will be offered later as Floor amendments. I urge the Members to accept our Committee's unanimous judgment on these amendments, which include:

The amendment of the gentlewoman from California (Ms. WOOLSEY) creates a Homeland Security Institute. The Institute would be a non-profit organization assisting the Secretary in much the same way that the RAND Corporation and the MITRE Corporation assist the Secretary of Defense in analyzing proposals, establishing test-beds, assessing defense vulnerabilities and strengths, and so forth. The creation of this Institute was the major recommendation of last month's National Research Council report on terrorism R&D.

The amendment of the gentleman from New York (Mr. ISRAEL) creates an advisory committee for the Under Secretary for Science and Technology. The committee would review and make recommendations on general policy issues for the Under Secretary. Most importantly, the Committee will include representatives of the users of the Department's research activities—emergency responders—and of citizen groups.

It includes proposed language by the gentlewoman from Michigan (Ms. RIVERS) that strengthens the channels through which creative American inventors can propose their ideas and technologies to the appropriate government officials. Many of us have heard from constituents who fit that description and who have asked for our help. This amendment provides those inventors with a place to take their ideas.

Two other amendments were adopted by the Science Committee but failed to make the list of amendments under consideration on the House Floor. I would hope that these items may be accommodated in the conference.

First the amendment of the gentlewoman from Texas. (Ms. EDDIE BERNICE JOHNSON) to clarify how the Department should classify information. The amendment adds language requiring the Under Secretary, before issuing R&D awards, to state definitively and in a timely manner whether the research results will be controlled by standard classification procedures. This policy was part of President Ronald Reagan's National Security Decision Directive 189, promulgated in 1985.

And there is the amendment of the gentleman from Utah (Mr. MATHESON) regarding standard setting by the Department. This amendment tasked the National Institute of Standards and Technology to work with the new Department in standard setting for chemical, biological, nuclear and radiological detection, and transportation standards.

Mr. Chairman, I urge the adoption of these. We need to move this bill through the conference as quickly as possible. Homeland security is too important a task to let politics, turf, jurisdictional concerns, or struggles over credit get in our way.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. WELDON), the founder and chair of the Congressional Fire Caucus.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I wore this bracelet for 9 months, since September 11. This bracelet was given me by the widow of Ray Downing, one of my best friends.

Ray Downing took me through the World Trade Center in 1991 to give me lessons that I should learn to take back to this body regarding our ability to respond to terrorist incidents. Ray Downing was the Chief Rescue Officer for New York City on September 11. All of those 343 firefighters that were killed worked for Ray Downing. As people were rushing out of the building, Ray was going in with his friends. In fact, two of his sons are firefighters today with the New York City Fire Department.

Ray Downing became a good friend of mine after 1991. And, in fact, he encourage me to introduce legislation in our defense bill, which I did in 1999, creating the Gilmore Commission. The Gilmore Commission published three documents long before 9-11 occurred. And so when my colleagues today talk about a rush to do something, I do not know where they have been. The Gilmore Commission, the Hart-Rudman Commission, the Deutsch Commission, the Bremer Commission, all of this work was done over the past 8 years. Where have my colleagues been? When were they engaged with us?

Ray Downing was engaged. Ray Downing made recommendations for one single Federal agency, and he made it over and over again in the Gilmore Commission document. It was Ray Downing who led us to understand that FEMA had to play a lead role and be a part of that agency, not some outside entity. It was Ray Downing who told us

that communication was terrible in 1991, and we did not listen. We did not do anything up until now. It was Ray Downing who told us in these reports that our intelligence system was inadequate and it was Ray Downing who told us that cybersecurity and asymmetric sets required a new impetus, a new direction. Not once, not twice, but three times in three separate volumes that each of us in this body should have read.

Mr. Chairman, I am here today because of Ray Downing. Ray Downing is an American hero. I wore his bracelet until we found his remains 40 days ago, through DNA evidence, because we could not find his body. When I went to the Ground Zero on September 13, his two sons were on their knees looking for their dad.

Ray Downing told us what we should have done and we did not pay attention. This is no rush. I say it is about time we pay attention to the real heroes of this country, the domestic defenders who are in our 32,000 departments who have been telling us for 10 years what recommendations we should enact.

□ 2145

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. WYNN).

Mr. WYNN. Mr. Chairman, I thank the gentleman for yielding me this time, and extend my compliments to my colleagues on both sides of the aisle that have brought this bill forward. I think it is a good piece of work, although I have some questions.

Our most important resource in homeland security is human capital. I represent 72,000 Federal employees, and I rise to take exception to the so-called flexibility provisions. I fear they will result in lower morale and, thus, less effectiveness. This bill undermines the rights and protections currently afforded to Federal employees and in certain cases creates unfairness. The bill allows the new Department after 1 year to reduce the pay of employees transferred from other agencies. The bill would allow the Department to establish a new human resource management system, one that is different from other Federal employees, and leaves to the discretion of the Secretary whether the new system would apply to all or just some organizational units.

In addition, the bill undercuts the ability of unions to represent employees. The bill would allow the Secretary the authority to exempt some employees from organizing unions. Currently only the President has that authority.

Second, those allowed to organize would not necessarily be afforded current features such as agency recommendation of unions as the exclusive representatives of employees, a right to have union representation at grievances, and the requirement to mediate disputes with unions in the case of an impasse.

The bill allows the Department to establish its own appeal system rather

than taking appeals to the Merit System Protection Board or Equal Employment Opportunity Commission.

I understand that some flexibility is necessary. However, in this respect the bill uses a meat-ax approach more akin to union busting. Many of these proposed personnel changes are not rationally linked to security functions. The tragedy of September 11 was linked to a lack of coordination, information-sharing, and intelligence failures, not unionization and not the existing grievance procedures. We are asking our Federal employees for more to help us with homeland security while we undermine their employment security. This is a wrong-headed approach which I hope we will correct as we move forward in this process.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. GRANGER), a member of the Subcommittee on Transportation of the Committee on Appropriations.

Ms. GRANGER. Mr. Chairman, I want to express my admiration and appreciation for the gentleman from Texas (Mr. ARMEY) for his leadership in fashioning this legislation which provides the reorganization needed to protect America by establishing the Department of Homeland Security.

I have been working especially hard on transportation issues in homeland security, and tomorrow I will be speaking on those issues, but I wanted to respond tonight to the suggestion that there is no case for providing flexibility in this arbitrary deadline for checking baggage for explosives.

Airport security is important to our homeland security, and we all know that and we all want it, but we want real, not pretend, security at our airports. To make the deadlines as we have it today, the TSA would have to install screening machines at our airports at the rate of one every 35 minutes for the next 5 months. To make the deadline as we have it, screeners would have to be recruited, hired, and trained at the rate of 4.5 seconds for the next 5 months. I can go on and on.

The American people know that cannot happen and we know it cannot happen. That is the case for changing this deadline. Let us make this right. Let us have real, not pretend, security at our airports. The American people deserve and demand real security, not political posturing from us. Let us do it right, and let us pass real legislation, the legislation that is before us here today.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE) who has been a very active participant in making suggestions for this legislation.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I am reminded of the debate we had just a few days ago giving honorary citizenship to Marquis de Lafay-

ette. His words rendered during his lifetime ring very loud today. He fought for America's freedom in the Revolution when patriots stood side by side. His words were, "Humanity has won its battle. Liberty now has a country."

I think even today as we debate this homeland security department, and even as the winds of action whirl around us, I hope that words of caution are relevant as we move this legislation forward to be instructive to do what is best for the American people.

My visit to Ground Zero was as any other American because the grief was so overwhelming I wanted to be in the process of the lost souls and heroes that gave their lives on September 11. In tribute to them, I think it is important to address some of the concerns with this legislation.

I want a Department of Homeland Security. I have worked and reviewed and looked at options and opportunities to improve the legislation.

I am disappointed that even in the rush that we would not take the time for a full debate in the open daylight for the American people to be engaged. We are making a historic change in the way we do business in America. I think it is important for the RECORD to reflect, Mr. Chairman, that we are concerned about due process and civil liberties; that even though we stand together as Americans, we are concerned that we should ensure that there is no racial profiling in this particular legislation.

I think that we should be concerned that we have an FBI and a CIA that works, and whether or not we have whistleblower protection. I believe that we should reflect on these issues, and I hope as we do so, we will find the kind of department that will work well for all Americans.

Mr. PORTMAN. Mr. Chairman, I yield myself 10 seconds simply to make the point and give the gentlewoman some comfort that section 2301, whistleblower protection, is very much a part of this legislation. If the gentlewoman looks at the language, it is explicitly referenced.

Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. WILSON), the only Member of Congress who is in the National Guard.

Mr. WILSON of South Carolina. Mr. Chairman, it is a great honor to rise in support of H.R. 5005, the Homeland Security Act of 2002. I commend the majority leader, the gentleman from Texas (Mr. ARMEY), for his excellent service and the members of the Select Committee for the bipartisan nature in which this bill was put together. I also commend the President for his leadership in working for the establishment of the new Department.

My perspective, indeed, is as the only member of the Army National Guard serving in Congress at this time, and I have had the privilege as a member of the South Carolina National Guard to work with the community agencies and with the different first responders for

other natural disasters that have occurred in our country. In particular, I have worked with the situation of recovery from Hurricane Hugo which struck our State. It was an extraordinary experience, but working together we were able to recover in our State and ensure domestic tranquility.

H.R. 5005 will ensure that our communities and first responders are prepared to address all threats. I believe that it is an orderly streamlining of agencies to focus on homeland security. In particular, I want to commend that the Secret Service will be moved to the Department. One of the main missions of the Secret Service is protecting individuals and securing key events such as the Olympics and Super Bowl. The Department will depend on this agency's protective functions and expertise. H.R. 5005 essentially accepts the Committee on Government Reform's recommendation.

Another point that I see in this bill is recognition that active private sector participation in homeland security is essential. The Select Committee authorized the Secretary of Homeland Security to have a special liaison with the private sector to promote public-private partnerships and promote technology integration for homeland security. A national council for first responders is also established.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BARR), a member of both the Committee on the Judiciary and the Committee on Government Reform.

(Mr. BARR of Georgia asked and was given permission to revise and extend his remarks.)

Mr. BARR of Georgia. Mr. Chairman, when American leaders convened on Monday, December 8, 1941, they knew three things: They knew America was at war; they knew that the mechanism that had been designed to alert America to impending danger had failed; and they knew that the mechanisms that we had in place at the time to respond to emergencies had failed.

They indeed faced a crisis, much as the crisis that we faced the day after the terrorist attacks on this Nation on September 11. We knew that the existing mechanism designed to alert America to danger and to impending attacks had failed, we knew we were at war, and we knew that the mechanisms designed to respond quickly to emergencies in this Nation were not adequate to meet the challenge.

We owe it to this President the same as our forefathers owed and gave to Franklin Delano Roosevelt in December of 1941 the power and the flexibility to respond to a threat that our Nation had never faced before. Is the mechanism that this President is proposing and that we have before us in the Department of Homeland Security perfect? No, it is not. But it does grant the President the flexibility that he needs to respond to an ever-changing threat and to make those responsible for meeting that threat within our shores accountable.

Without flexibility and the mechanisms that we provide this President, there can be no accountability, and without accountability, whatever mechanisms we put in place, no matter how much money we put behind them, they will fail. Therefore, I urge Members to adopt this proposal to give the President the flexibility that he needs, and also to maintain the balance included in this important proposal to ensure that the privacy rights of American citizens are not infringed by the exercise of these necessary powers.

Mr. Chairman, I am pleased to rise in support of this historic piece of legislation.

On June 6, 2002, President Bush proposed creating a permanent Cabinet-level Department of Homeland Security, to unite essential agencies to work closely together and provide seamless coordination and execution of homeland security functions.

The Select Committee, under the leadership of Chairman Arney, took President Bush's proposal and made it better. The measures added by the Select Committee clarify roles and responsibilities of the Department, help create a world-class workforce within the civil service framework, enhance research and development opportunities, and protect civil liberties.

This bill goes beyond moving boxes on an organization chart. It represents a thoughtful approach to securing our borders and protecting our nation. It follows a rational strategy to bring together the current disjointed hodgepodge of government activities into a single department whose primary mission is to protect our homeland.

I'd also like to commend the work of Chairman Dan Burton. The Committee on Government Reform, on which I serve as Vice Chair, worked long and hard to perfect this bill. We crafted a document which served as the base text for the Select Committee bill. We worked into the early morning hours, marking up this legislation. We voted on nearly 40 amendments. At the end of that process, thanks to the leadership of Chairman Burton, we approved the bill, 30 to 1.

Government Reform paid particular attention to important management issues. Not only is creating the right organization for Homeland Security important, so is having the management tools and flexibility to create an agile 21st century workforce capable of responding to emerging new threats, and protect and defend the American people. This is, for example, the reason Committee on Government Reform recommended to the Select Committee, granting the Secretary of Homeland Security needed flexibility in the area of personnel management.

I recently chaired Government Reform hearing in Atlanta to examine post 9/11 security at federal buildings outside the nation's capital. Undercover GAO investigators attempted to infiltrate federal facilities in Atlanta, which has the largest federal government presence outside of Washington, D.C. We learned a very important lesson as a result of this investigation: Organizing the proper structure and implementing proper procedures is futile if there is no accountability, and there can be no accountability without flexibility.

If the Secretary cannot move quickly to rectify personnel problems in the interests of security, we will have no ac-

countability, and we will have failed in our most critical task—to create an effective organization capable of responding quickly and decisively to security threats. The Secretary must have the authority and the flexibility to remove employees from sensitive positions should these employees pose a threat to national security.

We do not aim to take away any employee right. We are merely providing the Secretary the needed management flexibility to strike a sensible balance between national security, employee rights, and the overall needs of the government to protect its citizens.

While we have heard the hue and cry about protecting the rights of the bureaucrats, we need to remember why we are creating this Department in the first place: to protect our communities from the terrorist threats that are unlike any other in the history of our nation. I submit the safety of our communities outweighs the importance of certain civil service administrative procedures. When are we talking about so-called "dirty bombs" being detonated here in the nation's capital, and aircraft being employed as missiles to take out our treasured institutions, I believe the proper perspective comes back into focus.

The existing personnel system locks federal organizations into making obsolete decisions—decisions that do not reflect the mission of the Department or needs of American public. This bill brings accountability and common sense to a cumbersome process, while retaining fundamental rights for all transferred employees.

I would also like to take a few moments and discuss the issue of privacy; specifically the privacy protections we've incorporated into the final bill.

The Department of Homeland Security will be assembling millions of pieces of personal information about American citizens. The thought of the federal government collecting such private details still gives me pause. However, after spending eight years of my life at the CIA, I understand how important collecting and analyzing foreign intelligence information is to stopping terrorism. However, in order to protect this information and ensure it is not improperly retained, used, or disseminated, I fought for the inclusion of the Privacy Officer provision, which I first proposed in the Judiciary Committee's Commercial and Administrative Law Subcommittee.

This provision mandates the Privacy Officer track public complaints regarding privacy violations, then explain to Congress how the Department has addressed them, and what internal controls have been established to improve privacy protection. It is vital we protect America from those who would cause us harm, but that must not mean that Americans sacrifice their privacy arbitrarily or any more than absolutely necessary, and always with regard to the Bill of Rights. The inclusion of a Privacy Officer will help to

prevent that from happening. The privacy officer is specifically charged with examining legislative proposals that would minimize privacy intrusions, and also be required to assess the privacy implications of rules proposed by the Department. This privacy officer will ensure that private information obtained by the new Department be kept private, absent a sound, compelling and Constitutional reason otherwise. These provisions will safeguard Americans' right to privacy and preserve the freedoms and liberties central to the American identity.

Mr. Chairman, President Bush—and Governor Ridge—are to be commended for the job they have done over the past nine months. Since the September 11th attacks, their swift and decisive efforts to strengthen homeland defense have restored confidence in the American people. I also commend all the Committees for their hard work on this bill, and urge all Members to support this important piece of legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. BROWN) who is a member of the Committee on Transportation and Infrastructure and the Committee on Veterans' Affairs.

Ms. BROWN of Florida. Mr. Chairman, the first agency to respond to the terrorist act on September 11 was the United States Coast Guard. Within minutes, they were guarding our ports, bridges and waterways. It was so reassuring to know that they were out there protecting us while other agencies were still in shock, and I want to point out, all while under the supervision of the Department of Transportation.

I strongly oppose the transferring of the Coast Guard to the Department of Homeland Security. Moving the Coast Guard to the new Department is not in the best interest of the Coast Guard, the Department of Homeland Security, or the American people. Each year the Coast Guard conducts over 40,000 search-and-rescue cases. They inspect U.S. and foreign flag ships, and protect many of U.S. citizens who travel on cruise ships and ferries. Most important to my home State of Florida, they stop drugs from entering our country. Over 80 percent of the Coast Guard's operating budget is spent on missions that have nothing to do with border protection or homeland security.

□ 2200

The Republican Party is supposed to be the party of smaller government, but today they are creating a huge monster. I do support the creation of a Department of Homeland Security, but this Congress cannot just rubber-stamp this legislation. It is not unpatriotic to ask serious questions about this agency, and we should not base the process on a symbolic date. Our constituents deserve better than that. We do not need to create another monster. We need to create a homeland security agency that really will protect this Nation and its citizens from harm.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER) chairman of the Government Reform Criminal Justice and Drug Policy Subcommittee.

Mr. SOUDER. Mr. Chairman, I rise in support of this important legislation. I particularly would like to discuss a provision of the bill that arises from an amendment that I successfully offered in the committee with bipartisan support from the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from Illinois (Mr. DAVIS) to provide for a senior-level official within the new Department to coordinate counternarcotics matters.

I raised this issue as chairman of the Criminal Justice and Drug Policy Subcommittee and as one of the co-chairs of the Speaker's Task Force on a Drug Free America. I believe it is extremely important, and I would also like to thank the leadership, including Chairman ARMEY, Speaker HASTERT and the gentleman from Ohio (Mr. PORTMAN) for working with us on this provision.

The scope of the legislation we are considering today is much larger than just catastrophic terrorism. One of the issues the proposed reorganization will have an impact upon is drug interdiction.

Let me remind the House of two critical facts. First, approximately 19,000 Americans will die this year of drug-induced causes. These tragedies happen every day in every congressional district across the country. Thousands more Americans have to seek emergency treatment and thousands more families are disrupted by the effects of illegal drugs. The second is that three of the most prominent agencies involved in this legislation, the Customs Service, the Coast Guard and the Border Patrol, are among the preeminent agencies in the Federal Government with respect to drug interdiction. This bill will move these agencies into a new Cabinet Department whose stated mission and focus relate primarily to catastrophic terrorism.

While I strongly support the overall intention of the bill, I also believe with equal strength that our efforts to respond to potential future acts of terrorism cannot come at the price of relaxing our efforts against drugs. Section 768 of the bill, which is derived from my amendment, will require the appointment of a counternarcotics officer who will be a senior official in the Department to assure this coordination.

The new counternarcotics officer must be a senior officer capable of ensuring proper attention and resources to this critical mission. He or she must also be dedicated solely and exclusively to this task. In my view, it will not be acceptable for the new Secretary of Homeland Security simply to add this job on top of others tasked to another senior official.

The purpose of the provision is to ensure that there will be a responsible official whose energies and attention are

devoted to managing the significant responsibilities of the new department in this area. This mission is unique among all of the nonterrorism functions and it is important that we have this senior level coordinator.

Our Subcommittee's oversight findings have long suggested the need for such a single operational coordinator even prior to the current reorganization.

This new Department will become the preeminent drug interdiction agency for the federal government, and we cannot allow that mission to continue to be run with such a lack of integration and coordination. We must have an official in charge of this vital task, and I again very much appreciate its inclusion in the bill. Drug control is an integral part of Homeland Security, and I look forward to working closely with the new Department in pursuit of this goal.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 1½ minutes to the gentleman from Ohio (Mr. KUCINICH), the ranking member on the Committee on Government Reform Subcommittee on National Security and a member of the Committee on Education and the Workforce.

Mr. KUCINICH. Mr. Chairman, after an attack on our Nation, Franklin D. Roosevelt told our Nation, "We have nothing to fear but fear itself." Over 61 years later, we are told we have everything to fear. We now measure our fears by the size of the bureaucracy we could create to deal with those fears. But I submit that we will not have responded to the underlying conditions which have created those fears in the first place.

This bill will not accomplish a more effective defense of our Nation because there has been no analysis of the threat. There has been no risk assessment. There is no sense of the actual causes of insecurity and there is no strategy which would provide justification for sweeping changes in 153 different agencies. Little in this bill demonstrates how this bill will accomplish security superior to what these 153 different agencies can now accomplish with strong leadership. \$4.5 billion more will be spent, but how do we know it will work in a new department when there has not been any agency-by-agency analysis that justifies the creation of a new Department?

Mr. Chairman, this House just passed a national independent commission to investigate 9/11. We will have a new department with 170,000 employees to respond to 9/11, yet the commission which will analyze 9/11 has not even begun its work. That is quite a feat, especially with our President saying tonight, "I didn't run for office promising to make government bigger." 170,000 employees in this new Department, no idea how they will integrate, 10 years for the Department to be up and running.

In the meantime this reorganization itself will represent a threat to the security of our Nation because it will induce paralysis and administrative breakdown.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), a member of the Committee on Transportation and Infrastructure and also someone who has taken a special interest in homeland security issues.

Mrs. CAPITO. Mr. Chairman, I rise in support of H.R. 5005, the Homeland Security Act and I commend the committee for their fine work.

Mr. Chairman, the way our country prepares for and responds to emergencies since the events of September 11 must be a key component of our homeland security strategy. To that end, I think the President should be commended for putting nearly all of the Federal emergency management and response responsibilities under the Department of Homeland Security. By making emergency management and response a priority under the new Department, we will change the mindset of merely reacting to disasters to include a comprehensive plan of helping communities better prepare for emergency situations. A broader perspective on emergency preparedness will help our cities and towns across the country be ready to respond to terrorist attacks, major disasters and other emergency situations that could paralyze a community that is ill-prepared for a surprise scenario. Initiatives such as State-to-State pacts for emergency response situations must be promoted in order to better use our resources that can be shared across the country.

I think it is important to highlight a few national "firsts" included in this bill. Building a national incident management system to respond to attacks, consolidating existing Federal emergency response plans into a single national plan, and developing comprehensive programs for interoperative communications technology.

The emergency preparedness and response portion of the Department of Homeland Security will continue current Federal support for local government efforts to promote structures that have a lesser chance of being impacted by disasters. It will bring together private industry and citizens to create model communities in high-risk areas.

Like the Boy Scouts and Girl Scouts, every community in America, no matter how large or how small, needs to always be prepared. A firm structure demonstrated by the Federal Government will provide the help and guidance that towns, cities and counties need as they continue to ensure the safety of citizens across the country.

I support this bill wholeheartedly.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 1½ minutes to the very distinguished gentleman from Texas (Mr. TURNER), a respected member of the Committee on Armed Services and the Committee on Government Reform.

Mr. TURNER. I thank the gentlewoman for yielding me this time.

Mr. Chairman, I want to address an amendment that I will offer on this

floor tomorrow relating to indemnity of Federal contractors who will provide to the government sophisticated antiterrorism equipment. The language that I will offer on the floor tomorrow was passed unanimously by the Committee on Government Reform, but unfortunately taken out of the bill by the Republican majority on a special panel. I was very amused when I looked at some talking points about the amendment I will offer tomorrow that was put out by the Republican leadership tonight. It says, and I quote, The trial lawyers, through an amendment expected to be offered by Representative TURNER, and I might say I find that very amusing because the amendment I am offering tomorrow was prepared by Representative TOM DAVIS, and I as the chairman and ranking member of the Technology and Procurement Subcommittee of Government Reform, and the amendment was brought to me by Lockheed Martin, Northrop Grumman and the Information Technology Association of America.

What it simply asked was that we extend to the Department of Homeland Security the authority that current law already gives to the Department of Defense to indemnify against claims of damage over certain limits. It has been suggested that this approach, which I say is already in existing law for the Department of Defense, will open the Treasury of the United States to unlimited claims.

But I would like to point out that the amendment I offer makes it very clear that the director of OMB and the director of Homeland Security can limit the indemnity in any amount they see fit.

I would urge Members to join us in restoring this language tomorrow.

Mr. PORTMAN. Mr. Chairman, could the Chair tell us what the division of time is? We have the right to close, I believe.

The CHAIRMAN. The gentleman from Ohio (Mr. PORTMAN) has 4½ minutes and the gentlewoman from California (Ms. PELOSI) has 3 minutes.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield the balance of my time to the gentlewoman from Connecticut (Ms. DELAURO), a very important member of our Select Committee on Homeland Security, the assistant to the minority leader, and a respected member of the Committee on Appropriations.

Ms. DELAURO. Mr. Chairman, I have been proud to work with Chairman ARMEY, Ranking Member PELOSI and all the members of the Select Committee to craft this legislation. Every Member of the House came to this effort with one goal, to create a department that will help us win the war on terrorism and protect our citizens from future attacks. We have no greater obligation under this Constitution. We share the goal, but we differ on the details.

And while we have made great strides toward the goal, we cannot afford to ig-

nore the details. We face an enemy who leaves us no room for error and we owe the American people nothing less than getting this right the first time.

There are several areas where I believe we have made real progress, due in large part to the hard work of our committees. I am very pleased that the chairman heeded the bipartisan recommendation of the Committee on Energy and Commerce and declined the administration's request to transfer health functions from the National Institutes of Health and the Centers for Disease Control to the new Department.

On a bipartisan recommendation of the Committee on Appropriations, we removed provisions that would have given the administration unprecedented power to transfer funds without congressional oversight. And the gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. LANTOS) worked together to find a bipartisan compromise on the visa issue that was accepted by the White House and three committees. No easy task.

However, very legitimate concerns still exist. I disagree with the committee's decision to extend the deadline for the Transportation Security Agency to check baggage on airlines. The American public and their children should feel safe on those airlines that the airplane is not going to explode. The Secretary of Transportation told us he could meet the deadlines over and over again. I am also concerned about provisions that broaden the FOIA exemption which undermine the civil service protections for 170,000 Federal workers, both union and nonunion. That particular provision goes against the unanimous bipartisan vote of the Committee on Government Reform.

I am disappointed that the Committee on Rules did not make in order my amendment which would have banned the Homeland Security Department from contracting with corporations that are owned and operated in the United States who incorporate themselves on paper overseas for the sole reason of avoiding U.S. taxes. These corporations have abandoned our country at a critical time in our history, leaving senior citizens, soldiers who are fighting overseas, and companies who are doing the right thing, to pay the costs of the war on terrorism. They should not be rewarded for putting profits over patriotism with the contracts from the very department that is charged with screening our homeland and securing our homeland.

I am optimistic that we can address these problems. And with regard to my amendment, all we are asking these corporations to do is to pay American taxes on American profits. These companies should not abandon the United States of America at a time in its greatest need. The President has told us that we are on a wartime footing. And when these companies take their revenue overseas, they put that burden of taxation on working men and women and those who are fighting overseas.

Details do matter. As I said before, we owe the American people nothing less than getting this right the first time. We all want to make America safe.

Mr. PORTMAN. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader. He led the Select Committee panel, he listened to all the standing committees, and he did a good job in presenting a fair and open process with the gentlewoman from California (Ms. PELOSI).

The CHAIRMAN. The gentleman from Texas is recognized for 4½ minutes.

□ 2215

Mr. ARMEY. Mr. Chairman, let me say on a personal note, it is a privilege for me to follow the gentlewoman from Connecticut. What a privilege it was to serve together on this select committee. The gentlewoman made it select indeed, and I want to thank her for that.

Mr. Chairman, on September 11 of last year, early in the morning, the unthinkable happened in America. We should remind ourselves. It was the unthinkable; so horrible, so awful, so sneaky, so vicious.

We should not fault ourselves because we had not thought about it. Americans would not think of such an atrocity. We did not anticipate it. We were not expecting it. We were not ready. It was a classic sneak attack.

Four airplanes, carefully selected, loaded heavily with fuel for a cross-coast trip, took off that morning. Nobody could have imagined even as the hijacking went on, as vicious as it must have been at the time it happened, nobody could have imagined what those hijackers must have had for their destination plan.

Can you imagine the fear, the terror, of those travelers in those first three planes, when at some point in each of those three planes, at some point those passengers must have realized the awful thing these hijackers had in mind?

I think often about the terror they must have felt in their hearts, the helplessness, the hopelessness, the despair that they must have felt. It was particularly bad, I believe, in the case of those first three planes because they were so helpless. By the time they realized what their destiny was, it was too late. Nothing could be done but to realize this awful thing visited upon our land and their place in it.

But there was a fourth plane, a fourth plane, where the passengers of the plane, by virtue of American technology, became aware of exactly what was in the evil minds of those hijackers en route, before it was too late, while they could act. We know from the conversations they had over their cell phones that they huddled in the back of the plane and they laid the best plans they could, grasped for those resources available to them, checked

their courage and their resourcefulness, and came up with what plan was available.

We do not know the destination of that plane. Was it the White House? Was it our own Capitol? Was it the CIA headquarters? But whatever those evil doers in that cockpit had in mind, it was clear it was to take the lives of far more people than were in that plane.

And this is the important thing we must remember: when America knew the evil that it was against, America acted. With whatever they had, they acted. And we know with those resounding words that we keep hearing over and over and over in this great land from Todd Beamer, "Let's roll," America acted with what it had.

Our victims became our heroes. When they knew what they must do, they did it. Now the President of the United States has called upon us to respect that, gather our resources around us, focus what we have, and try to recognize the danger. It may come by sea, it may come by air, it may come by land, it may come insidious ways not yet imagined. We know it will come. But what the President of the United States called upon us to do was to get ready, prepare ourselves, imitate as we can, the best we can, the actions of those heroes in Flight 93.

He has given us an outline. Our 12 standing committees have acted, each of them in accordance with their better understanding, their knowledge, their awareness and their experience on how to best hone these tools and bring them together, weld them and unite them in a common course of defense and safety and security. They have trusted their work to our select committee, and I believe we have honored it, and honored it well. We have now brought it to the floor for a final chance to make whatever corrections we can.

I am reminded when I think of the greatness of this institution of Sam Rayburn from Texas, our great Speaker. We honored him from both sides of the aisle. Sam was a man with a sense of humor. He reminded us often, "Don't sweat the small things."

There are no complaints with this bill that are borne out of the big things. We are all in agreement that we have got the right model, that we put the right pieces together. By and large, we have honed the right tools.

Our concerns here are about the smaller things. Look at the amendments. They are not about big things; they are about smaller things, the fine points, as it were. Let us have a fair contest. Let us have the votes.

But I must tell you, we have got the right package of defense, safety and security, honor and respect of those great heroes to carry on what they started in Flight 93. We know the danger. We have the resources, and we can act.

When the voting is done on these amendments and when we rise from this committee, let us put all of our small disappointments aside and let us

try to rise with our voting card to take that tool, as Todd Beamer would have us do, and let's roll, and defend America as they did.

Ms. MILLENDER-McDONALD. Mr. Chairman, I am united with the President and with my colleagues in our determination to win the war against terrorism. We have a responsibility to all Americans to reduce the risk of further attacks. There is not one person in this Congress who does not agree that we need better coordination between Federal agencies in order to fight the very real threat of terrorism.

This is the most important piece of legislation that we will consider in the 107th Congress and, we all need to make certain that this new Department of Homeland Security will make the country and our citizens safer. This new department will be charged with assessing our vulnerabilities, gathering and disseminating our intelligence information, and preparing and working with our local responders. We should all be cognizant that it was the local first responders who answered the challenges of September 11 and if we are to ever be truly prepared then we must properly train and equip our local police and fire departments.

I recognize that this legislation will pass the House today and I support its passage. However, I urge caution as we agree to the proposed transfer of several federal agencies to the new Department of Homeland Security, particularly the Coast Guard, and the Federal Emergency Management Agency. As we move the Coast Guard and these other agencies into the new Department of Homeland Security, we will need to exercise close congressional oversight to ensure that we do not overlook the significant other functions that these agencies already make on a daily basis and how these contributions will be maintained.

I would like to thank the Select Committee for adopting the Transportation and Infrastructure Committee's recommendation for an annual assessment of terrorist related threats to public transportation. This language which I authored, directs the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, to conduct an assessment of potential terrorist related threats to all forms of public transportation and public gatherings.

The horrific events of September 11, 2001 showed that terrorists were able to hijack our national transportation system and use it against us as a weapon. The terrorists used America's accessibility and our freedom of mobility to perpetrate these unspeakable evil acts. If we are to restore America's confidence and adequately protect our transportation infrastructure—the foundation of our economy—then we must conduct a complete assessment of our public transportation system's vulnerabilities. The events at LAX over the July 4 weekend this year, once again showed how vulnerable our citizens can be while exercising their freedom of mobility. Public transportation clearly remains a target and we should access that threat and make the necessary changes that can measurably improve the ability of our transportation systems to ensure enhanced security.

I am committed to a strong, effective Homeland Security and hope that as we move forward with this legislation, we will revisit and

review and in some instances restructure areas of the Department to ultimately create an efficient and effective homeland that is secure. We must continue to assess the Department's performance as the protector of the homeland.

Mr. CHAMBLISS. Mr. Chairman, I have heard some concerns about the Strategic National Stockpile. One of today's most serious potential threats to our national security is bioterrorism. The CDC is an integral part of the homeland defense, because of its ability to identify, classify, and recommend courses of action in dealing with biological and chemical threats.

The Strategic National Stockpile Program demonstrated its excellence and reliability through its on time delivery of the Stockpile's 50 ton "push packs" on September 11, 2001 and in the numerous smaller deployments after that date. The push packs are delivered through the nation's public health system and deployment requires continuous medical supervision in order to assure that the medical supplies and pharmaceuticals are provided to the right people and used correctly as medically recommended by Centers for Disease Control and Prevention in Atlanta, Georgia.

Being on the front lines of the war on bioterrorism, the CDC is prepared to respond to emergencies such as a terrorist attack using smallpox virus, anthrax, a worldwide flu pandemic, or a large-scale exposure to deadly toxic chemicals.

It is my hope that the transfer of the stockpile to the Department of Homeland Security will occur with minimum disturbance to the current program. The stockpile should remain an integral part of responding to disease outbreaks and other public health emergencies. CDC has been very successful in their response to all types of public health emergencies and we need to ensure the proposed changes do not negatively impact our ability to make our country safer.

Mr. WU. Mr. Chairman, I rise tonight in support of the Davis amendment to H.R. 5005, the Homeland Security Act. I believe this amendment is crucial to making sure that the Homeland Defense Department and other agencies in charge of Americans' safety are adequately equipped to combat terrorism and other major disasters.

Initially after the September 11 terrorist attacks, I met with a group of Oregonians working in high technology. They were not only eager to offer their services in defense of our country, they also offered many sound ideas on how best to improve our national security. I came away from these meetings convinced that it is critical for us to recruit the best ideas, whether from public, private, or nonprofit sectors, in our fight against terrorism.

In the House Science Committee, I joined Representatives LYNN RIVERS and MIKE HONDA in offering the amendment to H.R. 5005. Today, I remain strongly supportive of creating a technology portal within the Homeland Security Department to reach out to the private sector. The Rivers/Wu amendment would do just that by establishing a technology clearinghouse to recruit innovative solutions from the private sector to enhance homelands security.

I would also like to commend the gentleman from Virginia, Mr. DAVIS, for offering a similar amendment, which is included in the manager's amendment. Good ideas, no matter

where the proposal came from, should be implemented.

I believe the Rivers/Wu amendment will keep an open door for talents outside of the government to contribute to our efforts to fight terrorism. I urge my colleagues to adopt the amendment.

Mr. THOMAS. Mr. chairman, I rise in support of House Resolution 5005 enacting the Homeland Security Act of 2002.

The protection of the United States from threat and terror is, and should be, the first priority of this government. The protection that we seek today with the creation of the new Department is for our people, our property, and our economy. For more than 200 years, the U.S. Customs Service has been on the frontline supporting and defending our nation. The requirement for a strong Customs was so important that it was the fifth Act of Congress and was the first Federal agency of the new Republic. The many functions of Customs are as important today as they were at the start of our nation.

Passage of the Homeland Security Act of 2002 is the right decision for the country. This country is only as safe and secure as the economy that supports it. Last year over \$1 trillion in merchandise was imported into the country. Customs collected over \$20 billions of revenue. The bill before us today helps to protect the trade functions of the Customs Service that are so vital to the strength of this land. It helps to protect the investment that America has made in the new computer system that will be the cornerstone of the new Department. The bill keeps Customs core revenue functions whole, which ensures that the many trade and enforcement functions will be carried out.

Our bipartisan agreement in this bill:

Transfers the Customs Service in its entirety to the Department of Homeland Security Division for Border and Transportation Security.

Identifies revenue-related offices and functions within Customs—about 25 percent of the agency—and prohibits reorganization or decrease in their funding or staff or reductions to Title V pay and benefits levels.

Requires that adequate staffing of customs revenue services be maintained, and requires notice to Congress of actions that would reduce such service.

Maintains the Commissioner of Customs as Senate-confirmed.

Transfers all authority exercised by Customs to Homeland security with the exception of revenue collecting authority, which would remain at the Treasury Department. Treasury may delegate this authority to Homeland Security.

Specifies that a portion of the Customs Merchandise Processing Fee must go to build the new Customs computer, which Governor Ridge has told us will likely be the cornerstone of the new Department's architecture.

For these reasons I urge a "yes" vote on House Resolution 5005.

Mr. GOSS. Mr. Chairman, I rise this evening to briefly summarize the bipartisan recommendations of the Intelligence Committee on title 2 of H.R. 5005.

Before I offer the committee's recommendation, let me give you an idea of why the committee took its action. If you look at the overall structure of the new department, you will notice that the vast majority of the organization has to do with planning, implementation, pro-

tection and response to terrorist threats and actions. What we also know is that combating terrorism relies very much on timely, well-coordinated access to intelligence and other sensitive information. I would submit that if the analytical portion of the Department doesn't work, the rest of the Department's operations and functions are somewhat academic.

The committee's strategic vision was that the new department needs an analytical focal point where foreign intelligence, Federal law enforcement, and state and local information will all be analyzed collectively in order to best understand threats, specifically to our homeland, and to properly evaluate the weaknesses in our defenses. Without an all-source analytic capability to validate and make sense of threat information, the Secretary for Homeland Security will have to rely only on Intelligence Community analysis that may be fractious, contradictory, parochial, and incomplete, and will have to make critical analytical judgments in a vacuum.

The HPSCI recommendations to the Select Committee, which have been largely adopted in the Manager's amendment, provide for the establishment of an all-source, collaborative Intelligence Analysis Center that will fuse intelligence and other information from the Intelligence Community, as well as Federal, State and local law enforcement agencies and the private sector, with respect to terrorist threats and actions against the United States. Our proposal integrates the traditional mission of intelligence analysis with new sources of information and sophisticated information tools.

An equally important duty of the Intelligence Analysis Center will be to integrate intelligence and other information to produce and disseminate strategic and tactical vulnerability assessments with respect to terrorist threats. The Intelligence Analysis Center would be charged with developing a comprehensive national plan to provide for the security of key national resources and critical infrastructures. The Intelligence Analysis Center would also review and recommend improvements in law, policy and procedure for sharing intelligence and other information within the Federal Government and between the Federal, State, and local governments.

The committee believes that the proposed Intelligence Analysis Center should be made an element of the Intelligence Community and be a funded program within the National Foreign Intelligence Program in accordance with the National Security Act of 1947. Making the Intelligence Analysis Center an NFIP element will ensure that the Secretary has full and timely access to all relevant intelligence pertaining to terrorist threats against the United States, as well as to ensure proper coordination between the Department and Federal intelligence and law enforcement agencies.

The Intelligence Committee's recommendation envisions an Intelligence Analysis Center that is agile in terms of personnel and infrastructure, appropriately flexible in terms of its authorities and its capacity to address rapidly changing threats to the United States, and unique to our government in that it incorporates the best analytical practices and capabilities found in both the government and the private sector to defend our country and our people.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 5005

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) **SHORT TITLE.**—This Act may be cited as the “Homeland Security Act of 2002”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Construction; severability.
- Sec. 4. Effective date.

**TITLE I—DEPARTMENT OF HOMELAND SECURITY**

- Sec. 101. Executive department; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.
- Sec. 104. National Council of First Responders.

**TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION**

**Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection**

- Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
- Sec. 202. Functions transferred.
- Sec. 203. Access to information.
- Sec. 204. Procedures for sharing information.
- Sec. 205. Privacy officer.
- Sec. 206. Federal cybersecurity program.

**Subtitle B—Intelligence Analysis Center**

- Sec. 211. Intelligence Analysis Center
- Sec. 212. Mission of the Intelligence Analysis Center.

**TITLE III—SCIENCE AND TECHNOLOGY**

- Sec. 301. Under Secretary for Science and Technology.
- Sec. 302. Functions transferred.
- Sec. 303. Conduct of certain public health-related activities.
- Sec. 304. Federally funded research and development center.
- Sec. 305. Miscellaneous provisions.
- Sec. 306. Homeland Security Science and Technology Coordination Council.
- Sec. 307. Conduct of research, development, demonstration, testing and evaluation.
- Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

**TITLE IV—BORDER AND TRANSPORTATION SECURITY**

**Subtitle A—General Provisions**

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Functions transferred.
- Sec. 403. Visa issuance.
- Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
- Sec. 405. Functions of Administrator of General Services.
- Sec. 406. Functions of Transportation Security Administration.
- Sec. 407. Preservation of Transportation Security Administration as a distinct entity.
- Sec. 408. Annual assessment of terrorist-related threats to public transportation.
- Sec. 409. Explosive detection systems.
- Sec. 410. Transportation security.

**Subtitle B—Immigration and Nationality Functions**

**CHAPTER 1—IMMIGRATION ENFORCEMENT**

- Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.
- Sec. 412. Establishment of Bureau of Border Security.
- Sec. 413. Professional responsibility and quality review.
- Sec. 414. Employee discipline.
- Sec. 415. Report on improving enforcement functions.

**CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES**

**SUBCHAPTER A—TRANSFERS OF FUNCTIONS**

- Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.
- Sec. 422. Citizenship and Immigration Services Ombudsman.
- Sec. 423. Professional responsibility and quality review.
- Sec. 424. Employee discipline.
- Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.
- Sec. 426. Preservation of Attorney General’s authority.
- Sec. 427. Effective date.
- Sec. 428. Transition.

**SUBCHAPTER B—OTHER PROVISIONS**

- Sec. 431. Funding for citizenship and immigration services.
- Sec. 432. Backlog elimination.
- Sec. 433. Report on improving immigration services.
- Sec. 434. Report on responding to fluctuating needs.
- Sec. 435. Application of Internet-based technologies.
- Sec. 436. Children’s affairs.

**CHAPTER 3—GENERAL PROVISIONS**

- Sec. 441. Abolishment of INS.
- Sec. 442. Voluntary separation incentive payments.
- Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
- Sec. 444. Sense of Congress.
- Sec. 445. Reports and implementation plans.
- Sec. 446. Immigration functions.

**Subtitle C—United States Customs Service**

- Sec. 451. Establishment; Commissioner of Customs.
- Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.
- Sec. 453. Establishment and implementation of cost accounting system; reports.
- Sec. 454. Preservation of Customs funds.
- Sec. 455. Separate budget request for Customs.
- Sec. 456. Payment of duties and fees.
- Sec. 457. Definition.
- Sec. 458. GAO report to Congress.
- Sec. 459. Allocation of resources by the Secretary.
- Sec. 460. Reports to Congress.
- Sec. 461. Customs user fees.

**TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE**

- Sec. 501. Under Secretary for Emergency Preparedness and Response.
- Sec. 502. Functions transferred.
- Sec. 503. Nuclear incident response.
- Sec. 504. Definition.
- Sec. 505. Conduct of certain public-health related activities.

**TITLE VI—MANAGEMENT**

- Sec. 601. Under Secretary for Management.
- Sec. 602. Chief Financial Officer.
- Sec. 603. Chief Information Officer.
- Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

**TITLE VII—MISCELLANEOUS**

- Subtitle A—Inspector General**
- Sec. 701. Authority of the Secretary.

**Subtitle B—United States Secret Service**

- Sec. 711. Functions transferred.

**Subtitle C—Critical Infrastructure Information**

- Sec. 721. Short title.
- Sec. 722. Definitions.
- Sec. 723. Designation of critical infrastructure protection program.
- Sec. 724. Protection of voluntarily shared critical infrastructure information.
- Sec. 725. No private right of action.

**Subtitle D—Acquisitions**

- Sec. 731. Research and development projects.
- Sec. 732. Personal services.
- Sec. 733. Special streamlined acquisition authority.
- Sec. 734. Procurements from small businesses.

**Subtitle E—Property**

- Sec. 741. Department headquarters.

**Subtitle F—Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)**

- Sec. 751. Short title.
- Sec. 752. Administration.
- Sec. 753. Litigation management.
- Sec. 754. Risk management.
- Sec. 755. Definitions.

**Subtitle G—Other Provisions**

- Sec. 761. Establishment of human resources management system.
- Sec. 762. Advisory committees.
- Sec. 763. Reorganization; transfer of appropriations.
- Sec. 764. Miscellaneous authorities.
- Sec. 765. Military activities.
- Sec. 766. Regulatory authority.
- Sec. 767. Provisions regarding transfers from Department of Energy.
- Sec. 768. Counter narcotics officer.
- Sec. 769. Office of International Affairs.
- Sec. 770. Prohibition of the terrorism information and prevention system.
- Sec. 771. Review of pay and benefit plans.
- Sec. 772. Role of the District of Columbia.
- Sec. 773. Transfer of the Federal Law Enforcement Training Center.

**TITLE VIII—TRANSITION**

**Subtitle A—Reorganization Plan**

- Sec. 801. Definitions.
- Sec. 802. Reorganization plan.

**Subtitle B—Transitional Provisions**

- Sec. 811. Transitional authorities.
- Sec. 812. Savings provisions.
- Sec. 813. Terminations.
- Sec. 814. Incidental transfers.
- Sec. 815. National identification system not authorized.
- Sec. 816. Continuity of Inspector General oversight.
- Sec. 817. Reference.

**TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS**

- Sec. 901. Inspector General Act of 1978.
- Sec. 902. Executive Schedule.
- Sec. 903. United States Secret Service.
- Sec. 904. Coast Guard.
- Sec. 905. Strategic National Stockpile and smallpox vaccine development.
- Sec. 906. Biological agent registration; Public Health Service Act.
- Sec. 907. Transfer of certain security and law enforcement functions and authorities.
- Sec. 908. Transportation security regulations.
- Sec. 909. Railroad security laws.
- Sec. 910. Office of Science and Technology Policy.
- Sec. 911. National Oceanographic Partnership Program.
- Sec. 912. Chief Financial Officer.
- Sec. 913. Chief Information Officer.

**TITLE X—NATIONAL HOMELAND SECURITY COUNCIL**

- Sec. 1001. National Homeland Security Council.

- Sec. 1002. Function.  
 Sec. 1003. Membership.  
 Sec. 1004. Other functions and activities.  
 Sec. 1005. Homeland security budget.  
 Sec. 1006. Staff composition.  
 Sec. 1007. Relation to the National Security Council.

## SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

- (1) Each of the terms “American homeland” and “homeland” means the United States.
- (2) The term “appropriate congressional committee” means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.
- (3) The term “assets” includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).
- (4) The term “critical infrastructure” has the meaning given that term in section 1016(e) of Public Law 107-56 (42 U.S.C. 5195c(e)).
- (5) The term “Department” means the Department of Homeland Security.
- (6) The term “emergency response providers” includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.
- (7) The term “executive agency” means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.
- (8) The term “functions” includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.
- (9) The term “key resources” means publicly or privately controlled resources essential to the minimal operations of the economy and government.
- (10) The term “local government” means—  
 (A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;  
 (B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and  
 (C) a rural community, unincorporated town or village, or other public entity.
- (11) The term “major disaster” has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).
- (12) The term “personnel” means officers and employees.
- (13) The term “Secretary” means the Secretary of Homeland Security.
- (14) The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.
- (15) The term “terrorism” means any activity that—  
 (A) involves an act that—  
 (i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and  
 (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and  
 (B) appears to be intended—  
 (i) to intimidate or coerce a civilian population;  
 (ii) to influence the policy of a government by intimidation or coercion; or  
 (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16) The term “United States”, when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

## SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

## SEC. 4. EFFECTIVE DATE.

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

## TITLE I—DEPARTMENT OF HOMELAND SECURITY

### SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

- (A) prevent terrorist attacks within the United States;  
 (B) reduce the vulnerability of the United States to terrorism;  
 (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;  
 (D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;  
 (E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and  
 (F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

### SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

- (1) except as otherwise provided by this Act, may delegate any of the Secretary’s functions to any officer, employee, or organizational unit of the Department;  
 (2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary’s responsibilities under this Act or otherwise provided by law; and  
 (3) shall take reasonable steps to ensure that information systems and databases of the De-

partment are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—The Secretary shall coordinate (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government’s communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

- (1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;  
 (2) advising the Secretary on the impact of the Department’s policies, regulations, processes, and actions on the private sector;  
 (3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies’ actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

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

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

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A-119.

### SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

#### SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.

(a) FINDINGS.—The Congress finds the following:

(1) First responders are key to protecting the health and safety of our citizens against disasters.

(2) First responders are the Nation's ready reaction force of dedicated and brave people who save lives and property when catastrophe strikes.

(3) First responders have the knowledge, training, and experience to save lives, often under the most difficult conditions imaginable.

(4) First responders play an important role in helping to develop and implement advances in life saving technology.

(5) First responders are uniquely qualified to advise the Department of Homeland Security on the role of first responders in defending our Nation against terrorism.

(b) ESTABLISHMENT AND ADMINISTRATION.—

(1) There is established within the Department of Homeland Security a National Council of First Responders (in this section referred to as the "Council").

(2) The President shall appoint the members of the Council. The Council shall consist of not less than 100 members, no more than 10 of whom may be residents of the same State. Members of the Council shall be selected from among the ranks of police, firefighters, emergency medical technicians, rescue workers, and hospital personnel who are employed in communities, tribal governments, and political subdivisions of various regions and population sizes.

(3) The Director of Homeland Security shall appoint a Chairman of the Council.

(4) Members shall be appointed to the Council for a term of 3 years.

(5) Membership shall be staggered to provide continuity.

(6) The Council shall meet no fewer than 2 times each year.

(7) Members of the Council shall receive no compensation for service on the Council.

(8) The Secretary shall detail a single employee from the Department of Homeland Security to the Council for the purposes of:

(A) Choosing meeting dates and locations.

(B) Coordinating travel.

(C) Other administrative functions as needed.

(c) DUTIES.—The Council shall have the following duties:

(1) Develop a plan to disseminate information on first response best practices.

(2) Identify and educate the Secretary on the latest technological advances in the field of first response.

(3) Identify probable emerging threats to first responders.

(4) Identify needed improvements to first response techniques and training.

(5) Identify efficient means of communication and coordination between first responders and local, State, and Federal officials.

(6) Identify areas in which the Department can assist first responders.

(7) Evaluate the adequacy and timeliness of resources being made available to local first responders.

(d) REPORTING REQUIREMENT.—The Council shall report to the Congress by October 1 of each year on how first responders can continue to be most effectively used to meet the ever-changing challenges of providing homeland security for the United States.

### TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

#### Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

#### SEC. 201. UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall be responsible for the following:

(1) Conducting analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States.

(2) Integrating information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats.

(3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.

(4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.

(5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.

(6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.

(7) Supporting the intelligence and information requirements of the Department.

(8) Administering the Homeland Security Advisory System, exercising primary responsibility for public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

#### SEC. 202. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

#### SEC. 203. ACCESS TO INFORMATION.

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide;

(3) the Secretary shall have full access and input with respect to information from any national collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and

methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

**SEC. 204. PROCEDURES FOR SHARING INFORMATION.**

The Secretary shall establish procedures on the use of information shared under this title that—

- (1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;
- (2) ensure the security and confidentiality of such information;
- (3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and
- (4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

**SEC. 205. PRIVACY OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

- (1) assuring that the use of information technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;
- (2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;
- (3) evaluating legislative proposals involving collection, use, and disclosure of personal information by the Federal Government;
- (4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and
- (5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

**SEC. 206. FEDERAL CYBERSECURITY PROGRAM.**

(a) **IN GENERAL.**—The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information systems, including carrying out responsibilities under paragraphs (1) and (2) of section 201 that relate to such systems.

(b) **DUTIES.**—The duties of the Secretary under subsection (a) are—

- (1) to evaluate the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;
- (2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and
- (3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) **FEDERAL INFORMATION SYSTEM SECURITY TEAM.**—

(1) **IN GENERAL.**—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerability assessment techniques.

(2) **TEAM MEMBERS.**—The Secretary shall ensure that the team under paragraph (1) includes

technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.

(3) **AGENCY AGREEMENTS REGARDING AUDITS.**—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) **REPORTS.**—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph shall prepare a report summarizing the findings of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) **DEFINITION.**—For purposes of this section, the term “Federal critical information system” means an “information system” as defined in section 3502 of title 44, United States Code, that—

- (1) is, or is a component of, a key resource or critical infrastructure;
- (2) is used or operated by a civilian executive agency or by a contractor of such an agency; and
- (3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

**Subtitle B—Intelligence Analysis Center**

**SEC. 211. INTELLIGENCE ANALYSIS CENTER.**

(a) **ESTABLISHMENT; NFIP AGENCY.**—(1) There is established within the Department the Intelligence Analysis Center. The Under Secretary for Information Analysis and Infrastructure Protection shall be the head of the Intelligence Analysis Center.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) **FUNCTIONS.**—The Under Secretary for Information Analysis and Infrastructure Protection, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (6), and (7) of section 201(b).

(c) **DETAIL OF CERTAIN PERSONNEL.**—

(1) **IN GENERAL.**—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

- (A) The Central Intelligence Agency.
- (B) The Federal Bureau of Investigation.
- (C) The National Security Agency.
- (D) The National Imagery and Mapping Agency.
- (E) The Department of State.
- (F) The Defense Intelligence Agency.
- (G) Any other agency or department that the President determines appropriate.

(2) **TERMS OF DETAIL.**—Any officer or employee of the United States or a member of the Armed Forces who is detailed to the Under Secretary under paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years for the performance of temporary functions as required by the Under Secretary.

(d) **INCLUSION OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.**—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

- (1) by striking “and” at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

“(J) the Intelligence Analysis Center of the Department of Homeland Security; and”.

**SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.**

(a) **IN GENERAL.**—The mission of the Intelligence Analysis Center is as follows:

- (1) **ANALYSIS AND PRODUCTION.**—
  - (A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.
  - (B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.

(C) Providing appropriate dissemination of such assessments.

(D) Improving the lines of communication with respect to homeland security between the Federal Government and State and local public safety agencies and the private sector through the timely dissemination of information pertaining to threats of acts of terrorism against the United States.

(2) **COORDINATION OF INFORMATION.**—Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) **ADDITIONAL DUTIES.**—Performing such other functions as the Secretary may direct.

(b) **STRATEGIC AND TACTICAL MISSIONS OF THE INTELLIGENCE ANALYSIS CENTER.**—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

- (1) Domestic terrorism.
- (2) International terrorism.
- (3) Counterintelligence.
- (4) Transnational crime.
- (5) Proliferation of weapons of mass destruction.
- (6) Illicit financing of terrorist activities.
- (7) Cybersecurity and cybercrime.
- (8) Key resources and critical infrastructures.

(c) **STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.**—

(1) **FUNCTIONS TRANSFERRED.**—In accordance with title VIII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Federal Computer Incident Response Center of the General Services Administration.

(D) The National Infrastructure Simulation and Analysis Center of the Department of Energy.

(E) The National Communications System of the Department of Defense.

(F) The intelligence element of the Coast Guard.

(G) The intelligence element of the United States Customs Service.

(H) The intelligence element of the Immigration and Naturalization Service.

(I) The intelligence element of the Transportation Security Administration.

(J) The intelligence element of the Federal Protective Service.

(2) **STRUCTURE.**—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the Department of the Army to the maximum extent feasible and appropriate.

**TITLE III—SCIENCE AND TECHNOLOGY****SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.**

The Secretary, acting through the Under Secretary for Science and Technology, shall have responsibility for—

(1) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological radiological, nuclear and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(2) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(3) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs; provided that such responsibility does not extend to human health-related research and development activities;

(4) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(5) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;

(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems—

(A) for preventing the importation of chemical, biological, radiological, and nuclear weapons and related materials;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related materials; and

(C) for interoperability of communications systems for emergency response providers;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of the Department are aligned with the Department's procurement needs;

(8) facilitating the deployment of technology that will serve to enhance homeland security, including through the establishment of a centralized Federal repository for information relating to technologies described in subparagraphs (A), (B), and (C) of paragraph (6) for dissemination to Federal, State, and local government and private sector entities, and for information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would contribute to homeland security;

(9) providing guidance, recommendations, and technical assistance as appropriate to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in subparagraphs (A), (B), and (C) of paragraph (6); and

(10) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

**SEC. 302. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section

906(a)(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107-188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, is transferred to the Department.

(2) Programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) The programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-proliferation and verification research and development program.

(B) The programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program.

(C) Those aspects of the nuclear assessment program of the international materials protection and cooperation program that are directly related to homeland security.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(3) The homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program.

**SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.**

With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 301(1).

**SEC. 304. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.**

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

**SEC. 305. MISCELLANEOUS PROVISIONS.**

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, dem-

onstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(2)(D) of this Act, the President shall notify the Congress of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

**SEC. 306. HOMELAND SECURITY SCIENCE AND TECHNOLOGY COORDINATION COUNCIL.**

(a) ESTABLISHMENT AND COMPOSITION.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the "Coordination Council"). The Coordination Council shall be composed of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Under Secretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) RESPONSIBILITIES.—The Coordination Council shall—

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(4).

**SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.**

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 301(3) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—(1) The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate; and

(B) distribute funds through grants, cooperative agreements, and contracts through competitions that are as open as possible.

(2)(A) The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—(1) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any national laboratory and may establish additional laboratory units at other national laboratories.

(3) If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate national laboratories against the criteria.

(D) Select a national laboratory on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

#### SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

(c) NOTIFICATION.—At least 180 days before any change in the biosafety level at the facility described in subsection (a), the President shall notify the Congress of the change and describe the reasons therefor. No such change may be made until at least 180 days after the completion of the transition period defined in section 801(2).

### TITLE IV—BORDER AND TRANSPORTATION SECURITY

#### Subtitle A—General Provisions

#### SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 411 takes effect.

(4) Establishing and administering rules, in accordance with section 403, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Except as provided in subtitle C, administering the customs laws of the United States.

(6) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

(7) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

#### SEC. 402. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The United States Customs Service, except as provided in subtitle C.

(2) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(3) The Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto.

(4) The Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(5) The Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(6) The Office for Domestic Preparedness of the Office of Justice Programs of the Department of Justice, including the functions of the Attorney General relating thereto.

(7) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(8) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

#### SEC. 403. VISA ISSUANCE.

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the

granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(b) AUTHORITY OF THE SECRETARY OF STATE.—(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(C) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act.

(D) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(E) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(F) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(G) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(H) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104-114).

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105-277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106-553).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106-113.

(K) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107-115).

(3) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to individual visa applications or classes of applications.

(B) Review any or all such applications prior to their adjudication, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) **PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.**—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(3) **TRAINING AND HIRING.**—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) The Secretary shall promulgate regulations within 60 days of the enactment of this Act establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) **NO CREATION OF PRIVATE RIGHT OF ACTION.**—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) **STUDY REGARDING USE OF FOREIGN NATIONALS.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(f) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to the Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(g) **VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.**—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening, interview waiver, or other non-interview visa issuance programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication. All visa applicants in Saudi Arabia shall be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing and pursuant to written guidelines issued by the Secretary of Homeland Security,

that the alien is unlikely to present a risk to homeland security. The Secretary of Homeland Security shall promulgate such guidelines not later than 30 days after the date of the enactment of this Act.

**SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.**

(a) **TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.**—There shall be transferred to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) **COVERED ANIMAL AND PLANT PROTECTION LAWS.**—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading “Bureau of Animal Industry” in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Protection Act (subtitle E of title X of Public Law 107-171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) **EXCLUSION OF QUARANTINE ACTIVITIES.**—For purposes of this section, the term “functions” does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) **EFFECT OF TRANSFER.**—

(1) **COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.**—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) **RULEMAKING COORDINATION.**—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) **EFFECTIVE ADMINISTRATION.**—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) **TRANSFER AGREEMENT.**—

(1) **AGREEMENT REQUIRED; REVISION.**—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) **REQUIRED TERMS.**—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) **COOPERATION AND RECIPROCITY.**—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) **PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.**—

(1) **TRANSFER OF FUNDS.**—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) **LIMITATION.**—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) **TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.**—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) **PROTECTION OF INSPECTION ANIMALS.**—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting “or the Department of Homeland Security” after “Department of Agriculture”; and

(B) by inserting “or the Secretary of Homeland Security” after “Secretary of Agriculture”;

(2) by striking “Secretary” each place it appears (other than in sections 501(a) and 501(e)) and inserting “Secretary concerned”; and

(3) by adding at the end of section 501 the following new subsection:

“(e) **SECRETARY CONCERNED DEFINED.**—In this title, the term ‘Secretary concerned’ means—

“(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

“(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.”.

**SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.**

(a) **OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.**—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) **COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.**—

(1) **STATUTORY CONSTRUCTION.**—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

**SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.**

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

**SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.**

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply two years after the date of enactment of this Act.

**SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.**

On an annual basis, the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

**SEC. 409. EXPLOSIVE DETECTION SYSTEMS.**

(a) INSTALLATION OF SYSTEMS.—Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

“(2) MODIFICATION OF AIRPORT TERMINAL BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION SYSTEMS.—

“(A) NOTIFICATION OF AIRPORTS.—Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44903(c) of the number and type of explosive detection systems that will be required to be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.

“(B) ASSESSMENTS OF AIRPORT TERMINAL BUILDINGS.—If the owner or operator of a

United States airport described in section 44903(c) determines that the airport will not be able to make the modifications to the airport's terminal buildings that are necessary to accommodate the explosive detection systems required under subparagraph (A) in a cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.

“(C) PLANS FOR MAKING MODIFICATIONS TO AIRPORT TERMINAL BUILDINGS.—

“(i) IN GENERAL.—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary, in consultation with the owner or operator, shall develop, not later than December 1, 2002, a plan for making necessary modifications to the airport's terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.

“(ii) DEADLINE.—A plan developed under this subparagraph shall include a date for executing the plan. All such plans shall be executed as expeditiously as practicable but not later than December 31, 2003.

“(iii) TRANSMISSION OF PLANS TO CONGRESS.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.

“(D) REQUIREMENTS FOR PLANS.—A plan developed and published under subparagraph (C), shall provide for, to the maximum extent practicable—

“(i) the deployment of explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building; and

“(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.

“(E) USE OF SCREENING METHODS OTHER THAN EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44903(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.

“(3) PURCHASE OF EXPLOSIVE DETECTION SYSTEMS.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

“(4) EXPLOSIVE DETECTION SYSTEM DEFINED.—In this subsection, the term ‘explosive detection system’ means a device, or combination of devices, that can detect different types of explosives.”.

(b) CORRECTION OF REFERENCE.—Section 44901(e) of title 49, United States Code, is amended by striking “(b)(1)(A)” and inserting “(d)(1)(A)”.

**SEC. 410. TRANSPORTATION SECURITY.**

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

“(A) The Secretary of Homeland Security, or the Secretary's designee.”.

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking “Secretary of Transportation” and inserting “Secretary of Homeland Security”.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

“(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).”.

**Subtitle B—Immigration and Nationality Functions**

**CHAPTER 1—IMMIGRATION ENFORCEMENT**

**SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

- (1) The Border Patrol program.
- (2) The detention and removal program.
- (3) The intelligence program.
- (4) The investigations program.
- (5) The inspections program.

**SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.**

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be known as the “Bureau of Border Security”.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 411 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services of the Department of Justice established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions

specified under section 411 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration enforcement policies and priorities;

(B) performing policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) CITIZENSHIP AND IMMIGRATION SERVICES LIAISON.—

(1) IN GENERAL.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Border Security.

(2) FUNCTIONS.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Border Security, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

#### SEC. 413. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

#### SEC. 414. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

#### SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a

plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

### CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

#### Subchapter A—Transfers of Functions

#### SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the “Bureau of Citizenship and Immigration Services”.

(2) ASSISTANT ATTORNEY GENERAL.—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Attorney General; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Assistant Attorney General by this section or this Act or otherwise vested in the Assistant Attorney General by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman’s annual report to the Congress within 3 months after its submission to the Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) establishing national immigration services policies and priorities;

(B) performing policy research and analysis on immigration services issues; and

(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department of Homeland Security.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and

functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and

(C) responding to inquiries from the media and the general public on immigration services issues.

(g) BORDER SECURITY LIAISON.—

(1) IN GENERAL.—There shall be a position of Border Security Liaison for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Border Security Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

(h) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

#### SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the “Ombudsman”). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman’s responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship

and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman’s discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

#### SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

#### SEC. 424. EMPLOYEE DISCIPLINE.

The Assistant Attorney General for Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

#### SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

“OFFICE OF IMMIGRATION STATISTICS

“SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the ‘Office’), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

“(b) The Director of the Office shall be responsible for the following:

“(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled ‘Statistical Yearbook of the Immigration

and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

"(c) The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director."

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following:

- (1) Adjudications of immigrant visa petitions.
- (2) Adjudications of naturalization petitions.
- (3) Adjudications of asylum and refugee applications.
- (4) Adjudications performed at service centers.
- (5) All other adjudications performed by the Immigration and Naturalization Service.

(c) CONFORMING AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(c)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following:

"(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review."

**SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.**

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

**SEC. 427. EFFECTIVE DATE.**

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

**SEC. 428. TRANSITION.**

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this subchapter in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

(4) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

**Subchapter B—Other Provisions**

**SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.**

(a) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services."

(b) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the

Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

**SEC. 432. BACKLOG ELIMINATION.**

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking "not later than one year after the date of enactment of this Act;" and inserting "1 year after the date of the enactment of the Homeland Security Act of 2002;".

**SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.**

(a) IN GENERAL.—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 421(b) and related processes.

**SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.**

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

**SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.**

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related

to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) **REPORT.**—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) **TECHNOLOGY ADVISORY COMMITTEE.**—

(1) **ESTABLISHMENT.**—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Attorney General in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b). The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) **COMPOSITION.**—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

#### **SEC. 436. CHILDREN’S AFFAIRS.**

(a) **TRANSFER OF FUNCTIONS.**—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) **FUNCTIONS.**—

(1) **IN GENERAL.**—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for

whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child’s placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department’s actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) **COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.**—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) **DUTIES WITH RESPECT TO FOSTER CARE.**—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) **EFFECTIVE DATE.**—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) **REFERENCES.**—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) **OTHER TRANSITION ISSUES.**—

(1) **EXERCISE OF AUTHORITIES.**—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to

the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) **SAVINGS PROVISIONS.**—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) **TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.**—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) **DEFINITIONS.**—As used in this section—

(1) the term “placement” means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

### **CHAPTER 3—GENERAL PROVISIONS**

#### **SEC. 441. ABOLISHMENT OF INS.**

The Immigration and Naturalization Service of the Department of Justice is abolished.

#### **SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

(a) **DEFINITIONS.**—For purposes of this section—

(1) the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term “covered entity” means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and

(3) the term “transfer date” means the date on which the transfer of functions specified under section 411 takes effect.

(b) **STRATEGIC RESTRUCTURING PLAN.**—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104-208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the “appropriate committees of Congress” are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) **AUTHORITY.**—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed \$25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act, whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) **ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.**—

(1) **IN GENERAL.**—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) **AMOUNT REQUIRED.**—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) **FIRST METHOD.**—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) **SECOND METHOD.**—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) **COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.**—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) **FINAL BASIC PAY DEFINED.**—In this subsection, the term “final basic pay” means, with

respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) **EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.**—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) **EFFECT ON EMPLOYMENT LEVELS.**—

(1) **INTENDED EFFECT.**—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) **USE OF VOLUNTARY SEPARATIONS.**—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

**SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.**

(a) **IN GENERAL.**—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) **SCOPE.**—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) **PROCEDURES.**—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) **ACTIONS INVOLVING DISCRIMINATION.**—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) **CERTAIN EMPLOYEES.**—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code. Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) **REPORTS.**—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) **DEFINITION.**—In this section, the term “covered entity” has the meaning given such term in section 442(a)(2).

**SEC. 444. SENSE OF CONGRESS.**

It is the sense of the Congress that—

(1) the missions of the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

**SEC. 445. REPORTS AND IMPLEMENTATION PLANS.**

(a) **DIVISION OF FUNDS.**—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) **DIVISION OF PERSONNEL.**—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) **IMPLEMENTATION PLAN.**—

(1) **IN GENERAL.**—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) **CONTENTS.**—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

#### SEC. 446. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Attorney General shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and

petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department of Justice (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF THE CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of the Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Attorney General should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

#### Subtitle C—United States Customs Service

##### SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 457(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

“Commissioner of Customs, Department of the Treasury”

and inserting

“Commissioner of Customs, Department of Homeland Security.”.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

##### SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(5), 402(1), and 808(e)(2), authority that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of

the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 451) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

##### SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM REPORTS.

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in the operation of the Customs Service.

(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(3) USE OF MERCHANDISE PROCESSING FEES.—The cost accounting system described in paragraph (1) shall provide for an identification of all amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b) REPORTS.—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

**SEC. 454. PRESERVATION OF CUSTOMS FUNDS.**

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

**SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

The President shall include in each budget transmitted to the Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

**SEC. 456. PAYMENT OF DUTIES AND FEES.**

Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended—

(1) in the first sentence—  
(A) by striking “Unless merchandise” and inserting “Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise”; and  
(B) by inserting after “by regulation” the following: “(but not to exceed 10 working days after entry or release, whichever occurs first)”; and

(2) by striking the second and third sentences and inserting the following: “If an import activity summary statement is filed, the importer of record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever occurs first.”.

**SEC. 457. DEFINITION.**

In this subtitle, the term “customs revenue function” means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

**SEC. 458. GAO REPORT TO CONGRESS.**

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to the Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

**SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.**

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term “customs revenue services” means those customs revenue functions described in paragraphs (1) through (6) and (8) of section 457.

**SEC. 460. REPORTS TO CONGRESS.**

The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

**SEC. 461. CUSTOMS USER FEES.**

Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).”;

(2) in paragraph (4), by striking “(other than the excess fees determined by the Secretary under paragraph (5))”; and

(3) by striking paragraph (5) and inserting the following:

“(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the ‘Customs Commercial and Homeland Security Automation Account’. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), \$350,000,000.

“(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

“(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.”.

**TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE****SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.**

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall be responsible for the following:

(1) Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.

(2) With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

(3) Providing the Federal Government’s response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.

(4) Aiding the recovery from terrorist attacks and major disasters, interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters.

(5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

(6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.

(7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

**SEC. 502. FUNCTIONS TRANSFERRED.**

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) Except as provided in section 402, the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, and the Integrated Hazard Information System of the Department of Defense.

(2) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(3) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

**SEC. 503. NUCLEAR INCIDENT RESPONSE.**

(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency within the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) CONSTRUCTION.—Nothing in this title shall be understood to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(c) INDEMNIFICATION OF CONTRACTORS DURING TRANSITION PERIOD.—(1) To the extent the Department of Energy has a duty under a covered

contract to indemnify an element of the Nuclear Incident Response Team, the Department and the Department of Energy shall each have that duty, whether or not the Nuclear Incident Response Team is operating as an organizational element of the Department.

(2) Paragraph (1) applies only to a contract in effect on the date of the enactment of this Act, and not to any extension or renewal of such contract carried out after the date of the enactment of this Act.

#### SEC. 504. DEFINITION.

For purposes of this title, the term "Nuclear Incident Response Team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform radiological emergency response and support functions.

#### SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary of Homeland Security in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

### TITLE VI—MANAGEMENT

#### SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security.

Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Border Security.

(2) TRANSFER OF FUNCTIONS.—In accordance with title VIII, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

#### SEC. 602. CHIEF FINANCIAL OFFICER.

Notwithstanding section 902(a)(1) of title 31, United States Code, the Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

#### SEC. 603. CHIEF INFORMATION OFFICER.

Notwithstanding section 3506(a)(2) of title 44, United States Code, the Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

#### SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

The Secretary shall establish in the Department an Office for Civil Rights and Civil Liberties, the head of which shall be the Director for Civil Rights and Civil Liberties. The Director shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Office; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described in paragraph (1) and any actions taken by the Department in response to such allegations.

### TITLE VII—MISCELLANEOUS

#### Subtitle A—Inspector General

#### SEC. 701. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a

serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes (1) a statement as to whether the Inspector General agrees or disagrees with such exercise and (2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of the Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 81 the following:

#### "SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office."

#### Subtitle B—United States Secret Service

#### SEC. 711. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

#### Subtitle C—Critical Infrastructure Information

#### SEC. 721. SHORT TITLE.

This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".

#### SEC. 722. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term "agency" has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term "critical infrastructure information" means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) **CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**—The term “critical infrastructure protection program” means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) **INFORMATION SHARING AND ANALYSIS ORGANIZATION.**—The term “Information Sharing and Analysis Organization” means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) **PROTECTED SYSTEM.**—The term “protected system”—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) **VOLUNTARY.**—

(A) **IN GENERAL.**—The term “voluntary”, in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency’s exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) **EXCLUSIONS.**—The term “voluntary”—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to

section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

**SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.**

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

**SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.**

(a) **PROTECTION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding *ex parte* communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) **EXPRESS STATEMENT.**—For purposes of paragraph (1), the term “express statement”, with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: “This information is voluntarily submitted to

the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.”; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) **LIMITATION.**—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) **INDEPENDENTLY OBTAINED INFORMATION.**—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) **TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.**—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) **PROCEDURES.**—

(1) **IN GENERAL.**—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) **ELEMENTS.**—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) **PENALTIES.**—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

(g) **AUTHORITY TO ISSUE WARNINGS.**—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the

general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) **AUTHORITY TO DELEGATE.**—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

**SEC. 725. NO PRIVATE RIGHT OF ACTION.**

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

**Subtitle D—Acquisitions**

**SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.**

(a) **AUTHORITY.**—During the five-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1)(A) In carrying out basic, applied, and advanced research and development projects for response to existing or emerging terrorist threats, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f) of such section), after making a determination that—

(i) the use of a contract, grant, or cooperative agreement for such projects is not feasible or appropriate; and

(ii) use of other authority to waive Federal procurement laws or regulations would not be feasible or appropriate to accomplish such projects.

(B) The annual report required under subsection (h) of such section 2371, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

(B) In applying the authorities of such section 845—

(i) subsection (c) thereof shall apply with respect to prototype projects under this paragraph, except that in applying such subsection any reference in such subsection to the Comptroller General shall be deemed to refer to the Comptroller General and the Inspector General of the Department; and

(ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) **REPORT.**—Not later than one year after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) **DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.**—In this section, the term “nontraditional Government contractor” has the same meaning as the term “nontraditional defense contractor” as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note).

**SEC. 732. PERSONAL SERVICES.**

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

**SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHORITY.**

(a) **AUTHORITY.**—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) **INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.**—(1) The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be \$5,000.

(2) The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) **SIMPLIFIED ACQUISITION PROCEDURES.**—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be \$175,000.

(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking “or” at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.”.

(d) **APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.**—(1) With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) The \$5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be \$7,500,000 for purposes of property or services under the authority of this subsection.

(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104-106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) **REPORT.**—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

**SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.**

There is established in the Department an office to be known as the “Office of Small and Disadvantaged Business Utilization”. The management of such office shall be vested in the manner described in section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and shall carry out the functions described in such section.

**Subtitle E—Property**

**SEC. 741. DEPARTMENT HEADQUARTERS.**

(a) **IN GENERAL.**—Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.), the Administrator of General Services shall construct a public building to serve as the headquarters for the Department.

(b) **LOCATION AND CONSTRUCTION STANDARDS.**—The headquarters facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.

(c) **USE OF HEADQUARTERS FACILITY.**—The Administrator of General Services shall make the headquarter facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator's authorities under section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 et seq.) and there is authorized to

be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

**Subtitle F—Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)**

**SEC. 751. SHORT TITLE.**

This subtitle may be cited as the “Support Anti-terrorism by Fostering Effective Technologies Act of 2002” or the “SAFETY Act”.

**SEC. 752. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior and extensive United States government use and demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this subtitle.

**SEC. 753. LITIGATION MANAGEMENT.**

(a) FEDERAL CAUSE OF ACTION.—(1) There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law.

(2) Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2)(A) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) For purposes of subparagraph (A), the term “noneconomic damages” means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoy-

ment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—(1) Should a product liability lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) For those products reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the product on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

**SEC. 754. RISK MANAGEMENT.**

(a) IN GENERAL.—(1) Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to non-Federal government customers (“Seller”) shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(2) For the total claims related to one such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) Liability insurance obtained pursuant to this subsection shall, in addition to the Seller,

protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

**SEC. 755. DEFINITIONS.**

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term “qualified anti-terrorism technology” means any product, device, or technology designed, developed, or modified for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism and limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term “act of terrorism” means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term “insurance carrier” means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term “liability insurance” means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term “loss” means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term “non-Federal Government customers” means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

#### Subtitle G—Other Provisions

### SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

#### “CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

“Sec.

“9701. Establishment of human resources management system.

#### “§9701. Establishment of human resources management system

“(a) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

“(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

“(1) be flexible;

“(2) be contemporary;

“(3) not waive, modify, or otherwise affect—

“(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

“(B) any provision of section 2302, relating to prohibited personnel practices;

“(C)(i) any provision of law referred to in section 2302(b)(1); or

“(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

“(I) providing for equal employment opportunity through affirmative action; or

“(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

“(D) any other provision of this title (as described in subsection (c)); or

“(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

“(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and

“(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

“(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

“(1) subparts A, B, E, G, and H of this part; and

“(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

“(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

“(1) to modify the pay of any employee who serves in—

“(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

“(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

“(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

“(3) to exempt any employee from the application of such section 5307.

“(e) SUNSET PROVISION.—Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.”.

(2) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

#### “97. Department of Homeland Security 9701”.

(b) EFFECT ON PERSONNEL.—

(1) NON-SEPARATION OR NON-REDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person’s date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

#### SEC. 762. ADVISORY COMMITTEES.

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92-463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

#### SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIATIONS.

(a) REORGANIZATION.—

(1) IN GENERAL.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate,

alter, or discontinue organizational units within the Department, but only—

(A) pursuant to section 802; or

(B) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(2) LIMITATIONS.—(A) Authority under paragraph (1)(A) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(B) Authority under paragraph (1)(B) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

(b) TRANSFER OF APPROPRIATIONS.—

(1) IN GENERAL.—Except as otherwise specifically provided by law, not to exceed two percent of any appropriation available to the Secretary in any fiscal year may be transferred between such appropriations, except that not less than 15 days’ notice shall be given to the Committees on Appropriations of the Senate and House of Representatives before any such transfer is made.

(2) EXPIRATION OF AUTHORITY.—The authority under paragraph (1) shall expire two years after the date of enactment of this Act.

#### SEC. 764. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) GIFTS, DEVICES, AND BEQUESTS.—With respect to the Department, the Secretary shall have the same authorities that the Attorney General has with respect to the Department of Justice under section 524(d) of title 28, United States Code.

(c) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

#### SEC. 765. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

#### SEC. 766. REGULATORY AUTHORITY.

Except as otherwise provided in this Act, this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

#### SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.

(a) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through contracts with the operator of

a national laboratory of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the contracts of the Department of Energy with such operator.

(b) **HOMELAND SECURITY CENTER.**—(1) Notwithstanding section 307, the Secretary, acting through the Under Secretary for Science and Technology, shall establish at a national security laboratory of the National Nuclear Security Administration, a center to serve as the primary location for carrying out research, development, test, and evaluation activities of the Department related to the goals described in section 301(6)(A) and (B). The Secretary shall establish, in concurrence with the Secretary of Energy, such additional centers at one or more national laboratories of the Department of Energy as the Secretary considers appropriate to serve as secondary locations for carrying out such activities.

(2) Each center established under paragraph (1) shall be composed of such facilities and assets as are required for the performance of such activities. The particular facilities and assets shall be designated and transferred by the Secretary of Energy with the concurrence of the Secretary.

(c) **REIMBURSEMENT OF COSTS.**—In the case of an activity carried out by the operator of a national laboratory of the Department of Energy but under contract with the Department of Homeland Security, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(d) **LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.**—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.

(e) **DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.**—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

**SEC. 768. COUNTERNARCOTICS OFFICER.**

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

**SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS.**

(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) **DUTIES OF THE DIRECTOR.**—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such information exchange shall include the following:

(A) Joint research and development on countermeasures.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

**SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.**

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

**SEC. 771. REVIEW OF PAY AND BENEFIT PLANS.**

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of the Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

**SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.**

The Secretary (or the Secretary's designee) shall work in cooperation with the Mayor of the District of Columbia (or the Mayor's designee) for the purpose of integrating the District of Columbia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

**SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.**

There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center, including any functions of the Secretary of the Treasury relating thereto.

**TITLE VIII—TRANSITION**

**Subtitle A—Reorganization Plan**

**SEC. 801. DEFINITIONS.**

For purposes of this title:

(1) The term "agency" includes any entity, organizational unit, program, or function.

(2) The term "transition period" means the 12-month period beginning on the effective date of this Act.

**SEC. 802. REORGANIZATION PLAN.**

(a) **SUBMISSION OF PLAN.**—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) **PLAN ELEMENTS.**—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this

Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) **MODIFICATION OF PLAN.**—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) **STATUTORY CONSTRUCTION.**—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) **SUPERSEDES EXISTING LAW.**—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

**Subtitle B—Transitional Provisions**

**SEC. 811. TRANSITIONAL AUTHORITIES.**

(a) **PROVISION OF ASSISTANCE BY OFFICIALS.**—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) **SERVICES AND PERSONNEL.**—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) **TRANSFER OF FUNDS.**—Until the transfer of an agency to the Department, the President is authorized to transfer to the Secretary to fund the purposes authorized in this Act—

(1) for administrative expenses related to the establishment of the Department of Homeland Security, not to exceed two percent of the unobligated balance of any appropriation enacted prior to October 1, 2002, available to such agency; and

(2) for purposes for which the funds were appropriated, not to exceed three percent of the unobligated balance of any appropriation available to such agency;

except that not less than 15 days' notice shall be given to the Committees on Appropriations of the House of Representatives and the Senate before any such funds transfer is made.

(d) **ACTING OFFICIALS.**—(1) During the transition period, pending the advice and consent of

the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(e) **TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.**—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

Paragraph (1) shall not apply to appropriations transferred pursuant to section 763(b).

(f) **PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) **LIMITATION.**—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

**SEC. 812. SAVINGS PROVISIONS.**

(a) **COMPLETED ADMINISTRATIVE ACTIONS.**—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term “completed administrative action” includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) **PENDING PROCEEDINGS.**—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) **PENDING CIVIL ACTIONS.**—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) **REFERENCES.**—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) **EMPLOYMENT PROVISIONS.**—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

**SEC. 813. TERMINATIONS.**

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

**SEC. 814. INCIDENTAL TRANSFERS.**

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and obligations held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

**SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.**

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

**SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.**

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b) of this Act.

**SEC. 817. REFERENCE.**

With respect to any function transferred by or under this Act (including under a reorganiza-

tion plan that becomes effective under section 802) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

**TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS**

**SEC. 901. INSPECTOR GENERAL ACT OF 1978.**

Section 11 of the Inspector General Act of 1978 (Public Law 95-452) is amended—

(1) by inserting “Homeland Security,” after “Transportation,” each place it appears; and

(2) by striking “; and” each place it appears in paragraph (1) and inserting “;”;

**SEC. 902. EXECUTIVE SCHEDULE.**

(a) **IN GENERAL.**—Title 5, United States Code, is amended—

(1) in section 5312, by inserting “Secretary of Homeland Security.” as a new item after “Affairs.”;

(2) in section 5313, by inserting “Deputy Secretary of Homeland Security.” as a new item after “Affairs.”;

(3) in section 5314, by inserting “Under Secretaries, Department of Homeland Security.” as a new item after “Affairs.” the third place it appears;

(4) in section 5315, by inserting “Assistant Secretaries, Department of Homeland Security.”, “General Counsel, Department of Homeland Security.”, “Chief Financial Officer, Department of Homeland Security.”, “Chief Information Officer, Department of Homeland Security.”, and “Inspector General, Department of Homeland Security.” as new items after “Affairs.” the first place it appears; and

(5) in section 5315, by striking “Commissioner of Immigration and Naturalization, Department of Justice.”.

(b) **SPECIAL EFFECTIVE DATE.**—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

**SEC. 903. UNITED STATES SECRET SERVICE.**

(a) **IN GENERAL.**—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking “of the Treasury”, each place it appears and inserting “of Homeland Security”.

(2) Section 208 of title 3, United States Code, is amended by striking “of Treasury” each place it appears and inserting “of Homeland Security”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

**SEC. 904. COAST GUARD.**

(a) **TITLE 14, U.S.C.**—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(b) **TITLE 10, U.S.C.**—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044(d), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a),

10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(2) Section 801(1) of such title is amended by striking “the General Counsel of the Department of Transportation” and inserting “an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security”.

(3) Section 983(d)(2)(B) of such title is amended by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(4) Section 2665(b) of such title is amended by striking “Department of Transportation” and inserting “Department in which the Coast Guard is operating”.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking “Secretaries of the Army, Air Force, and Transportation” both places it appears and inserting “Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security”; and

(B) in subsection (b), by striking “Department of Transportation” and inserting “Department of Homeland Security”.

(6) Section 7361(b) of such title is amended in the subsection heading by striking “TRANSPORTATION” and inserting “HOMELAND SECURITY”.

(7) Section 12522(c) of such title is amended in the subsection heading by striking “TRANSPORTATION” and inserting “HOMELAND SECURITY”.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(d) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking “of Transportation” and inserting “of Homeland Security”; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking “of Transportation” and inserting “of Homeland Security”.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking “after consultation with the Secretary of Transportation”.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking “of Transportation” each place it appears and inserting “of Homeland Security”.

(7) Section 1407(b)(2) of the Defense Dependents’ Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking “of Transportation” both places it appears and inserting “of Homeland Security”.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking “of Transportation” and inserting “of Homeland Security”.

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking “of Transportation” in the fourth paragraph and inserting “of Homeland Security”;

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking “of Transportation” both places it appears and inserting “of Homeland Security”;

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking “of Transportation” both places it appears and inserting “of Homeland Security”;

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking “Secretaries of Army, Navy, Air Force, or Transportation” and inserting “Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,”; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking “of Transportation” both places it appears and inserting “of Homeland Security”.

(e) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(f) EFFECTIVE DATE.—The amendments made by this section (other than subsection (e)) shall take effect on the date of transfer of the Coast Guard to the Department.

#### SEC. 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking “Secretary of Health and Human Services” and inserting “Secretary of Homeland Security”;

(B) by inserting “the Secretary of Health and Human Services and” between “in coordination with” and “the Secretary of Veterans Affairs”; and

(C) by inserting “of Health and Human Services” after “as are determined by the Secretary”; and

(2) in subsections (a)(2) and (b), by inserting “of Health and Human Services” after “Secretary” each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

#### SEC. 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC HEALTH SERVICE ACT.

(a) PUBLIC HEALTH SERVICE ACT.—Section 351A of the Public Health Service Act (42 U.S.C. 262a) is amended—

(1) in subsection (a)(1)(A), by inserting “(as defined in subsection (1)(9))” after “Secretary”;

(2) in subsection (h)(2)(A), by inserting “Department of Homeland Security, the” before “Department of Health and Human Services”; and

(3) in subsection (l), by inserting after paragraph (8) a new paragraph as follows:

“(9) The term ‘Secretary’ means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.”.

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 262a note) is amended by striking “Secretary of Health and Human Services” and inserting “Secretary of Homeland Security”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of

transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department.

#### SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO PROPERTY ACT.—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(a)(2)) is repealed.

(b) LAW ENFORCEMENT AUTHORITY.—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:

##### “SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Protection of Public Property Act’.

##### “SEC. 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.

“(a) IN GENERAL.—The Secretary of Homeland Security (in this Act referred to as the ‘Secretary’) shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

“(b) OFFICERS AND AGENTS.—

“(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

“(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

“(A) enforce Federal laws and regulations for the protection of persons and property;

“(B) carry firearms;

“(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

“(D) serve warrants and subpoenas issued under the authority of the United States; and

“(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

“(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

“(c) REGULATIONS.—

“(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

“(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

“(d) DETAILS.—

“(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

“(2) **APPLICABILITY OF REGULATIONS.**—The Secretary may—

“(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

“(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

“(3) **FACILITIES AND SERVICES OF OTHER AGENCIES.**—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

“(e) **AUTHORITY OUTSIDE FEDERAL PROPERTY.**—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

“(f) **SECRETARY AND ATTORNEY GENERAL APPROVAL.**—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

“(g) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to—

“(1) preclude or limit the authority of any Federal law enforcement agency; or

“(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.”.

**SEC. 908. TRANSPORTATION SECURITY REGULATIONS.**

Title 49, United States Code, is amended—  
(1) in section 114(l)(2)(B), by inserting “for a period not to exceed 30 days” after “effective”; and

(2) in section 114(l)(2)(B), by inserting “ratified or” after “unless”.

**SEC. 909. RAILROAD SECURITY LAWS.**

Title 49, United States Code, is amended—  
(1) in section 20106 by inserting in the second sentence, “, including security,” after “railroad safety” and “or the Secretary of Homeland Security” after “Secretary of Transportation”; and

(2) in section 20105—  
(A) by inserting “or the Secretary of Homeland Security” after “Secretary of Transportation” in subsection (a);

(B) by inserting “of Transportation or the Secretary of Homeland Security” after “issued by the Secretary” in subsection (a);

(C) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate,” after “to the Secretary” in subsection (a), and after “Secretary” in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears in subsections (b)(1)(B) and (B)(iii) and (d), each place it appears in subsections (c)(1), (c)(2), (e), and (f), and the first four times it appears in subsection (b)(3);

(D) by inserting “of Transportation or the Secretary of Homeland Security, as appropriate,” after “Secretary” in subsection (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it appears in subsection (b)(1)(B)(iii), and the last place it appears in subsection (b)(3);

(E) in subsection (d), by replacing “Secretary's” with “Secretary of Transportation's” and adding before the period at the end “or the Secretary of Homeland Security's duties under section 114”; and

(F) in subsection (f), by adding before the period at the end “or section 114”.

**SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting “homeland security,” after “national security,”; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting “the Office of Homeland Security,” after “National Security Council.”.

**SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.**

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

“(14) Other Federal officials the Council considers appropriate.”.

**SEC. 912. CHIEF FINANCIAL OFFICER.**

Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

(2) by inserting the following new subparagraph after subparagraph (F):

“(G) The Department of Homeland Security.”.

**SEC. 913. CHIEF INFORMATION OFFICER.**

(a) **CLINGER-COHEN ACT.**—(1) The provisions enacted in section 5125 of the Clinger-Cohen Act of 1996 (division E of Public Law 104-106; 110 Stat. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting “or appointed” after “a Chief Information Officer designated”.

(b) **TITLE 44.**—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—

(A) in subparagraph (A) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(B) by adding at the end the following:

“(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.”;

(2) in each of subsections (a)(4) and (c)(1) of section 3506, by inserting “or appointed” after “the Chief Information Officer designated”; and

(3) in subsection (a)(3) of section 3506, by inserting “or appointed” after “The Chief Information Officer designated”.

**TITLE X—NATIONAL HOMELAND SECURITY COUNCIL**

**SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.**

There is established within the Executive Office of the President a council to be known as the “Homeland Security Council” (in this title referred to as the “Council”).

**SEC. 1002. FUNCTION.**

The function of the Council shall be to advise the President on homeland security matters.

**SEC. 1003. MEMBERSHIP.**

The members of the Council shall be the following:

- (1) The President.
- (2) The Vice President.
- (3) The Secretary of Homeland Security.
- (4) The Attorney General.
- (5) The Secretary of Health and Human Services.
- (6) The Director of Central Intelligence.
- (7) The Secretary of Defense.
- (8) The Secretary of the Treasury.
- (9) The Secretary of State.
- (10) The Secretary of Energy.
- (11) The Secretary of Agriculture.
- (12) Such other individuals as may be designated by the President.

**SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.**

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of

homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

**SEC. 1005. HOMELAND SECURITY BUDGET.**

The Director of the Office of Management and Budget shall prepare for the President a Federal homeland security budget to be delivered to the Congress as part of the President's annual budget request.

**SEC. 1006. STAFF COMPOSITION.**

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

**SEC. 1007. RELATION TO THE NATIONAL SECURITY COUNCIL.**

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute is in order except those printed in House Report 107-615 and amendments en bloc described in section 3 of House Resolution 502.

Except as specified in section 4 of the resolution or the order of the House of today, each amendment printed in the report shall be offered only in the order printed, may be offered only by a Member designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

It shall be in order at any time for the chairman of the Select Committee on Homeland Security or his designee to offer amendments en bloc consisting of amendments printed in the report not earlier disposed of or germane modifications of any such amendment.

Amendments en bloc shall be considered read, except that modification shall be reported, shall be debatable for 20 minutes, equally divided and controlled by the chairman and ranking minority member or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The original proponent of an amendment included in the amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before disposition of the amendment en bloc.

The chairman of the Committee of the Whole may recognize for consideration of any amendment out of the order printed, but not sooner than 1 hour after the chairman of the Select Committee on Homeland Security or his designee announces from the floor a request to that effect.

It is now in order to consider amendment No. 1 printed in House Report 107-615.

AMENDMENT NO. 1 OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. OBERSTAR:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 501(1) of the bill, strike “, major disasters, and other emergencies”.

In the matter preceding subparagraph (A) of section 501(3) of the bill, strike “and major disasters”.

In section 501(3)(D) of the bill, strike “or major disaster”.

In section 501(4) of the bill—

(1) strike “and major disasters”;

(2) strike “or major disasters”; and

(3) strike “or disasters”.

In section 501(5) of the bill, strike and “disasters”.

Strike section 501(6) of the bill and insert the following:

(6) In consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b).

In section 502(1) of the bill, strike the text after “(1)” and preceding “Integrated” and insert “The”.

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

**SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.**

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enact-

ment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Minnesota (Mr. OBERSTAR) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, over the past decade, the Federal Emergency Management Administration has come to be recognized as one of our most effective and widely respected Federal Government agencies. It has helped tens of thousands of our fellow citizens devastated by natural disasters, such as floods, fires, earthquakes, hurricanes, tornadoes and blizzards. But if we transfer FEMA to the Department of Homeland Security, we run the risk of undermining the mission and the effectiveness of the one agency, I should not say the one, but one of the few agencies of this government that touches the lives of Americans daily, that works effectively and smoothly and responds to the needs of American citizens where they are when disaster strikes.

Over the past several years, FEMA has responded to four federally declared disasters emerging from terrorism: the World Trade Center, the Pentagon, the bombing of the Murrah Federal Building, and the attack on the World Trade Center in 1993, effectively, efficiently. Its response was never diminished by its independent status and was, in fact, enhanced by that status.

Since 1976, FEMA has responded to 927 federally declared disasters and 77 emergency declarations resulting from natural hazards, floods, fire, hurricane, earthquake and tornado, responding effectively, helping Americans devastated, and, in the process, earning the respect and admiration of the Congress, of State and local officials, and other nations who have come to study our system to see how it works and try to emulate it.

The former director of FEMA, James Lee Witt, who elevated the effectiveness of FEMA to this highly respected, efficient status that we all admire today, said that its effectiveness was directly dependent upon its ability to stay out of the large bureaucratic morass of Washington agencies and allowed it “to effectively coordinate the resources of 26 Federal agencies following disaster events.” James Lee Witt said the plan to move FEMA to the new Department “would be a mistake.”

I concur.

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

The CHAIRMAN. Is the gentleman from Texas (Mr. ARMEY) opposed to the amendment?

Mr. ARMEY. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman is recognized for 10 minutes in opposition to the amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. WELDON).

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks).

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment, in spite of my high respect for the author of the amendment. I agree with the gentleman on the support for FEMA and on his support for James Lee Witt, who is a good friend of mine. In fact, I talk to James Lee on a regular basis. I was with James on a number of those disasters, at the Murrah Building bombing, Hurricane Andrew, Hurricane Hugo, the Wildlands fires in California and Colorado, Loma Prieta, Northridge, and I was with Joe Allbaugh up at the World Trade Center in 1993.

Let me tell you, Mr. Chairman, and I want all of my colleagues to listen, because 360 have joined with me and with my colleague, the gentleman from Maryland (Mr. HOYER), in joining the Fire Caucus; and when you signed up to join the Fire Caucus, you made a commitment to your firefighters that you would work with them, that you would listen to them, because each of you in your districts have hundreds of firefighters, both paid and volunteer, who are the backbone of FEMA. Eighty-five percent of them are volunteer.

Mr. Chairman, what did those firefighters say about this amendment? What are the fire fighting organizations saying? Let me read it into the RECORD, Mr. Chairman. Your constituents, when you belong to the Fire Caucus, and all of my colleagues on both sides of the aisle who belong better listen, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, the International Fire Service Training Association, the National Fire Protection Association, the National Volunteer Fire Council, the North American Fire Training Directors, are all unanimous. 1.2 million men and women in this country from 32,000 departments have said on the record, their first recommendation on their position paper for the Office of Homeland Security is the Federal Emergency Management Agency must be at the core of the Department of Homeland Security.

So if you are a Member of the Fire Caucus and you support this amendment, you are slapping your firefighters across the face like they do not matter. I am going to remind them. So I encourage my colleagues to vote against this amendment and support the firefighters, including the memory of my good friend Ray Downing.

Mr. OBERSTAR. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, notwithstanding the gentleman's enthusiasm, I do not think

that that is a fair characterization of our amendment. It is not a slap in the face to firefighters. Our amendment is not a slap in the face to firefighters, with all due respect to the gentleman.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Every fire organization opposes this amendment. Every one.

□ 2230

Mr. OBERSTAR. Mr. Chairman, it is an overcharacterization, to use the gentleman's language.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. COSTELLO).

Mr. COSTELLO. Mr. Chairman, I rise in support of the amendment offered by myself, the gentleman from Minnesota (Mr. OBERSTAR), and the gentleman from Indiana (Mr. ROEMER). This amendment will retain the independence of the Federal Emergency Management Agency rather than incorporate it within the Department of Homeland Security.

In the past 20-plus years, FEMA has become one of the best government agencies with responsibility for responding to, planning for, recovering from, and mitigating against disasters. FEMA currently coordinates the response activities of more than 25 Federal agencies and numerous nongovernmental groups with more than 2,500 full-time employees and over 5,000 standby disaster reservists.

The traditional role of FEMA includes advising on building codes and floodplain management; teaching people how to get through a disaster, helping equip local and State emergency preparedness; coordinating the Federal response to a disaster; and the list goes on and on, Mr. Chairman. These core responsibilities are unrelated to homeland security, but are of the utmost importance to our Nation.

Our amendment today will guarantee that FEMA will continue to focus on these tasks to prepare our Nation for disasters. Under our amendment, FEMA will remain independent and will not be absorbed into a large bureaucracy, a bureaucracy with no experience addressing these issues. Without the continuation of FEMA's independent coordinating role, we cannot ensure that the government will be able to effectively respond to and recover from disasters.

Mr. Chairman, FEMA has responded, as the ranking member, the gentleman from Minnesota (Mr. OBERSTAR), has indicated, to over 1,000 federally declared disasters and emergency declarations. They have done the job very well. I believe that they need to maintain their independence in order for us to continue with this agency that has been very effective. The agency will be more effective, both in its homeland security role and its national preparedness role, as an independent agency.

Mr. Chairman, I urge my colleagues to join me in support of this amendment.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I oppose this amendment for two reasons. Number one, FEMA is central to the success of a Department of Homeland Security because it is the critical link to emergency responders.

Secondly, I oppose this amendment because FEMA will be stronger and in a better position to help natural disasters as a part of the Department of Homeland Security rather than out on its own as some independent agency.

Now, emergency responders are the central element of homeland security, not just in responding after something happens, but in preventing things from happening. Through this FEMA structure and its 10 regional offices already established across the country, with its relationships it already has with State and local folks, information that comes into the Federal Government can be disseminated quickly to the folks on the ground who need to know it and, therefore, they can help, better help prevent terrorism. And, at the same time, if they have information that they think we need to know in Washington, they have that channel of communication that they can use to come back up the other way.

FEMA is going to be the way we provide grants and training and information and planning to emergency responders. That is why it must be in this Department and it is central to our efforts to be successful.

But as we prepare to be better equipped to deal with terrorism, we are also better equipped to deal with tornadoes and hurricanes and floods and the things that FEMA has grown to do very well. If we go to the site of a disaster after it happens, it is pretty hard to tell the difference between whether it is a terrorist event or a flood. FEMA can do both well, as it is strengthened with the resources and with the relationships and as that critical channel of communication in the Department of Homeland Security.

Mr. Chairman, I urge my colleagues to oppose this amendment. This amendment will weaken the Department and weaken our security.

Mr. OBERSTAR. Mr. Chairman, I yield 1 minute to the gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentleman for yielding me this time. I had an amendment which I submitted which is just about identical to this amendment, so I rise tonight in very strong support for the Oberstar-Costello-Roemer amendment to maintain the independence of the Federal Emergency Management Agency.

FEMA's primary mission is to provide assistance after natural disasters.

It is recognized throughout the country as the premium agency that people can depend upon. It has helped all sorts of disaster victims. It has helped certainly an entire island in my State when a hurricane hit there about 10 years ago. It not only responds to the disaster, but it helps people replace their home, repair damaged conditions, and it brings comfort and solace to the individuals who are devastated. FEMA is an entirely unique agency and to put it into this very large homeland security agency which has an entirely different mission would completely subsume the efficiency, purpose, and mission of FEMA.

So I hope that this House will support this amendment to keep FEMA and the integrity of this operation outside the Department. It can coordinate activities with the new Department, but leave FEMA as an independent agency.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding me this time.

This is a critical issue that we are debating tonight, this very amendment. I chair the Subcommittee on National Security that has oversight of FEMA, and we have oversight of terrorism at home and abroad. This is the central proposal of the Hart-Rudman, to keep FEMA as part of the homeland security. Preparedness, risk management, consequence management, emergency responders, it is the critical link to State and local responders.

I never figured out why a natural disaster, be it fire, chemical, biological, is any different than a man-made disaster, be it chemical, biological, or nuclear. The bottom line to me is we need to keep this as the central core of homeland security.

We have an amendment that I think will take some of the concerns of the author of this amendment, the Young amendment that should follow, and I think that is a happy compromise and will deal with the concerns of the ongoing FEMA responsibilities to continue. But the bottom line is this is the critical link to the responders, the State, and local responders. We need to keep FEMA part of the homeland security office.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

In response to the gentleman from Pennsylvania who spoke a moment ago and talked about the support of local fire departments, they all ought to be reminded of the headline in the Washington Post saying, "FEMA's Influence May Be Cut Under New Department. The influence of the Federal Emergency Management Agency may become severely diminished as Congress crafts legislation to create the new department."

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

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 1 minute to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, just a comment. I chair the Subcommittee on Science which has oversight of the U.S. Fire Administration and the first responders.

The fact is that we need the experience of FEMA in this new Department of Homeland Security. I understand the arguments that it would be nice to keep them separate, but the fact is they are the most experienced body. They have the tools, they have the equipment, they have the experience. I think we are not going to diminish what they are doing now, but we are probably going to expand the capabilities of what they do in responding to natural disasters.

The next amendment, I think, makes it clear that we have to keep FEMA together in this new Department of national security, and I trust that the gentleman making this first amendment is going to support that amendment, but I would say to my colleagues, vote against this amendment.

The fact is, the Fire Administration, the fire responders, the first responders believe that it is important that they stay in FEMA and that FEMA be part of this new homeland security.

Mr. OBERSTAR. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the Brookings Institution studied this proposal for a Department of Homeland Security and reached the same conclusion as former FEMA Director James Lee Witt with this observation:

“There is very little day-to-day synergy between the preventive and protective functions of the border and transportation security entities in the Department and the emergency preparedness and response functions a consolidated FEMA contributes. There is, therefore, little to be gained in bringing these very different entities under the same organizational roof. And the costs are not insignificant.

“FEMA,” the report says, “would likely become less effective in performing its current mission in case of natural disasters, as time, effort, and attention are inevitably diverted to other tasks within the larger organization.”

Prior to the time when we enacted the Stafford Act which statutorily established FEMA in 1979, after we had shed its disaster, civil defense role, the Federal Government had had no coordinated or effective response to natural disasters, but FEMA became that response agency.

Now, if we move this really effective agency into a big bureaucracy, we know what happens. We all know in this Chamber what happens when a small agency gets into a big department and the big appetite for more money to be shuffled around with fungible dollars that can go from one agency to the next and suddenly, FEMA's will just dissipate and fritter away.

Mr. Chairman, I am in the enviable position of rising in support of the unanimous position of the Committee on Transportation and Infrastructure in reporting out our responsibilities toward homeland security, and that is the committee reported out recommendation to keep FEMA as an independent agency.

All right. This is July 2002. Let us fast forward to July 2003. The majority has prevailed. FEMA is a box in the mammoth bureaucracy of the Department of Homeland Security. Flood waters are swirling around your city. You call for help. You get the Department of Homeland Security. The switchboard sends your call to the Under Secretary's office which looks up “disaster” on their organizational chart and sends you to the Congressional Liaison Office, which then promises to get a message back to you in 24 hours. Eventually, they find FEMA, by which time you are stranded on the roof of your house waving a white handkerchief and screaming for help. FEMA, the word comes back, sorry, is looking for suspected terrorists some place in the hinterland of America and will get back to you as soon as we can.

This Department of Homeland Security is a bureaucracy in search of a mission. Do not give them FEMA's mission. It is too important to waste on this misguided department. There is that old barnyard saying, “if it ain't broke, don't fix it.” FEMA ain't broke. Don't fix it by ruining it and sending it into the Department of Homeland Security. It is nimble, quick, lean, effective as an independent agency today. Keep it that way. Help your city, help your State, help yourself, help your firefighter by keeping FEMA as an independent agency where it belongs and has been effective.

Mr. ARMEY. Mr. Chairman, I yield myself the remaining time.

□ 2245

Mr. Chairman, there must be a reason why every firefighter organization in America has asked that FEMA be included in the Department of Homeland Defense, not only all the firefighters in this great land and all their organizations, but a dozen other professional emergency service organizations. Why is that? I think the gentlewoman from California (Ms. PELOSI) gives us some insight into why that would be the case. Throughout all of the hearings we held, throughout that long day of the markup, the gentlewoman from California said repeatedly locality, locality, locality.

When America is safe in our communities, America is safe. We know, we understand, we all intuitively grasp at some level and it is grasped at the most pain any acute level of understanding by the firefighters of America that this new threat we face, this insidious infliction that could be visited, yes, on my community or your community.

Mr. Chairman, our firefighters know that this requires us to have a relation-

ship with the Federal Government unlike we have had before, and when someone is in the local community and they think of the catastrophe that might come, be it a flood, a vicious storm or a vicious attack from somebody who hates our way of life, the local community is most comfortable with the agency they know, FEMA; FEMA with whom they share training, FEMA whom they know by name, FEMA whom they have seen in action before. When the crisis strikes, they want that familiar face.

Members might say if their singular concern is the well-being of FEMA as an institution and organization in Federal Government, it is better to keep it out here alone on its pedestal. One might say that if one was willing to betray FEMA because FEMA sees itself as the Federal force for comfort repair in every community in America and FEMA wants to be there. And this Congress should honor FEMA by putting them where they are needed most.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. OBERSTAR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) will be postponed.

It is now in order to consider amendment No. 2 printed in House Report 107-615.

AMENDMENT NO. 2 OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. YOUNG of Alaska:

Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 502(l) of the bill, strike “Except as provided in section 402, the” and insert “The”.

At the end of title 5 of the bill, add the following (and conform the table of contents of the bill accordingly):

**SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY**

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to,

and recover from any hazard by planning, training, and exercising;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Alaska (Mr. YOUNG) and a Member opposed each will control 10 minutes.

Mr. YOUNG of Alaska. Mr. Chairman, who is going to have the time in opposition?

The CHAIRMAN. Who takes the time in opposition to the amendment?

Mr. OBERSTAR. Mr. Chairman, I seek the time in opposition.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) will be recognized for 10 minutes.

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

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself such time as I may consume.

I can only agree with what has been said about FEMA. And if I thought for a moment that homeland security would not become a reality, I would be supporting the gentleman from Minnesota's (Mr. OBERSTAR) amendment. But I am also a very practical individual who believes that if we are going to have homeland security and FEMA is in it, it ought to be an entity as one unit. I frankly do not know how this got into the committee's markup because what it does is weaken FEMA.

It actually, I believe, is a turf war, and I think that is very unfortunate because at the very beginning when President Bush asked for Homeland Security, I told him personally that my opposition to the proposal was not a turf war, it was how it was going to be constructed. I will give the gentleman from Texas (Mr. ARMEY) credit and the gentlewoman from California (Ms. PELOSI) credit for, in fact, answering most of my questions on the Coast Guard, and I thank them for that because it is the right thing to do.

I do think it was wrong thing to do to divide FEMA. I believe FEMA should

stay intact as an entity so it can do the job people expect it to do, so it can do the job it has done and will continue to do the job under the Homeland Security bill. A lot has been said here about the importance of FEMA responding, and as all of my colleagues know it, in the New York tragedy that happened with the terrorists, FEMA was on the frontlines and did an outstanding job. So I compliment FEMA for that.

Much has been said about who supports and who does not support. I can say that I have found no one that opposes my amendment other than the Committee on the Judiciary. The firefighters support my amendment, as they should. The FEMA people themselves support my amendment as an entity. This was not the President's suggestion. This, in fact, was the ad hoc committee's suggestion.

I think in retrospect, as they look at it, maybe there was a slight mistake made, not intentionally, but because someone else asked for it and did not understand the ratification of it. So I am asking my colleagues tonight and hopefully in the vote tomorrow that if the gentleman from Minnesota's (Mr. OBERSTAR) amendment fails to at least accept the idea of keeping FEMA as an entity, because if that was not to happen, I think we would lose the total effectiveness of FEMA as a respondent, as we mentioned, to earthquakes and terrorists attacks, et cetera.

So I again ask my colleagues to support this amendment and make sure that we have an agency that can do the job correctly under the Secretary of Homeland Security.

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

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds. And I do so again in support of the unanimous position of the Committee on Transportation and Infrastructure, a wisely reported measure that would keep FEMA as an independent agency.

The plan of the Select Committee would chop off one entity of FEMA and send it to another sector, another box within the Department of Homeland Security, and keep the body of FEMA intact in another box. That does not make any sense at all.

That does not make any sense at all. That is why we wanted to keep the agency together.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SMITH).

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I oppose this amendment. I support the separation of the Office of National Preparedness from the Federal Emergency Management Agency, FEMA. This was recommended by the Committee on the Judiciary in its views on H.R. 5005.

Mr. Chairman, FEMA has an important role to play when a natural disaster

occurs. Its core mission is to provide assistance to States and local officials. In sharp contrast to FEMA's natural disaster mission, the stated function of the Offices of National Preparedness, ONP, currently within FEMA, is to respond to terrorist attacks. This office is similar to the Department of Justice's Offices of Domestic Preparedness, and yet both programs train State and local first responders for such events.

Merging the Office of National Preparedness with the Office of Domestic Preparedness will ensure the Federal coordination of State and local first responders. It ensures that they both receive law enforcement crisis management training and consequence management training.

As James Witt, the former director of FEMA stated, "FEMA has become a model agency by focusing on its prime mission: Responding to disasters and trying to reduce their impact in the future."

Mr. Chairman, this mission is inconsistent with the purpose of ONP, which is described by Bruce Baughman, director of ONP at FEMA, in a January 30, 2002 letter, is to oversee "consequence management and the impacts as a result of a Weapons of Mass Destruction—terrorist incident."

Thus, ONP should be kept with the other training programs under the Under Secretary of the Border and Transportation Security and outside of FEMA.

Mr. Chairman, I have a dear colleague letter which I will include in the RECORD.

WASHINGTON, DC, July 25, 2002.

OPPOSE THE YOUNG (AK) AMENDMENT TO MOVE THE OFFICE OF NATIONAL PREPAREDNESS BACK TO FEMA

DEAR COLLEAGUE: In the event of a terrorist attack, it is essential that there be a single office within the federal government to coordinate state and local first responders. This office must assure coordination in training, equipment selection, acquisition, and use by first responders in both crisis management and consequence management. Crisis management is a primarily law-enforcement function, it involves intelligence, surveillance, tactical operations, negotiations, forensics, and criminal investigations, arrest, evidence collection and prosecutions. First responders include law enforcement, fire fighters and other emergency responders, who must be trained together to assure a coordinated response.

FEMA, however, has stated that it will NOT provide training and equipment needs to first responders for law enforcement's crisis management functions. But a terrorist attack is a Federal crime and a crisis event. Such an event requires a law enforcement response different from a response to a natural disaster.

In sharp contrast to FEMA's natural disaster mission, the reason for the creation of FEMA's Office of National Preparedness (ONP) was to coordinate consequence management and limit the impact as a result of a weapons of mass destruction (WMD) incident. ONP's mission fits more appropriately with the other first responder programs.

The Select Committee's bill merging the Office of National Preparedness with the Office of Domestic Preparedness reporting to

the Under Secretary of Border and Transportation Security in essential to assuring the required federal coordination of state and local first responders, and assuring that they receive both law enforcement/crisis management training and consequence management training.

Mr. Young will offer an amendment to return the Office of National Preparedness to FEMA. Such a move would effectively gut any hope for a coordinated federal effort in this vital mission. Lack of coordination will cost lives. The attached article from last week's New York Times vividly highlights this point and points out that the lack of a coordinated response by state and local law enforcement and firefighters likely caused additional avoidable casualties on September 11. We must make sure that any future terrorist threats are addressed with a coordinated response, managed by a single office in the new Department of Homeland Security.

Moreover, such an office must be housed within the Under Secretary line of authority which has the needed law enforcement components, expertise and resources to assure that the crisis management component is given its proper emphasis. That is accomplished by the Select Committee's bill.

As former FEMA Director James Lee Witt stated "A Department of Homeland Security that has a focused mission and does not include a patchwork of unrelated programs will have a much greater chance at success. A successful Department of Homeland Security will ensure that horrible events, such as the WTC attacks, continue to be extremely rare occurrences and much less common than the hundreds of floods, tornados, and hurricanes that affect our nation each year."

Many believe that the Office of National Preparedness has already distracted FEMA from its primary mission and created a imbalanced focus for an agency which generally responds to natural disasters. For a future terrorist attack we need a single office for a coordinated response. ONP should not go back to FEMA. Oppose the Young amendment.

Sincerely,

F. JAMES SENSENBRENNER,  
Jr.,

*Chairman, Committee  
on the Judiciary.*

JOHN CONYERS, JR.,  
*Ranking Member,  
Committee on the Judiciary.*

LAMAR SMITH,  
*Chairman, Subcommittee on Crime  
Terrorism and Homeland Security.*

HENRY J. HYDE,  
*Chairman, Committee  
on International Relations.*

SAXBY CHAMBLISS,  
*Chairman, Subcommittee on Terrorism and Homeland Security of the House Intelligence Committee.*

ROBERT C. SCOTT,  
*Ranking Member, Subcommittee on Crime  
Terrorism and Homeland Security.*

Mr. Chairman, this dear colleague letter was sent out a few days ago in opposition to the Young amendment to move the Office of National Preparedness back to FEMA. I would like to read the signatures on this letter, Mr. JAMES SENSENBRENNER, Chairman,

Committee on the Judiciary; JOHN CONYERS, Ranking Member, Committee on the Judiciary; it is signed by me, Chairman, Subcommittee on Crime, Terrorism and Homeland Security; HENRY HYDE, Chairman, Committee on International Relations; SAXBY CHAMBLISS, Chairman, Subcommittee on Terrorism and Homeland Security of the House Intelligence Committee; and ROBERT C. SCOTT, Ranking Member, Subcommittee on Crime, Terrorism and Homeland Security.

H.R. 5005, the Homeland Security Act as reported by the Select Committee, has put FEMA in the Emergency Response division under the Department of Homeland Security (DHS) and placed FEMA's Office of National Preparedness (ONP) in the Border Security division with the other offices that train first responders. This structure is essential to ensure that the Department maintains its focus on prevention of terrorist acts.

Critically, the Border Security Division will assume responsibility over several different offices that administer training to all state and local responders, including offices, fire fighters, and other emergency responders. These offices were previously housed at the Department of Justice and FEMA.

Their new location in DHS will provide an integrated program, with the requisite expertise, to lead a comprehensive and coordinated effort to train our first responders, including law enforcement and consequence management training for a terrorist threat or attack.

Federal law enforcement authorities notify first responders of threats and the first responders must have crisis management training and equipment to respond appropriately. For instance, they must be trained in detection and disruption skills, which are law enforcement skills. They will need fundamental law enforcement training to detect or collect evidence that will help prevent a future or halt an ongoing attack.

All first responders need these skills—including fire fighters and other emergency providers. Such skills will save lives. Such skills will help first responders prevent secondary attacks.

This is why the Office of National Preparedness (ONP) must be placed in the Border Security Division with the Office of Domestic Preparedness, and the National Domestic Preparedness Office training programs. Together, these programs will ensure a coordinated effort to provide first responders with the necessary law enforcement training as well as consequence management training.

This structure will create "one-stop shopping" that provides all the necessary training and assistance to state and local responders. "One-stop shopping" will *not exist* if ONP is placed back into FEMA because as Director Allbaugh stated in a March 13, 2002 letter to the Judiciary Committee, FEMA will not provide law enforcement training.

Separating ONP from FEMA will *not* create duplication and fragmentation of federal assistance programs. In fact, it will eliminate such redundancy. Placing ONP back into FEMA will guarantee an inconsistent uncoordinated program where some first responders receive only consequence or clean up training and other responders will receive both crisis and consequence training.

Furthermore, placing ONP with the other training programs outside of FEMA will in no

way harm its relationship with the U.S. Fire Administration (USFA). USFA assists ONP to organize training, planning and exercises for emergency responders. It will continue to do so regardless of ONP's location. Currently, the USFA assists the Department of Justice in their training, planning and exercises for emergency responders and no one has suggested that the USFA should be moved over to Justice.

ONP does not belong in FEMA. I urge my colleagues to oppose the Young Amendment.

Mr. YOUNG of Alaska. Mr. Chairman, if I can remind my good friend from Texas, they all came from the Committee on the Judiciary that signed that letter.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE), chairman of a very, very important subcommittee under the Committee on Transportation and Infrastructure that handles FEMA.

Mr. LATOURETTE. Mr. Chairman, I thank the chairman for yielding me time.

Mr. Chairman, I want to preface my statement by making clear that I support our first responders and the vital worth they do in protecting our citizens.

I also want to indicate my tremendous respect for the gentleman from Texas (Mr. SMITH) and the fine work he does for Congress and in the Committee on the Judiciary. But I am sad. I am sad because when we were dealing with the supplementary appropriations bill in this Congress, there is a turf battle that has developed. A turf battle that the President of the United States said we should not be having as we establish a Department of Homeland Security.

And the Committee on Judiciary sadly continues to come before the Members of our body and say they want to keep a program that the President of the United States says he wants to abolish, has defunded in the budget he sent here in February, and we have a fight over \$175 million. And who is better to distribute that money to the first responders across America?

Is it a department within the Department of Justice or is it FEMA? The Department of Justice's Office of Justice Programs is continuing to fund duplicative and overlapping programs. Our subcommittee has held numerous hearings on preparedness and response. The GAO has issued several reports on the issue. The subcommittee's findings and independent studies are consistent in their message to the Congress, we must stop spending money on duplicative and overlapping programs.

Mr. Chairman, I respectfully respect every member of the Committee on the Judiciary, but they are wrong. The gentleman from Alaska (Chairman YOUNG) is right and we need to support his amendment.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

The amendment offered by the chairman of the Committee on Transportation and Infrastructure is well-intentioned. In true sea captain fashion, he

is trying to repair the ship that has got a leak in the hull, and the leak in the hull is this scheme of taking an effective, functioning, useful agency that delivers goods, puncturing a hole in it and sending it over to the Department of Homeland Security where it serves no useful purpose to that department.

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

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. WELDON), an outstanding supporter of the firefighters of America to speak on my amendment.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, we are here tonight, I hope, to help the people who are our first responders. We were not here to help Brookings Institution. We are not here to help The Washington Post. We are not here to help the members of the Committee on the Judiciary. They are not out fighting fires. They are not out there dealing with disasters. They were not at the World Trade Center.

The first responders of this country have spoken. All of their national associations met, and the date of this document, which I will insert in the record, this document is their combined position paper on the creation of the Office of Homeland Security. It is not me. It is every firearm service organization. Do we not respect them? Do you belong to the fire caucus? Are you listening to your firefighters? Your paid firefighters, your volunteers, your chiefs, because they thought this through. And what is their first recommendation?

The Federal Emergency Management Agency which is tasked with emergency preparedness and response missions must be at the core of the Department of Homeland Security.

Now, I do not care what the Committee on the Judiciary says. My friend from Texas (Mr. SMITH) the Committee on the Judiciary, says this should be separate. Well, he ought to go back and talk to the firefighters in Texas because they do not want that. The fire service of this country, including all of those firefighters from Texas want the Office of Homeland Security to control FEMA and as a part of FEMA they want the U.S. fire administration.

Mr. Chairman, I cannot believe we are having this debate because this is not about a bunch of bureaucrats or politicians in Washington who are going to leave here and go respond to disasters. This is about the people who we are going to call upon and they have told us what they want in black and white.

□ 2300

I will say it again, if we ignore what they want, I do not know what else we call it if it is not a slap across the face. It is a punch in the mouth because it is

clearly stated what they want, and what we are saying is we do not care what you want. We do not care what you say. We do not care what you ask for. We do not care that you are the fire chief. We do not care that you are the firefighters. We are going to tell you from Washington inside the Beltway that we know better than you do because Brookings Institution told us how to organize this Department.

Vote for the firefighters. Vote for this amendment, and vote down the Oberstar amendment.

FIRE SERVICE POSITION PAPER ON THE PROPOSED DEPARTMENT OF HOMELAND SECURITY  
*Overview*

The American fire and emergency service was very encouraged when the President proposed the creation of the Department of Homeland Security, especially since it has long advocated the need for a central point-of-contact for terrorism preparedness. Much has changed in the post-September 11th world, but one thing has remained constant: America's fire service must have the adequate personnel, training, and equipment to respond to future emergency incidents, including terrorist attacks, hazardous materials and emergency medical services incidents, technical rescues and fires. These, plus many other challenges, are what makes the fire service America's all-hazards first responders.

In developing a new department, Congress and the administration must consider a number of crucial issues or the department will fall short of meeting its desired intent:

1. The Federal Emergency Management Agency, which is tasked with emergency preparedness and response missions, must be at the core of the Department of Homeland Security. This guiding principle must manifest itself during the planning and development of a new department. To achieve this end, it is imperative that the fire and emergency service has significant representation at the table throughout the entire planning process.

2. The definition of a "first responder" must be clearly articulated from the onset, placing heavy emphasis on response times and exposure to risks. First responders are fire and rescue, emergency medical services and law enforcement personnel. This definition will determine to a large extent the distribution of federal funds to local, state and federal response agencies. To this end, it is imperative that funding for training and equipment reach the local level where it is needed most. Moreover, existing federal programs benefiting local first responders must be preserved. Of particular importance to the fire service is the Assistance to Firefighters grant program, authorized at \$900 million for fiscal year 2003. Congress needs to fully fund this program to bring all fire departments up to a baseline level of readiness and keep them there. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters. Any new grant programs addressing terrorism must be inclusive of all first responders and authorized to deliver at least 90 percent of all funds to local public safety agencies.

3. Local first responders are this nation's primary defense against terrorism. Without sufficient staffing and training, the risk of injury or death increases dramatically. This is why fire departments—both volunteer and career—must have adequate staffing levels and continuous training. Training must con-

sist of existing national programs that utilize first responders to train first responders, and take full advantage of state and regional training centers. Moreover, training and equipment must conform to nationally-recognized voluntary consensus standards where such standards exist.

4. The tragic events of September 11th have again demonstrated the importance of communications to public safety. This issue, itself, is not limited to on-scene communications, but encompasses a wide variety of needs including: access to intelligence data on possible terrorist threats/attacks, additional spectrum for interoperability of radio systems, and new technologies that can track the positions of firefighters inside buildings.

These are some important components of the blueprint for a Department of Homeland Security. We ask for both Congress and the administration to give these concerns their every consideration as they lay the groundwork for a new federal agency. Firefighters have long recognized their role in protecting our nation against threats of all magnitude and will continue to serve on the front lines against future attacks. No matter what the final configuration of the complete national response plan to terrorism, the fire service and other first responders will always be first to arrive at the scene. They must be properly staffed, trained, and equipped in order to make a positive difference at the "moment of truth." It is imperative that they be given the recognition and support needed to enhance their level of readiness and decrease their exposure to risks.

*Priorities*

ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

The Assistance to Firefighters grant program, commonly referred to as the FIRE Act program, is a model of efficiency. This can be attributed to the fact that it is a competitive grant program that provides direct support to local fire departments for basic fire fighting needs. Another important element of this grant program is that applications are peer-reviewed by fire service experts and grants are made on the basis of needs. Full community participation is assured by the matching grant requirement.

It is crucial that the Assistance to Firefighters grant program remains separate and distinct from any new funding programs for first responders and that it be fully funded to the amounts authorized by law. This is because local fire and emergency services departments are the only organizations deployed for the purpose of saving lives and mitigating property and environmental damage caused by natural or manmade disasters. They are strategically located throughout America and staffed, trained and equipped to arrive on the scene within 4 to 6 minutes of notification of an incident. It is only the local government level that Federal funds intended for first responders can be assured of being utilized for the purposes intended. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters.

Providing support for the basics of fire fighting enhances all fire department responsibilities, including terrorism response. The history of the program to date: Authorized at \$900 million through fiscal year 2004, Funded at \$100 million for fiscal year 2001 and \$360 million for fiscal year 2002, Almost 20,000 departments (of a total of 26,350) sought funding in each of the first 2 years in amounts approaching \$3 billion each year.

FIRST RESPONDER GRANT PROGRAM

America's fire and emergency service stands strongly in support of the proposed

\$3.5 billion first responder grant program. The program is uniquely positioned to promote desperately needed coordination between neighboring jurisdictions and various first response agencies. To ensure that the money is wisely spent, several principles should be included in the program.

First, at least 90 percent of the money must reach the local level. The funding should go through the States, but it should not stop there. While terrorism is an attack upon our Nation, every terrorist attack is first an attack upon a local community. The ability of our Nation to effectively combat terrorism is therefore inextricably intertwined with the ability of our local communities to respond to such attacks. Thus, a paramount job of the Federal Government is to provide adequate resources to local emergency response operations.

Secondly, the State agencies that distribute this funding must include all first responder interests in the decision making process. Too often the fire service is left out of discussions at the State level. This oversight must be corrected.

Thirdly, the States must expedite the funding to local governments. States are already undertaking needs assessments for terrorism preparedness, so within a limited amount of time the funding should be distributed to local governments.

Finally, if a match from State and local governments is part of the requirement for receiving Federal funds, then State and local in-kind contributions should meet, in full, that requirement.

#### WEAPONS OF MASS DESTRUCTION (WMD) TRAINING

The current WMD fire fighter training program operated by the Office of Domestic Preparedness in the U.S. Department of Justice must be retained and strengthened. The organizations that currently provide specialized WMD training under this program possess invaluable expertise and experience, which should be preserved under any plan to reorganize federal training programs. It is important to utilize existing and established programs to ensure the right training reaches the right people.

#### STANDARDIZATION OF EQUIPMENT

The InterAgency Board for Equipment Standardization and InterOperability (IAB) is designed to establish and coordinate local, state, and federal standardization, interoperability, and responder safety to prepare for, respond to, mitigate, and recover from any incident by identifying requirements for chemical, biological, radiological, nuclear or explosives incident response equipment. In addition to radio communication systems, interoperability applies to a firefighter's protective gear and rescue equipment. For instance, air cylinders of one manufacturer of self contained breathing apparatus cannot be interchanged with those from another. The purpose of the IAB is to ensure standardized and compatible equipment for use by emergency response personnel. The First Responder grant program should require that the Standardized Equipment List (SEL) prepared by the IAB be utilized for the purchase of equipment made possible by the federal grant.

#### SAFECOM

SAFECOM was formed as an e-government initiative with its purpose to improve wireless radio communications among and between federal agencies. Recently, the scope of SAFECOM was expanded to include state and local government and the lead agency

was changed to FEMA. Since this is the primary federal initiative to improve wireless radio communications and interoperability for local fire and emergency medical services departments it is essential for the fire service to have representation on advisory committees to SAFECOM. Local public safety first responders must have appropriate input to federal SAFECOM decision makers.

#### Conclusion

Future events will require continuous review and evaluation of all federal programs designed to mitigate the potential impact of terrorist attacks and other major disasters. In highlighting the primary theme of this report, it is imperative that those agencies at the local level—specifically the fire and emergency services, emergency medical services and law enforcement—serve a primary role in the development of all federal initiatives dealing with national homeland security initiatives.

Mr. OBERSTAR. Mr. Chairman, I yield myself 1½ minutes.

I love the enthusiasm of the gentleman from Pennsylvania, Mr. Chairman. He can get fired up and enthusiastic, but let me make it clear to this body that the gentleman from Pennsylvania does not speak alone for firefighters across America. They have been misguided. I do not know who wrote their position paper for them, but it is clear that the firefighters that I have talked to in my district have said we did not think this is a particularly good idea.

FEMA works well now. What is going to happen to the Office of Fire Training and the small grants for small communities when this effective agency is swallowed up into the guts of a huge bureaucracy of 170,000 people? And for all the enthusiasm of my good friend, and I admire this gentleman and we have worked together on a number of matters, for all his enthusiasm, Mr. Chairman, I warrant we will be back here a year from now when the gentleman from Pennsylvania and others who might be so misguided as to vote for keeping the position of the Select Committee on Homeland Security, be back here saying, what has happened to the money? We need more funds for FEMA; we need more funds for firefighting. It is being swallowed up by the Department; these dollars have been shifted around.

Does the gentleman from Pennsylvania have a firewall to protect the funds for FEMA from being swallowed up into some other part of the Department of Homeland Security? Not on my colleague's life. It is not part of this bill. There is no way to protect FEMA from the overarching, swarming arms of the Department of Homeland Security.

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, the gentleman from Minnesota (Mr. OBERSTAR) is still arguing his first amendment maybe. If we break off part

of FEMA and that part of FEMA gets the \$3.5 billion that we are talking about for additional training, then we move the whole U.S. fire administration away and we move the rest of FEMA away from that kind of decision.

I support the Young amendment, which would ensure that the Federal Emergency Management Agency's Office of National Preparedness is not broken off from the rest of FEMA and does not become part of the Under Secretary for Border Transportation and Security, but that it remains with FEMA, with the rest of FEMA as part of the Under Secretary for Emergency Preparedness and Response.

I think we all agree that emergency preparedness response activities will provide a critical role in the new Department of Homeland Security and has properly been selected as one of the four primary functions of the Department. I am chairman of the Committee on Science, Subcommittee on Research, and a Member that is actively involved in the first responder activities overseeing the U.S. fire administration.

All of the fire organization first responders think that FEMA should not be broken up, that the Young amendment should be passed; and I can tell my colleagues that there is no better agency to lead in this effort than FEMA. FEMA has the right personnel, the right resources and considerable experience demonstrating their ability to lead.

For these reasons, I believe that it is extremely important that we should protect and even expand FEMA's leadership role in this area. Most important, in protecting this role is keeping FEMA responsible for the \$3.5 billion first responder grant initiative that the President proposed in his budget this year.

This is what the Young amendment does; and Mr. Chairman, let me emphasize that in the administrative policy that the President sent over today, they support the Young amendment. Unfortunately, with some political maneuvering from the Judiciary, it was mixed up in this, and I think the whole body should support the Young amendment, keeping FEMA together and keeping it active and keeping it organized and helping our first responders.

Mr. OBERSTAR. Mr. Chairman, could the Chair advise the time remaining.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) has 5 minutes remaining. The gentleman from Alaska (Mr. YOUNG) has 1½ minutes remaining. The gentleman from Alaska (Mr. YOUNG) has the right to close.

Mr. OBERSTAR. Mr. Chairman, I yield myself such time as I may consume.

For the purpose of propounding a question to the chairman of our distinguished committee, Mr. Chairman, I would ask the gentleman from Alaska if he has any information about plans of the administration, any assurances in writing about the status of the first responder program and the status of the firefighter grant program in the new Department of Homeland Security?

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, the information I have, and again, I do not have anything in writing, they have testified in favor of my amendment, have written in favor of the amendment; and I think it is up to the Congress and I talked to the gentleman from Pennsylvania (Mr. WELDON) about it to make sure, as this new agency is created, we fund FEMA in toto as it should be to carry forth its duties.

If the gentleman would further yield to me, what I am trying to do here is, I told the gentleman, if I had my way, I would be supporting the gentleman's amendment, as the committee did, but realistically, I do not think that is possible. So I have to do what is best for FEMA and that is keep it as an entity and not have it split up because that would be a disaster, as the gentleman and I know. So that is really what I am trying to do is put everything back together again. I think it was inadvertently split apart.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, I just want to return to a letter of the International Association of Firefighters that was referenced in a previous debate on the floor to point out that the association says the Fire Act, meaning the small community grant program and the first responder proposal, serve different purposes and one should not subsume the other. That is what is going to happen if we swallow this agency, FEMA, up into this huge bureaucracy.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, we have a bill in the Committee on Science, the Subcommittee on Research. This bill that I introduced makes it very clear that the fire grant program is separate and distinct and the U.S. Fire Administration is still going to continue to administer that program separate from what might be broken off from FEMA.

Mr. OBERSTAR. Mr. Chairman, I appreciate the gentleman's bill, but it is not part of the Homeland Security Department. It is not part of the manager's amendment. It is not part of the legislation pending before us, and it is sort of kind of a pig in a poke, is a

promise in waiting, is not a good service to the firefighters of this country.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I would just remind my good friend that it was not his committee that created the fire grant program. It was this gentleman who brokered the fire grant program as an addition to the defense authorization bill. It was not the gentleman, it was not James Lee White who requested money for the firefighters which the gentleman is now so desperately saying is going to be taken away.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman's enthusiasm is wonderful. No speaker, Mr. Chairman, has impugned the gentleman's standing. In fact, I have praised the gentleman's enthusiasm for the firefighters. In fact, I have been a most enthusiastic supporter of FEMA, and then the gentleman's colleague, now Secretary in waiting for the Department of Homeland Security, was a member of this body when I held hearings on the proposal of the Reagan administration to, in effect, dismantle FEMA, and we reestablished FEMA. I asked the gentleman from Pennsylvania, Mr. Ridge, to be the sponsor of the legislation so that we would have bipartisan support for it.

I have worked diligently to establish FEMA, and I admire the work that the gentleman from Pennsylvania in the well has done on the fire grant program; and I do not want it to be swallowed up in some huge bureaucracy and crossbred with some other program.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I am grateful for the outstanding work the gentleman's done, and I would remind him, when I first came to Congress, and the gentleman was in the majority, he had dismantled the U.S. Fire Administration. He had put the fire academy under the National Emergency Management Training Center so the firefighters in this country were totally at a loss because he had taken away everything that had stood for them.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman impugns to me an action that I did not take. The gentleman impugns to me an action that I did not take that was initiated by an administration and an action that I was not in support of.

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself the remaining time.

I would like to just say a couple of small things about this. I hope the gentleman from Minnesota understands what I am trying to do; I am confident he does. I hope the rest of the committee understands that FEMA separated, as proposed by the ad hoc com-

mittee, would be a disaster. The President supports my position. I believe every member of the committee other than the Committee on the Judiciary supports my position, and I ask for a "yes" vote on this very important document.

Much has been said tonight about who supports the firefighters the most. I will say the gentleman from Pennsylvania (Mr. WELDON) is outstanding in that arena, but I also say that the gentleman from Minnesota (Mr. OBERSTAR) is also outstanding in that arena; and the gentleman from Minnesota's (Mr. OBERSTAR) intent to keep FEMA outside of the separate agency should be admired.

I do not think it is a reality, but in saying that, if it is not outside, let us make it whole. Let us make it as one. Let us make it an entity where we know where the money is going. Let us not make it an entity that goes into another agency that has frankly misused their dollars, has not used them correctly. In fact, the GAO says that, and I think it has been raised up before that let us keep this agency intact, let us make sure it works, let us make sure our constituents can be responded to if there is a national disaster, man-made disasters, so we have somebody to turn to and they have somebody to listen to and our constituents are served.

That is all I am asking in this amendment. I urge a quick passage of this amendment.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska (Mr. YOUNG).

The amendment was agreed to.

Mr. ARMEY. Mr. Chairman, pursuant to section 4 of House Resolution 502 and the order of the House of earlier today, I announce that the amendment by the gentleman from California (Mr. WAXMAN), No. 3 in the House Report 107-615, may be offered after consideration of the amendment numbered 16. Because the committee will rise this evening immediately after consideration of amendment No. 16, the gentleman from California's (Mr. WAXMAN) amendment will be the first amendment in order tomorrow morning.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 107-615.

AMENDMENT NO. 4 OFFERED BY MR. COX

Mr. COX. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. COX:

In section 201(5), insert the following before the period at the end: "including, but not limited to, power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and

technological assets that support such systems”.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. COX) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. Cox).

Mr. COX. Mr. Chairman, I yield myself such time as I may consume.

This amendment will specifically include cybersecurity as a function of the Department of Homeland Security. The amendment is supported by the Bush administration, and it was crafted with the assistance of the Committee on Energy and Commerce; and, Mr. Chairman, I would like to commend the distinguished gentleman from Louisiana (Mr. TAUZIN), the chairman of the Committee on Energy and Commerce, and the distinguished gentleman from Michigan (Mr. DINGELL), the ranking member, for their work in putting together this provision.

□ 2315

Just this week, the Committee on Government Reform received testimony warning of the significant threat of attacks on our Nation's information infrastructure. We learned how terrorists or hostile foreign states are building the capability to launch computer attacks on critical systems with the aim of severely damaging or disrupting national defense and other critical operations.

While much of this information is necessarily secret, there is ample open source information we can discuss on the floor this evening.

The Washington Post, in a recent page one story on cyberattacks stated, “Terrorists are at the threshold of using the Internet as a direct instrument of bloodshed. The new threat bears little resemblance to familiar financial disruptions by hackers responsible for viruses and worms. It comes, instead, at the meeting points of computers and the physical structures that they control. By disabling or taking command of the floodgates in a dam, for example, or of substations handling 300 volts of electric power, an intruder could use virtual tools to destroy real world lives and property.”

The amendment that I am offering will make it clear that responsibility for mounting a coordinated national effort at cybersecurity rests with the Department of Homeland Security. Specifically, it will designate the position of Under Secretary for Informational Analysis and Infrastructure Protection as the individual in the United States government who is specifically charged with cybersecurity. It provides that the Under Secretary is responsible for preventing and defeating computer attacks aimed at America's electric power production, our electric power distribution, including power grids, our information technology systems, both commercial and public telecommunication systems, satellites, the banking system, electronic commerce, and

emergency preparedness systems, including our civil defense network.

This amendment is needed for two reasons: First, while the base bill gives the new Department of Homeland Security the responsibility of protecting our Nation's critical infrastructure, this term is left largely undefined. When it comes to our Nation's information technology and communications infrastructure, we want there to be no mistake, no ambiguity. This amendment clarifies that when we use the term “infrastructure” in this Act, we are talking about more than roads and sewers.

By naming the specific threats we know that we face today, and by carefully enumerating the major critical information systems we intend to protect, we will be certain of consolidating both responsibility and authority for this function in one person in the Department of Homeland Security.

The second reason this amendment is needed is to ensure that the Department of Homeland Security will work to protect not just the government's, but the entire Nation's critical communications, power, and information technology assets. As much as 90 percent of our Nation's critical information technology infrastructure, such as financial records, energy distribution, and communication systems are privately owned and managed. Cybersecurity is, thus, an issue that goes far beyond the Federal Government's own assets.

Last November, in testimony before the House Committee on Energy and Commerce, former Representative Dave McCurdy, now the head of the Internet Security Alliance, reported that the private sector is under constant widespread and destructive cyberattack. He noted that over 80 percent of the Internet is owned and operated by the private sector.

Two years ago, the Carnegie Mellon Software Engineering Institute documented more than 20,000 incidents of cyberattacks against private U.S. firms. Last year, the following year, in 2001, that number of cyberattacks nearly doubled.

The CHAIRMAN. Does any Member claim time in opposition to the amendment?

If not, the question is on the amendment offered by the gentleman from California (Mr. COX).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 107-615.

AMENDMENT NO. 5 OFFERED BY MR. ISRAEL

Mr. ISRAEL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. ISRAEL:

At the end of title III, insert the following new section:

**SEC. 309. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.**

(a) ESTABLISHMENT.—There is established within the Department of a Homeland Security

Science and Technology Advisory Committee (in this section referred to as the “Advisory Committee”). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENT.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of one year, one a term of two years, and the other a term of three years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when one of its members has a conflict of interest in a matter being considered by the Advisory Committee

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary of Science and Technology

for transmittal to the Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) **ADDITIONAL REPORTS.**—The Advisory Committee may render to the Under Secretary for transmittal to the Congress such additional reports on specific policy matters as it considers appropriate.

(i) **FACA EXEMPTION.**—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from New York (Mr. ISRAEL) and a Member opposed each will control 5 minutes.

The gentleman from New York (Mr. ISRAEL) is recognized for 5 minutes.

Mr. ISRAEL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we also share the desire to see that something like September 11 never happens again. As a Member would whose district lies about 40 miles from what we now call "Ground Zero," the consideration of the Homeland Security Act holds a very special importance for me. My district lost over 100 people on that tragic day.

One of the great pleasures of serving on the Committee on Science with the gentleman from New York (Mr. BOEHLERT), the chairman of that committee, is the bipartisan manner in which he has guided the committee. I take pride, as I am sure he does, that legislation produced in the Committee on Science bears the input and the collaboration of all of its members. This was true when we debated those areas of the Homeland Security Act that fell in the purview of the committee and passed an amendment to create an advisory committee of the first responders, specifically in the Office of Science and Technology.

Let me explain why this is so necessary. As I said before, my Congressional District is about 40 miles from Ground Zero. Lots of first responders live there. Lots of first responders lived there, until September 11.

Our first responders have something unique and something special to offer the new Homeland Security Department, particularly in the areas of researching and developing new sciences and new technologies to save and protect lives, including their own, in engineering issues, in identifying research and budget priorities for new emergency equipment, even the apparel that protects them.

The compromise that was developed in the committee creates an advisory committee of 20 first responders. They would be selected by the Under Secretary of Science and Technology. They would be eminent in emergency response, research, engineering, and new product development. Mr. Chairman, the fact is that first responders will be the end users. They are the customers of the new technologies and sciences that are developed in the Office of Science and Technology, and they deserve a place at the drawing board.

I offer this amendment in the belief that we should value our first responders, but also accept their invaluable advice.

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

Mr. ISRAEL. I yield to the gentleman from California.

Ms. PELOSI. Mr. Chairman, I want to commend the gentleman for his leadership. This combines two very important issues having to do with the Department of Homeland Security, one of which is the use of science and technology. To the extent that this new Department can maximize the technological capabilities, I believe it will be more successful.

And as the distinguished majority leader quoted me as saying earlier in the debate, localities, localities, localities, that is the most important consideration that we should have when we talk about where the threat exists, where the ideas are, and where the need for resources are. Communication with those localities is where we should begin and end the development of protecting the American people.

So I commend the gentleman for his leadership, for the entrepreneurial spirit of his suggestion, and I hope the body will accept it. I urge my colleagues to support it.

Mr. ISRAEL. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. ISRAEL).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 6 printed in House Report 107-615.

AMENDMENT NO. 6 OFFERED BY MS. RIVERS

Ms. RIVERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. RIVERS:

At the end of title III, insert the following new section:

**SEC. 309. INQUIRIES.**

(a) **OFFICE.**—The Secretary, acting through the Under Secretary of Science and Technology, shall establish an office to serve as a point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such office shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) **FUNCTIONS.**—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Numbered 30) to—

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate;

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government; and

(4) develop and oversee the implementation of homeland security technology demonstration events, held at least annually, for the purpose of improving contact among technology developers, vendors, and acquisition personnel.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentlewoman from Michigan (Ms. RIVERS) and a Member opposed each will control 5 minutes.

The gentlewoman from Michigan (Ms. RIVERS) is recognized.

Ms. RIVERS. Mr. Chairman, I yield myself such time as I may consume.

This past fall, when the anthrax outbreak hit Capitol Hill, a company in my district approached me with a product they had developed they felt could be of significant use in the decontamination efforts here in Washington. For weeks, my staff and I tried to get this company in touch with the correct agency or find someone willing to learn about their product and determine if it could be of use.

Whether or not this company did indeed have the miracle cure is not the point, rather there should be an easier way to facilitate contact between scientists and developers at the local level and decision-makers within the Federal Government. This amendment speaks to that very need.

Now, it is my understanding that the elements of my amendment, which was added in the Committee on Science, have actually been folded into this bill, and I am very pleased to hear that. I want to thank the chairman of the Committee on Science, the gentleman from New York (Mr. BOEHLERT), who supported the amendment in committee, for his leadership in this matter. I would also like to thank the gentlewoman from California (Ms. HARMAN), the gentleman from Virginia (Mr. DAVIS), the gentleman from Connecticut (Mr. SHAYS), the gentleman from Georgia (Mr. CHAMBLISS) for the bipartisan cooperation that occurred in getting effective practical language into the manager's amendment. And, Mr. Chairman, the gentleman from Texas (Mr. HALL) was helpful as well.

This amendment specifically tasks the Under Secretary for Science and Technology to work with the Technical Support Working Group, TSWG, a Defense Department group that has the infrastructure in place to help mobilize existing technologies for our national security needs.

Homeland Security and TSWG will work together to review proposals, assess their feasibility, and identify areas where current technology could be adapted and deployed immediately. This would be tremendous progress from the status quo.

Although there are a couple of issues, like a point of entry for individuals or companies seeking guidance in interaction with the government, in other words, we must have an open door for people with unsolicited ideas who do not know how to work their way around the Federal Government, these are not a part of the language currently in the bill. I believe that we can

work together to develop in conference information to clarify and improve this, and I believe the language can be achieved relatively easily.

Ms. PELOSI. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I commend the gentlewoman for her leadership on this important issue.

As the chairman knows, on the Permanent Select Committee on Intelligence, where we both serve, we have a great need for "needs and leads." Certainly, the Federal Government and the intelligence community and the Department of Homeland Security benefits from leads that it receives from businesses coming forward with new entrepreneurial ideas that we have not even thought of.

We also have many needs that we are reaching out to businesses to fill. The Office of Inquiries within the Department of Science and Technology would act as a point of entry, as the gentlewoman suggested. It is an excellent idea to accommodate the system of "needs and leads," and also contributes to maximizing the technological capabilities that exist in our country to make the Department of Homeland Security even more successful in protecting the American people.

The gentlewoman from Michigan has done a great service in successfully presenting this amendment. I commend her for it, and I urge my colleagues to support it.

Ms. RIVERS. Mr. Chairman, I ask unanimous consent that my amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

It is now in order to consider amendment No. 7 printed in House Report 107-615.

AMENDMENT NO. 7 OFFERED BY MS. WOOLSEY

Ms. WOOLSEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Ms. WOOLSEY:

At the end of title III, insert the following new section:

**SEC. 309. HOMELAND SECURITY INSTITUTE.**

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION OF INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions.

(e) ANNUAL REPORTS.—The Institute shall transmit to the Security and the Congress an annual report on the activities of the Institute under this section.

Amend the table of contents accordingly.

Ms. WOOLSEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment requires the Secretary to create a Homeland Security Institute. It will be an independent, federally-funded research and development center: A think tank. That same style organization that will contract with the Department to provide objective analysis and to advise on science and technology issues.

□ 2330

In the Committee on Science, we voice-voted with no opposition the creation of this institute. I was pleased that the gentleman from New York (Mr. BOEHLERT) supported it in committee, and hope that he will also support it this evening. Since it was dropped in the version by the gentleman from Texas (Mr. ARMEY), I commend the Committee on Rules for bringing it before the House for consideration.

The concept for a homeland security institute is based on the key recommendation from the National Academy of Sciences' June 2002 report entitled Making the Nation Safer: The Role of Science and Technology in Countering Terrorism. Government agencies, including the Departments of Defense, DOE, HHS and the National Science Foundation, currently sponsor more than 35 institutes like this amendment proposes.

Let me give an example of how the institute could work. First responders and emergency personnel from different jurisdictions and departments often have difficult times communicating during a crisis. An appropriate

role for the institute would be to work with Federal, State and local agencies to develop the technology and implement the standards necessary to communicate effectively in a crisis.

The fact is that existing Federal agencies may not be able to supply the depth and breadth of technical expertise needed. Many of those with the necessary analytical and technical skills necessary do not work for the government. Instead, it is more likely that they could be working at one of the current institutes, like the Rand Corporation or the Institute for Defense Analysis, or in academia.

Considering the technical nature of the threats before us, the brightest minds of our time must be at the table. Just because these individuals do not draw their paycheck from the Treasury Department does not mean that we should not tap their expertise.

Mr. Chairman, this amendment will ensure that the Department of Homeland Security has outside objective expertise available at all times. I hope that the committee will support my amendment.

The CHAIRMAN. Does any Member claim the time in opposition to the amendment?

Ms. WOOLSEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California (Ms. WOOLSEY).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 107-615.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

Mr. CARDIN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARDIN:

In section 401(1), add the following at the end: "The functions, personnel, assets, and obligations of the Customs Service so transferred shall be maintained as a distinct entity within the Department."

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Maryland (Mr. CARDIN) and the gentleman from Texas (Mr. ARMEY) each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is consistent with the underlying legislation. It would treat the U.S. Customs Service in a similar way that the Secret Service and the Coast Guard are treated under the bill. All three of these agencies have critical homeland security functions as well as non-homeland security functions.

It does not affect the provisions in the bill that deal with the trade and revenue functions of the Customs Service that was included in the bill. That actually has a greater protection than would be for the nontrade and revenue

services within the Customs Agency. This affects about 75 percent of the agency, and 25 percent is already covered under the trade and revenue functions.

Basically this provides for congressional oversight on reorganizations that may occur in the Customs Service. This is particularly important because it deals with such a large part of the agency involved.

The Secretary, the administration, would have the ability to reorganize the Customs Service upon giving notice to Congress, and we would be preserving congressional oversight in regards to the functions of the Customs Service.

I think this is an amendment that is totally consistent with the way that we have treated other agencies that are going into this new Department. I would encourage Members to accept this amendment.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Maryland (Mr. CARDIN) is a very well respected member of the committee of jurisdiction, and it is quite appropriate for the gentleman to raise this subject.

Mr. Chairman, this is a subject that was considered, as many subjects were, with respect to, I think, a very fundamental question, to what extent do we want to maintain a synthesis of activities that complement one another and be able to coordinate these activities in such a way as to create some sort of symbiosis that would give us better efficiencies in the use of resources, complements in the process information-sharing between them, and coordinated efforts with respect to either discovery or interdiction.

It has been the position of the committee as negotiated with the White House, and one of the things that we on our Select Committee were quite pleased about was the manner in which the Committee on Ways and Means worked out details with the White House.

My position on this matter would be that it risks upsetting this very carefully agreed-upon provision from this committee, and I believe it runs counter to the overall larger plan which we see in so many agencies to keep resources together, keep people working with one another, and complement them with respect to their resources capabilities.

In all due respect, I must resist the gentleman's amendment.

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

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me assure the gentleman from Texas (Mr. ARMEY) that this amendment does not affect at all the underlying provisions concerning trade and revenue functions within the Customs Service. They actually have much greater protection than is provided in this amendment for the rest of the agency.

I would just encourage the majority leader to please look at page 50 of the underlying bill where the language is identical to where it says the Coast Guard in the Department of Transportation, which shall be maintained as a distinct entity within the department. I believe this is using the identical language for the remainder of the Customs Service. It is the remainder, not that which is included with the arrangements worked out between the gentleman from California (Mr. THOMAS) and the White House on the revenue functions and on the trade functions.

We are dealing here with the other functions of the agency. It provides for appropriate congressional oversight without interfering with the trade and revenue functions of the Customs Service. The Customs Service is one of the oldest agencies in the Federal Government. It has a tremendously important function to perform, and it preserves the appropriate congressional oversight. I would urge the majority leader to take a look at it. Without this, the drafting is somewhat suspect.

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

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, the gentleman from Ohio (Mr. PORTMAN) asked me to convey that the Committee on Ways and Means carefully considered the Customs Service transfer, and came up with what he felt was an elegant recommendation which the Select Committee adopted. The Committee on Ways and Means decided that the Customs Service is vital to homeland security and central to an effective department; splitting the agency made no sense; and trade and tariff collection policy must remain at Treasury.

The solution is to place the whole Customs Service in homeland security, but the trade and tariff collection policy will continue to be managed by the Treasury Department.

The gentleman from Ohio (Mr. PORTMAN) feels this is a good solution. The President urged the committees of Congress to overcome their jurisdictional concerns to come together for the good of the entire country. The gentleman from Ohio (Mr. PORTMAN) feels that the Committee on Ways and Means are champions, and has had jurisdiction over the Customs Service since 1789. It knows the Customs Service. The gentleman from Ohio (Mr. PORTMAN) urges Members to follow the wisdom of the Committee on Ways and Means.

Mr. CARDIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there is nothing in this amendment that alters that at all. I really did listen very carefully to the majority leader and the gentleman from Connecticut (Mr. SHAYS) because I want to make sure what we do for the Customs Service is consistent with what is in the Customs Service's best interest, and in the best interest of homeland security.

Let me explain the dilemma we have because I think there is a drafting problem without this amendment. We have cut out 25 percent of the Customs Service, calling it the U.S. Customs Service, but it only performs the revenue and trade functions. There is now the other 75 percent which is sort of in no man's land because the U.S. Customs Service is now only revenue and trade.

This amendment says that there will be an entity that deals with the other aspects of the U.S. Customs Service that is not trade and revenue-related. It is totally consistent with how other agencies that are being transferred into homeland security are handled as far as flexibility within the executive branch and oversight within the congressional branch. It does not provide the same protections as we provide for the revenue and trade functions, so it is not at all inconsistent with what was worked out as far as the trade and revenue functions of the Customs Service.

Without this amendment, we have, I think, a void in the legislation. I do not think that it is, quite frankly, properly drafted without this. I really look at this almost as a technical amendment in order to say to the 75 percent of the agency that is being transferred over that they do exist. Otherwise, we have the United States Customs Service, which is really only 25 percent of the whole. This makes it clear that 100 percent is being transferred over to the new agency, and 25 percent is protected as far as the revenue and the trade function. The other 75 percent is treated as we have treated other agencies which are being transferred over, which is not as great. I urge Members to accept my amendment.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY) to close on our side.

Mr. THORNBERRY. Mr. Chairman, I oppose this amendment for two reasons. The first reason is the comments that we have already heard: That there were extensive negotiations with the White House and others about how to best deal with the Customs Service. I understand the gentleman's point that this does not reverse those negotiations, but yet part of those negotiations were that the nontrade part of the Customs Service would be merged into one border security entity. This amendment would change that, so it does upset the negotiations which have gone on.

Secondly, part of the key purpose of the border and transportation security of this entity would be to have one seamless team at the border. Now since the Coast Guard is on the water, they are easier to differentiate, and we can have them as a distinct entity, as one of the compromises in this bill does, but it is much more difficult to have a separate entity, different uniforms, for the people who are watching the people come over the border versus the employees who are watching the goods or

the objects to make sure that bombs are not coming over the border.

In other words, that is a much harder thing to separate. So that 75 percent that used to be the Customs Service is going to be weaved into this one team with the border patrol and with the APHIS inspectors and one border security entity, not separate entities that are on their station at the border, but one entity with the same bosses, the same regulations, the same uniforms, the same databases and the same radios. To the extent that this amendment keeps the Customs Service out separate, it makes it harder to have one team at the border so we can be secure.

Mr. Chairman, I think this amendment should be rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. CARDIN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. CARDIN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Maryland (Mr. CARDIN) will be postponed.

□ 2345

It is now in order to consider amendment No. 9 printed in House Report 107-615.

AMENDMENT NO. 9 OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. HUNTER:

At the end of chapter 1 of subtitle B of title IV, add the following:

**SEC. 416. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.**

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. HUNTER) and the gentlewoman from California (Ms. PELOSI) each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is an amendment that would offer a sense of Congress stating that the border fence which lies in the 14-mile border sector between San Diego and Tijuana be completed. We have now completed some 12 miles of that 14-mile border fence.

When we started that fence, that corridor was considered to be the most prolific smugglers' corridor in North America. Through that corridor came most of the cocaine that was smuggled into the country as well as most of the

illegal aliens and was an area which was very dangerous, in which massive violence took place and an average of 10 people a year were murdered on the border. It is also an area that is just a couple of miles south of the west coast's biggest naval base at San Diego. It is an area of extremely difficult terrain, rugged terrain. It includes Smugglers Canyon and a number of other canyon areas feeding out into the Pacific Ocean.

Since we have built the 12 miles of fence that we have built so far and it is a double fence that is very, very difficult to pass through, but since we have built the 12 miles that is completed, we have cut down the average of 10 murders a year, murders which took place by armed gangs, some of which had automatic weapons, we have cut that down to almost zero, to where we have almost no murders on the border. It is also an area of vulnerability, once again because it is an area where terrorists could move fairly quickly and upon crossing the international border be within only a couple of miles of the San Diego naval base.

This resolution just very simply states that it is a sense of Congress that we should complete the fence. It has been several years since we have attempted to get that last 2 miles of fence completed, and because of environmental work which has taken a long time, that vulnerability still exists.

I would ask that we pass this. It is consistent with present law that says that the entire 14 miles should be completed. In fact, there is a mandate in the law passed in, I believe, 1996, signed by the President, stating that the entire 14 miles in that smugglers' corridor should be completed. Right now only 12 miles are completed, we have 2 to go, and if we do not do that, we are going to continue to have a stretch of vulnerability there which at some point could accrue to our detriment.

I would ask that we pass this.

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

Ms. PELOSI. Mr. Chairman, the gentleman from California knows the very high regard in which I hold him and it is with great reluctance that I oppose his amendment.

Mr. Chairman, I am pleased to yield 4½ minutes to the gentlewoman from California (Mrs. DAVIS) who has earned a great reputation for working closely with her community on this very issue.

Mrs. DAVIS of California. Mr. Chairman, I have great respect for my San Diego colleague. I know how hard he has worked for years on national security supporting our military and is in line to take the reins as the chair of the Committee on Armed Services. We traveled recently together to Afghanistan and visited with our troops fighting the war on terrorism. It is with this great respect for my colleague who has the best of intentions that I rise in opposition to his amendment because the San Diego border fence project creates

a false sense of security, endangers border patrol agents and diverts needed resources. The project's goal is to create a 14-mile long layer of three separate fences intended to prevent anyone from crossing the border from Mexico into the United States.

Securing our borders, as you all know, has long been a challenge, particularly because doing so must be balanced among our chief goal of protecting security and yet enabling legitimate cross-border travel, promoting commerce and protecting civil liberties. Clearly, we need a sustainable border infrastructure plan that can accommodate the projected growth in legal border crossings. However, instead of viewing the border landscape as one filled with obstacles that cripple us, we should use this as an opportunity to bring about long-needed change.

Border security is critically important to protect the country from terrorists and to stem the flow of undocumented immigrants. However, the border fence represents a false sense of security. Those who wish to bypass the fence can transit either through a long gap in the fence or in the water beyond the fence's end. Further, completion of the triple fence requires expending huge sums of money while destroying the landfill areas and negating the millions of dollars already expended in the area to preserve the estuary that exists there.

Finally, I have heard from several border patrol agents, agents who spend very lonely hours patrolling the border, who are concerned that the construction of the fence could trap them and leave them without an escape route should they come under attack. If we are serious about border security, we should enhance the quality of the existing fence and not create a lane between fences that endangers the lives of both U.S. agents and would-be border crossers.

Technology to improve border security exists in San Diego and around the Nation and is available off-the-shelf. Rather than relying on a Maginot Line along the border, we should rely upon our expertise and employ sophisticated technology to buttress protection through improved monitoring, surveillance and dispatch.

As well as its obvious security benefits, this use of technology will ease personnel requirements. In addition, a technology-based infrastructure system clearly meets the stated goals of the INS in creating a permanent deterrence through certainty of detection and apprehension and to reduce the current enforcement footprint. The term infrastructure does not immediately equate to fence and the mere construction of a fence does not meet the "certainty of detection" criterion.

Transforming our technology along the border has further benefits. At present, the dedicated men and women who work at the ports of entry are becoming increasingly taxed by the new

requirements for tighter security. It is time to provide them with the tools and the technology they need and to send them a clear message that we value the work that they do.

In addition, I believe that we can integrate existing technologies to increase interagency cooperation and data flow, thereby eliminating overlap and waste and streamlining processes, all while being mindful of civil rights. Moreover, leveraging technology will also serve to increase binational cooperation.

Rather than constructing an old fashioned triple layered wall along the border, a wall that creates a false sense of security, endangers border patrol agents and diverts our needed resources, we should shelve old methods and embrace the new methods that this Department of Homeland Security will undoubtedly employ.

I urge my colleagues to allow this new department the flexibility to develop its own priorities without burdening them with antiquated projects and defeat this amendment.

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have respect for my colleague, but let me just say that the opposition which has been stated to the border fence is, at best, bizarre. When we started this fence, Mr. Chairman, there were 300 drug trucks a month full of cocaine and marijuana which were hurtling across the border in these uncontrolled areas, in this mountainous region, the region extending from Otay Mesa to the Pacific coast. We had scores of border patrolmen who were hurt and injured because they were pelted with rocks from the other side of the border and we had an average again of about 10 people a year murdered by the armed gangs, many with automatic weapons, which moved back and forth across what was known as a no-man's land. In fact, it was so bad that Joseph Wampaugh wrote the book "Lines and Shadows" about this no-man's land that existed on the U.S.-Mexican border. Since we have built that fence, the first 12 miles of fence, we have totally eliminated the 300 drug trucks a month that were coming across, we have knocked down the 12 murders to almost zero, and people that live on both sides of the border have expressed, and the border patrol reports are very clear, that this fence has been a center of stability, it is a modern fence, it is a double fence, it has a large overhang, it has not hurt anybody. In fact, it has prevented 10 murders a year.

The idea that you do not complete the last 2 miles of that fence once again, Mr. Chairman, is, at best, a bizarre notion. I would hope that we would be rational and simply build the last 2 miles of what the border patrol has said is one of the greatest deterrents to illegal crossing and could be a deterrent to the crossing of a terrorist organization into that area just a few miles south of the biggest naval base on the west coast.

Ms. PELOSI. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Mr. Chairman, I think the area we are talking about is one that we believe now with our new technologies and with some greater priorities that are set as well with the community, that we can provide the protection that we need, that we can provide the protection for the agents, but we can also do what is best for this last 2 miles, especially in an area that has a lot of binational crossings.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. HUNTER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 107-615.

AMENDMENT NO. 10 OFFERED BY MR. OSE

Mr. OSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. OSE:

At the end of title VI add the following:

**SEC. . CONSOLIDATION AND CO-LOCATION OF OFFICES.**

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to the Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such offices are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. OSE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. OSE).

Mr. OSE. Mr. Chairman, I yield myself such time as I may consume.

As a subcommittee chairman over on Government Reform, I would like to offer this good-government amendment which relates to the regional and field offices in the proposed department. Before I do that, I want to make sure that I compliment my good friend the gentleman from Massachusetts (Mr. TIERNEY) who is the subcommittee ranking member with whom I have worked very closely in analyzing the President's bill and drafting bipartisan amendments to perfect it. The President's proposal includes moving agencies which currently have 10 different regional and field office structures into the new department. Neither the President's bill nor the special committee's substitute mentions any changes in these regional and field offices, although changes could be made under the select committee's section 763(a) reorganization authority, to consolidate, alter or discontinue organizational units.

My amendment would require the new department's under secretary for

management to develop a consolidation/collocation plan within 1 year. The plan would examine consolidating and collocating regional and field offices in each of the cities with any existing regional or field office in the transferred agencies. My amendment would retain at least one Department of Homeland Security office in each of these cities.

Staff in these consolidated/collocated offices could be cross-trained to respond to the full range of functions which may need to be performed locally. Besides improving Federal preparedness and response, consolidation and collocation should result in overhead and other efficiency savings.

Five examples of existing and different regional or field office networks are in the Agriculture Department's Animal and Plant Health Inspection Service, known as APHIS; the Justice Department's Immigration and Naturalization Service; the Department of Transportation's Coast Guard; the Department of Treasury's Customs Bureau; and the Department of Treasury's Secret Service.

I urge my colleagues to support this government efficiency amendment. I want to reiterate my appreciation for the time and effort and participation of my good friend from Massachusetts whom I would now like to recognize to elaborate on how helpful collocation could be for local first responders.

Mr. Chairman, I yield to the gentleman from Massachusetts (Mr. TIERNEY).

□ 2400

Mr. TIERNEY. Mr. Chairman, I thank the gentleman for yielding.

I rise in support of this amendment that was, as was said, to make a plan regarding the consolidation of officers and the crosstraining of Federal employees that ought to be consolidated into the new Department of Homeland Security. I want to thank and commend the gentleman from California (Mr. OSE) with whom I serve in the Committee of Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. As he stated, we have had the opportunity to work together in a bipartisan way to suggest improvements to the bill, and I thank him for his leadership.

In the course of this debate we must keep the focus where it truly belongs: on marshaling our country's best ideas and resources and skills to coordinate our fight against terrorism, streamline government, and make Americans safer. We need to do this for the families who lost loved ones on September 11 and in the October anthrax attacks, for the American people who expect us to protect them, and for our children so that future generations may grow up in a free and open society.

Nowhere is it felt more keenly than our local communities. All acts of terrorism are, as we know, local; and each community has to be prepared for crisis response and catastrophe management. Since September 11, we have

heard from our local first responders from across the country who have risen to the occasion, protecting communities as the first line of defense against terrorism. In my own district, as across America, they have marshaled their resources to track down leads of potential terrorist threats and buy more equipment, from upgraded weapons to technology to biohazard masks and suits. They have increased hazmat training for handling suspicious packages and stepped up patrols around potential terrorist targets like water and gas supplies, nuclear power plants, harbors and airports. They want the government to work with them, to train with them, to communicate with them, and to respond with them to any potential attack. And now it is time for us to step up and help them. We must respond with cooperation, with communication, and with coordination at all levels of government.

But before we can work with the local first responders, we have to be confident that the Federal agencies can work with one another. Coleen Rowley's bureaucratic nightmare was a cautionary tale. We simply must train personnel within different agencies that have different cultures and different skills to talk to one another, to share information before disaster strikes.

That is why I join Mr. OSE in introducing this "good government" amendment, to ensure that local first responders have a primary point of contact and coordination within the Federal Government and to ensure that these field officers work together.

No matter how Congress resolves the issue of who is in and who is out of this agency, and I frankly hope that we will end up with a leaner 21st century response rather than a bloated 19th century structure, we are not going to effectively fight terrorism from Washington, D.C. Any respected Department should consist of agencies that can work together, Mr. Chairman. And, again, I thank the gentleman from California (Mr. OSE) for helping to work with this problem.

Mr. OSE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. OSE).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 107-615.

AMENDMENT NO. 11 OFFERED BY MS. VELÁZQUEZ

Ms. VELÁZQUEZ. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Ms. VELÁZQUEZ:

In section 734 of the bill, insert before the first sentence the following:

(a) OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.—

At the end of section 734 of the bill add the following new subsection:

(b) SMALL BUSINESS PROCUREMENT GOALS.—

(1) IN GENERAL.—The Secretary shall annually establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women (as such terms are defined pursuant to the Small Business Act (15 U.S.C. 631 et seq.) and relevant regulations promulgated thereunder) in procurement contracts of the Department.

(2) DEPARTMENT GOALS NOT LESS THAN GOVERNMENT-WIDE GOALS.—Notwithstanding section 15(g) of the Small Business Act (15 U.S.C. 644(g)), each goal established under paragraph (1) shall be equal to or greater than the corresponding Government-wide goal established by the President under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(3) INCENTIVE FOR GOAL ACHIEVEMENT.—Achievement of the goals established under paragraph (1) shall be an element in the performance standards for employees of the Department who have the authority and responsibility for achieving such goals.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New York (Ms. VELÁZQUEZ).

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself as much time as I may consume.

I rise today to ensure that the new Department has access to the innovative resources this Nation's small businesses can offer in the defense for our country.

The amendment offered with my colleagues from California and New Mexico makes sure that the American taxpayer gets the best value for the dollar and that the new Department of Homeland Security has access to the best work and highest technology by requiring the new agency to open up its estimated \$37 billion market to our Nation's small businesses.

America's small businesses are the top innovators in the global economy. In an age when high technology will help keep us one step ahead of those who will do us harm, we cannot afford to ignore the contributions our small companies can make. When the private sector corporations need a job done quickly, they look to nimble, fast-working small businesses.

Unfortunately, small businesses face many obstacles when trying to win contracts from Federal agencies. The Velázquez-Issa-Wilson amendment will tear down barriers to part of that market by requiring the new Department of Homeland Security to have a small-business goal that is at least the statutory minimum of 23 percent.

The amendment also adds accountability to the process by including goal achievement in Federal contracting of officers' performance evaluations.

I close by asking my colleagues to get this new agency off to a good start. In a new era where we must be smarter and faster than our foe, we cannot afford to ignore the smartest and fastest of them all, America's innovative small businesses.

I urge support of the bipartisan Velázquez-Issa-Wilson amendment.

Ms. VELÁZQUEZ. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Ms. VELÁZQUEZ).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 12 printed in House Report 107-615.

AMENDMENT NO. 12 OFFERED BY MR. HASTINGS OF FLORIDA

Mr. HASTINGS of Florida. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. HASTINGS of Florida:

At the end of title VII, insert the following new section:

**SEC. 7 . REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.**

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107-174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Florida (Mr. HASTINGS) and a Member opposed each will control 5 minutes.

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

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

I would like to preface my remarks by thanking the majority leader and the minority whip and all of our colleagues who serve on the Select Committee on Homeland Security. In my judgment, they have done an outstanding job, notwithstanding the time constraints and other obstacles that they have been confronted with. I guess there is some comfort as a Member of this body in knowing that future legislation obviously will assist in refining the product that we will conclude with on tomorrow, and I also know that it is comforting to send a message around the world that this body is capable of responding to all challenges.

Mr. Chairman, I rise to introduce an amendment which adds a new section to title VII to H.R. 5005. The additional

language in title VII directs the Secretary to comply with the laws protecting equal employment opportunity and providing whistleblower protections. It further states that nothing in the act shall be construed as exempting the Department from the requirements that are applicable to all other executive agencies.

Mr. Chairman, we have heard Governor Ridge and the gentleman from Texas (Mr. ARMEY), our majority leader, along with various members of the administration assure us that all equal employment opportunity laws and whistleblower protections will be applicable to the new Secretary. This amendment simply puts those assurances, curiously absent from the bill at this point, in writing. I will point out that every agency in the Federal Government must comply with equal employment opportunity and whistleblower protection laws. This includes the Departments of Army, Navy and Air Force and CIA and NSA, just to name a few.

Not one Secretary or director from these Departments and agencies, all actively engaged in national security, has ever come to Congress seeking exemption from these laws.

I am puzzled by the exemptions the administration is seeking for the new Department. On May 15, 2002, the President signed PL 107-174, the No Fear Act, into law. It prohibits Federal agencies from retaliating against a claimant who has won a judgment relating to discrimination or whistleblower laws.

That law, which the House passed, and I might add the vote was 412 to 0, further strengthened the EEO and whistleblower protections. On the other hand, this latest legislation sets even higher standards of ethics and accountability for the Federal Government, while, on the other hand, the administration is seeking exemption from these standards for the new Secretary and the new Department of Homeland Security.

There is much to be lost and little to be gained by creating laws and then granting exceptions so that those laws do not apply equally to all.

Mr. Chairman, there is nothing partisan or even controversial about this amendment. It ensures that the protections guaranteed to all Federal employees apply to employees of the new Department as well.

I urge my colleagues on both sides of the aisle to support this amendment.

Once again, I thank the gentleman from Texas (Mr. ARMEY) and the gentlewoman from California (Ms. PELOSI) for the fine work that they have done on behalf of all of us, as well as the colleagues who have joined with them.

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

The CHAIRMAN. Does any Member rise in opposition?

Mr. SHAYS. Mr. Chairman, I rise in mild opposition.

The CHAIRMAN. The gentleman from Connecticut is recognized for 5 minutes in opposition.

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would say my opposition is mild. I am using this opportunity to point out what we believe is a fact, and I would say that the gentleman from Ohio (Mr. PORTMAN) particularly wanted this to be pointed out. We would note that the Select Committee bill provides on page 185, section 761, that any human resources management system established under the committee bill must not waive, modify or otherwise affect among the public employment principles of merit and fitness, including protection of employees against reprisal for whistleblowing, that is line 15, and any provisions of law provided for equal employment opportunity through affirmative action, and that is line 23.

Our opposition is just merely to point out that we think it is covered. We think it is there already. But we certainly know the intent of the gentleman from Florida (Mr. HASTINGS).

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

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

Mr. Chairman, I thank my good friend from Connecticut. I would urge to him that what he says is no doubt correct; but I know that if we pass this amendment, we will know.

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

The CHAIRMAN. The question occurs on the amendment offered by the gentleman from Florida (Mr. HASTINGS).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 13 printed in House Report 107-615.

AMENDMENT NO. 13 OFFERED BY MR. KINGSTON

Mr. KINGSTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Mr. KINGSTON:

Add at the end of subtitle G of title VII the following:

SEC. . FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Justice under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Georgia (Mr. KINGSTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia (Mr. KINGSTON).

Mr. KINGSTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is rather straightforward. It has to do with a move to move the Federal Law Enforcement Training Center from the Department of Treasury into the Department of Justice. This move, which was not requested by the White House and not requested by the Select Committee on Homeland Security, but apparently suggested by the Committee on the Judiciary, caught me off guard as the representative who represents the headquarters of FLETC at Glynco, Brunswick, Georgia.

This is the law enforcement training center which trains the Capitol Hill Police, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms and many others, in fact, 74 total government agencies. One of the things I have found during my 10 years I have had the honor of representing it is, because there are 74 agencies, lots of people have ideas about just peeling off one of those agencies and putting their training in their own district or one particular area.

What I have been concerned about is the Treasury has been a great balancing ground for the smaller agencies to train in, and if we move it to the Department of Justice and they are competing with the FBI, they become somewhat of a second-tier emphasis for the Department of Justice. So I am concerned about that move.

What my amendment does, Mr. Chairman, is it simply says if you do that move that the ongoing training will continue, and it will continue in the facilities which are in Maryland and in New Mexico and in Georgia. So it is very straightforward.

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

The CHAIRMAN. Does anyone rise in opposition to the amendment?

The gentleman from Georgia may conclude his remarks.

Mr. KINGSTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I submit for the RECORD some comments on the question of moving FLETC out of Treasury into the Department of Justice.

#### BACKGROUND

FLETC was established as a Treasury bureau in 1970 through a Memorandum of Understanding signed by the heads of eight Federal agencies, including the Secretary of the Treasury and the Attorney General. This decision was made based upon years of thorough research that established the need to consolidate our federal law enforcement training, counteracting the trend towards proliferating and redundant law enforcement training throughout the government. Congress supported this decision by funding the construction of facilities for FLETC in Glynco, Georgia.

Since its inception in 1970, FLETC has almost tripled its original 30,000 trainees and now houses around 80 agencies. The efficiency of a consolidated training site has benefited both the American taxpayer as well as every agency involved, a fact which goes unquestioned. The centralized site at Glynco has ensured that our federal law enforcement agents continued to get the best

training available from the best teachers while eliminating the red undancy in infrastructure that multiple sites would provide.

#### WHY FLETC SHOULD STAY IN TREASURY

The President's Homeland Security Department proposal consists of nine agencies with law enforcement/security functions. All nine (Immigration and Naturalization Service, United States Border Patrol, Federal Aviation Administration, Transportation Security Administration, United States Coast Guard, United States Customs Service, United States Secret Service, and GSA Federal Protection Services) are participants in FLETC and will account for sixty-nine of the students and 55 percent of the student weeks projections identified for FY 2003. Although many associate our federal law enforcement with the DOJ, DOJ will merely make up 7 percent of FLETC students.

Transferring FLETC to the Department of Justice (DOJ) will not serve to streamline any operations within our government. FLETC should remain within the Department of Treasury with a guarantee that the agencies that are transferring continue their training agreements with the Treasury Department.

#### HISTORICAL DETAILS ABOUT WHY FLETC HAS REMAINED IN TREASURY

In the past, there have been many attempts by the Justice Department to absorb FLETC, usually in conjunction with a new administration coming to power. Each time, a proper study was conducted and the findings concluded that such a move was not in the best interests of our Federal law enforcement. When FLETC was established, there was a discussion over who should be in charge of the new Center. Treasury seemed logical, because they were the only agency with experience with consolidated law enforcement training, they would be the largest customer of the CFLETC (providing about 40 percent of the students). No other agency seemed interested, or ready to assume the task. The CFLETC would be overseen by a multi-agency Board of Directors, they believed that each agency would have appropriate input as to its operation.

In fact, Ramsey Clark, the Attorney General at the time concluded that, "The Attorney General basically objects to the center being located in a line agency because the agency will begin to dominate the training staff and curriculum and secondarily a better law enforcement image can emerge if training is centered in a non-enforcement agency."

Phillip Hughes, then Director on the Bureau of the Budget (which would eventually become OPM) worried that "Concentration of additional control over Federal law enforcement programs in the Department of Justice may raise opposition from Congress and the public through fear of the eventual emergence of a national police force."

Others concurred and expressed their belief that widening the law enforcement footprint of a Justice Department that was already under criticism from some circles for having both enforcement and prosecution authority vested in the same agency.

The issue of Justice Department control did not resurface until 1976, when the FLETC had a new name and a new headquarters in Glynco, Georgia. Many of the existing participant agencies expressed concerns about the increasingly active and aggressive Justice Department role on the Board of Directors and the growing numbers of Justice students.

Again, concerns relating to the establishment of a national police force were expressed. Large numbers of additional agencies were applying for entry as consolidated training participants. No single watershed

event defused the tension. Instead, the FLETC simply redoubled its efforts to meet the needs of each customer, distributed scarce resources in an equitable and rational manner, and above all, dedicated itself to training excellence. The concerns gradually subsided.

Halfway through President Carter's administration, the President's reorganization project for federal law enforcement reached a tentative conclusion that the FLETC should be transferred to the Justice Department. Unwilling to lose one of Treasury's most successful bureaus, Treasury officials lobbied hard against any such transfer. And once again, other participating agencies expressed concern over the notion of Justice's stewardship of the FLETC. This time, the issue was resolved by strengthening the role of the Board of Directors, establishing three standing management committees (for budget and personnel, policy and program development, and longrange planning), and including the Justice's Criminal Division on the board in an observer and advisory role. The new board structure confirmed what the board members had campaigned for all along. Treasury might have organizational stewardship over the Center, but FLETC belonged to all the agencies, large and small. The board members would not be ignored nor would they allow either Treasury or Justice to overlook their interests—and their interest in the Center. Consolidated training meant not just common training, but joint management, too.

Early in President Reagan's tenure, Justice officials seriously considered an effort to gain management control of the Center. Attorney General William French Smith agreed to support the concept if Secretary of the Treasury Donald Regan would not oppose it. When Regan resisted the idea, it was dropped. Throughout the 1980's, Justice periodically sent out feelers to gauge the reaction to bringing the FLETC into the Justice fold. Frank Keating, a former FBI agent, assistant secretary of Treasury and then as associate attorney general, saw the relationship between the two departments from both perspectives. Convinced that the Center properly belonged under Treasury, partly because it thrived there and partly because he philosophically supported the diffusion of federal law enforcement, Keating resisted the idea of Justice making a steal. "... I know that on a number of occasions [as associate attorney general] the senior levels of the Justice Department and the FBI talked to me . . . of the need to merge FLETC into Justice." . . .

In his view, FLETC belonged in Treasury. "It makes far more sense to have a viable law enforcement training center than has no connection with the FBI." Keating strongly believed, "because the missions of the smaller agencies, even though they are distinct, would be clouded, and their self-respect and their confidence and their ability to run themselves would be jeopardized by this nine-thousand pound gorilla coming down there to take over."

The sporadic, almost half-hearted suggestions that Justice take over the training were tributes to the Center's success, the result of envy more than anything else. They sprang, too, from a superficial analysis that Justice's primary in federal law enforcement led logically to management of law enforcement training. Such a conclusion, however persuasive on its face, essentially ignored the historical forces that planted the Center squarely—and firmly—under Treasury.

Again, earlier this year, the administration looked into moving FLETC to Justice. After extensive studies, the bush administration decided that it would not be in their best interests.

#### WHERE DID THIS REQUEST COME FROM?

The Justice Department has made repeated attempts to take FLETC from Treasury, but each and every time, and after extensive reviews those attempts were thwarted. The decision to move FLETC from the Department of Treasury to the Department of Justice has been made without the benefit of hearings, studies or analysis. In fact, all past studies have concluded that FLETC should remain with the Treasury Department.

A recent Bush Administration study concurred that FLETC should remain in Treasury. The Bush Administration did not request this in their Department of Homeland Security proposal. Treasury did not propose FLETC's transfer. FLETC did not request this transfer. Homeland Security did not offer this proposal. Department of Justice did not request this either.

Mr. Chairman, I do want to make this last comment.

Mr. Chairman, I want to do what is best for homeland security; I want to do what is best for the training center and best for the law enforcement personnel. I just have not been convinced that the case has been made to move it out of Treasury into Justice, when most of the training is actually going to be done in homeland security. So I hope that the conferees work on that.

If the gentleman from Texas can give me some assurance, some comfort level in conference, I would love to hear it.

Mr. ARMEY. Mr. Chairman, will the gentleman yield?

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

Mr. ARMEY. I want to begin, Mr. Chairman, by thanking the gentleman from South Carolina for his interest in this matter. It is a matter of grave concern to all of us. This is an important agency that performs an important function, and we would want this agency to be complete and continuing.

I also appreciate the gentleman's enormous interest in keeping this agency located in his great State, where in fact it has been a great service to the Nation.

□ 0015

I want to say to the gentleman from South Carolina that I appreciate his efforts.

The CHAIRMAN. The gentleman is from Georgia, Mr. Leader.

Mr. KINGSTON. Mr. Chairman, I was going to let the gentleman from Arkansas continue.

Mr. ARMEY. Mr. Chairman, I want to thank the gentleman from Minnesota for that reminder, and now that we have gotten our geography lesson straight, let me thank the gentleman.

The gentleman from Georgia is absolutely right. This agency is so much more a service to this Nation in Georgia where it belongs than it ever could be in South Carolina. And, please, I want to encourage the gentleman to continue his work, and we will accept the amendment.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of this amendment.

The Federal Law Enforcement Training Center-FLETC, which was established in 1970, is an interagency law enforcement training program that trains Federal, State, local,

private entities and foreign law enforcement. In Fiscal Year 2003, FLETC trained over 54,000 law enforcement students. Those students were from law enforcement offices within the Department of Agriculture, Commerce, HHS, Interior, Justice, Treasury, Defense, the Capitol Police, and others.

The Judiciary Committee and the Select Committee, in their wisdom, decided that the Department of the Treasury, which will lose both the Customs Service and the Secret Service, should no longer be responsible for FLETC.

This means the Department of Treasury will only have two remaining law enforcement offices—BATF and IRS Investigators. Treasury will lose the bulk of their law enforcement and will have one of the smallest law enforcement contingents of any Department.

It was decided that FLETC go to the Department of Justice because its mission is consistent with the mission of the Department of Justice. The primary mission of the Department of Justice is law enforcement; specifically it is directed "to enforce the nation's laws, combat terrorism, protect public safety, help prevent and control crime, provide just punishment for criminals, and ensure the fair and impartial administration of justice."

FLETC's mission is "to serve as the Federal government's leader for and provider of world-class law enforcement training." It makes sense that a bureau with such a mission be included as part of a Department with the same mission and that is the flagship law enforcement in the Federal Government.

The primary mission of the Treasury Department is to support the American economy and manage the finances of the United States Government. It does not make sense, in light of the transfer of almost all of the law enforcement bureaus out of the Department of Treasury in this Homeland Security legislation, that we would continue to require that the centralized training for Federal law enforcement be located at the Department of Treasury.

The Department of Justice is not a stranger to the operations of FLETC. In fact, DOJ is one of five voting members of the FLETC Board of Directors that establishes training policy, programs and standards. Additionally, the administration has been aware of this proposal for weeks and has not objected. They understand that this is not intended to diminish FLETC's role, but rather enhance it and expand it in a Department that will pay attention to it, provide for it, and nurture it.

I can assure the gentleman from Georgia that our intention in transferring the Federal Law Enforcement Training Center to the Department of Justice is to ensure that law enforcement is coordinated and centralized in the part of the government responsible for law enforcement. I can also assure the gentleman from Georgia that it is our intention to see that FLETC continue its current operations at its current location and continue to carryout their current training agreements. We expect that this transfer would have a minimal impact on the day-to-day operations and training activities of FLETC and, at the same time, maximize the effectiveness of our training system for federal law enforcement personnel.

I thank the gentleman for bringing this matter to our attention with this amendment and look forward to working with him to ensure that the high quality of training of federal law enforcement agents continues at FLETC.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. KINGSTON).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 14 printed in House report 107-615.

AMENDMENT NO. 14 OFFERED BY MR. ROGERS OF KENTUCKY

Mr. ROGERS of Kentucky. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. ROGERS of Kentucky:

At the appropriate place in the bill, add the following new section:

**SEC. . JOINT INTERAGENCY TASK FORCE.**

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Kentucky (Mr. ROGERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. ROGERS).

Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

First I want to thank the majority leader for working with us and our staff on this amendment. He worked well into the night with us yesterday, last night, getting this together, and I believe it has been thoroughly vetted by both sides of the aisle by the appropriate authorizing committees.

This is a simple amendment. It grants permissive authority to the new Homeland Security Secretary for the creation of a Joint Interagency Homeland Security Task Force completely at the discretion of the new Secretary, in no way impeding his flexibility or authority in running the new Department. It does not grant any new authorities or powers to the cooperating components of the task force not already authorized by the Congress, and the task force, if created, is suggested to be modeled in the language of the amendment, Mr. Chairman, after the existing joint interagency task forces for drug interdiction currently operating as we speak in two places, Key West, Florida, for the East, and Alameda, California for the West.

Mr. Chairman, the reason I suggest this type of a boiler room operation in the war on terrorism is the fact that these existing task forces for drug interdiction are efficient, they are lean, they are highly successful oper-

ations on the war on drugs, and while the task of protecting the homeland is vastly more complicated and different than any single drug mission, these centers are appropriate templates for how the various elements of our government should and can work together in a lean, mean machine war room.

These centers coordinate every aspect of the counterdrug operation, from intelligence-gathering, detection and monitoring, to the actual seizure and apprehension of those involved. These existing JIATF centers promote security cooperation and interagency efficiency. That is the exact kind of a concept we should be implementing in our defense of the homeland, a combination of military, civilian, and intelligence agencies, working together in the same place. Given the inextricable link between terrorist activity and illegal drugs, these existing centers already have firsthand knowledge and expertise in homeland defense and could prove to be a very valuable tool to the new Secretary as a template for the war on terrorism.

We have taken great care, Mr. Chairman, to craft the language in such a way that it will not be perceived as expanding the powers of the Secretary beyond what is already envisioned in the bill. Both the Committee on Armed Services and the Committee on the Judiciary have made helpful comments on our original draft. We have incorporated their changes in this language, and I appreciate their help as well.

Mr. Chairman, in closing, this amendment is simple. It seeks to establish a functioning interagency task force within the new Department, where coordination among the various agencies of the government, the various components who remain under their own control, and we simply draw as we need something for the particular task at hand from all agencies of the government.

The amendment in no way impedes the authority of the new Secretary from carrying out his or her core mission. It is merely a suggestion for another important, I think, and useful tool in the Department's arsenal.

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

Mr. SANDLIN. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

I am afraid with this amendment we are headed down a dangerous slippery slope and setting a dangerous precedent. My good friend and colleague mentioned that he wants to build an efficient, lean, mean machine, and therein lies the very danger.

In protecting our citizens and our civil liberties, we do not need a lean, mean machine. That is not what is anticipated by our Constitution; that is not what law enforcement in this country is about. Soldiers do not need to be reading Miranda rights with automatic rifles in hand; that is not their purpose. That is not what they are trained for. That is not what they do.

In this country we have posse comitatus, we have had that since 1878, and it makes it a crime to deploy Federal troops as enforcers of civilian law. That has worked in this country for 124 years. The United States has always recognized a great importance in the separation between the duties of the military and the duties of our domestic law enforcement. There is a good reason why it has stood that test of time. The military has a role in protecting our country. Domestic enforcement has a role in protecting our country, but they are separate roles.

I noticed this morning that The New York Times had this to say, and I quote: "The idea of military forces roaming the Nation, enforcing the laws sounds like a bad Hollywood script or life in a totalitarian society." Further, I notice that Tom Ridge, the homeland security chief, said in a radio interview that this expansion, this abandoning of posse comitatus would "go against our instincts as a country."

There are good, practical reasons for keeping the military out of our domestic law enforcement. The mindset is completely different. In our country we have professional, well-trained law enforcement officers, police that are taught to observe constitutional protections for our citizens. They know about the procedure of criminal law. Soldiers, on the other hand, are trained in the use of force, not the niceties of procedure. Both of those roles are necessary in our country; both are important. Neither role should be mixed.

The Christian Science Monitor said that the military exists to protect our country, not to run it. Clearly, the military and civilian forces should cooperate, they should work together in anticipating threats and responding to threats, but they must be separated. The Armed Forces should not be involved in domestic police tasks that are best left to the law enforcement professionals of this country.

Mr. Chairman, posse comitatus has stood the test of time. This is not a totalitarian State; this is not a police State. We have domestic laws that protect our citizens; we have military to protect our shores. That has worked, it has stood the test of time. Our country is strong and secure because of the hard work of our military in protecting our borders. We have freedom fighters all across the world right now protecting freedoms guaranteed by our Constitution. We have police that are keeping our homeland safe here in America. They are working well together, but they are recognizing the fact they have separate roles.

Mr. Chairman, I feel like that the amendment we are considering today would blur that line, would mix that line, and we would have the military roaming the country, as The New York Times says, trying to enforce the laws of our Nation.

Mr. Chairman, while this is a permissive amendment, as was mentioned by my friend and colleague, permissive is

too much. It is never okay to violate the Constitution. It is never okay to send the military roaming across the land enforcing domestic laws and arresting our citizens. It is never okay to have a soldier without training in procedure attempting to protect the constitutional rights of our citizens who are innocent until proven guilty. We have rights under our Constitution. Permissive is way too broad.

Let us respect posse comitatus. Let us make sure our military does its job and observes its role. Let us make sure that our domestic police know their role and are able to stand up for the Constitution. We can protect our Constitution, stand up for our citizens, and still fight terrorism all across the country.

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

Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

This provision has been vetted by the Committee on the Judiciary of the House, the Committee on Armed Services of the House, the Select Committee on Homeland Security under the leadership of the majority leader, and we have changed it accordingly at their suggestions.

Number two, the majority leader's amendment tomorrow, his manager's amendment, will reaffirm the posse comitatus belief that we have in this country, the law, in fact.

But most importantly, the joint task forces in Alameda and Key West only use Defense Department assets outside of the U.S. border. There are not going to be any soldiers roaming the streets of this country, for gosh sakes. We do it just exactly like the task forces now do on the drug war using the DOD assets outside of the U.S. border in keeping with title X posse comitatus restrictions. If they have an internal problem, they turn to the National Guard under State control if there is a need for it, but relying upon domestic law enforcement forces that we have in place now.

Mr. ROGERS of Kentucky. Mr. Chairman, I urge the adoption of this amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky (Mr. ROGERS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. SANDLIN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kentucky (Mr. ROGERS) will be postponed.

It is now in order to consider Amendment No. 15 printed in House report 107-615.

AMENDMENT NO. 15 OFFERED BY MR. RUSH

Mr. RUSH. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. RUSH:

At the end of subtitle G of title VII add the following:

**SEC. 7. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.**

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the home.

(4) develop a process for receiving meaningful input from State and local government meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Illinois (Mr. RUSH) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. RUSH).

Mr. RUSH. Mr. Chairman, I yield myself such time as I may consume.

A recent poll revealed that a vast majority of local governments, 95 percent, to be exact, have plans for dealing with natural disasters. However, only 49 percent of this Nation's local governments are equipped to protect and prepare its residents against acts of terror.

But, Mr. Chairman, the good news outweighs the bad. The good news is that local governments which have not developed plans to deal with terrorism now have an opportunity to build and coordinate an effective response plan from the ground up. The good news is that local governments, which already have response plans, are in a perfect position to improve upon current programs, and the good news is that the Federal Government now has the unique opportunity to coordinate with local governments so that access to Federal information and expertise become an integral part of the local response picture in this country.

My amendment will work to make that good news even better by bridging the gaps between local first responders and the Federal Government. And it would do so specifically, Mr. Chairman, by creating an office for State and local government coordination, which will assist us in streamlining relations between the new Department and State and local governments. Most importantly, perhaps, the office will be responsible for developing a process for receiving meaningful input from local and State governments on how this most important partnership, this vital partnership, should be strengthened.

This amendment has the support of the administration, as well as the National Conference of State Legislators, the National Governors Association, the Council of State Governments, the U.S. Council of Mayors, the International City and County Management Association, the National League of Cities and, last but not least, the National Association of Counties.

□ 0030

Mr. Chairman, the first step in preparing for acts of terror comes through communications and cooperation on all levels of government. The administration understands this principle. The American people understand this principle. And I am confident that those of us who are in the people's House will understand this important principle as well by adopting this amendment. I urge a yes vote on this amendment.

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

The CHAIRMAN. Does any Member rise in opposition?

Mr. ARMEY. Mr. Chairman, I will claim the time in opposition.

The CHAIRMAN. The gentleman from Texas (Mr. ARMEY) is recognized for 5 minutes.

Mr. ARMEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me say to the gentleman from Illinois (Mr. RUSH) I do not intend to oppose his amendment, but I did want to point out that we have addressed this very same question in page 13 of the bill. The difference between the gentleman's position offered in his amendment and our bill is we take it as a function of the Secretary. You want to elevate it to the position of an Office of the Secretary. Assuming that we would be effective in achieving the desired objectives in either case, the difference would be a modest difference, from my point of view, of our desire to minimize the amount of employee agency adds, bureaucrats, in this city, let us say, as opposed to the field.

I would suggest that perhaps as we move forward, the gentleman from Illinois (Mr. RUSH) and I might get together, take a look at that, and see if we could reconcile our modest differences and prepare ourselves to work with the other body towards the maximum effective fulfillment of the objectives we both outlined.

Mr. RUSH. Mr. Chairman, will the gentleman yield?

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

Mr. RUSH. Mr. Chairman, I want to thank my friend and I certainly do not have any objections to us working this out. I just want to make sure that we understand that there is a point in my amendment which calls for a specific location for this information to rest with a vehicle for this information to be transmitted, whereas I think the original language just said that it is going to happen, but nothing was in place for it to really rest in and a loca-

tion was not there and a central place was not there. And with my amendment, I tried to create a vehicle and a specific location for this information to be gathered and transmitted both up and downstream.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for his observations. That is the singular difference, what we are trying to do and how we are trying to do it. Mr. Chairman, I will yield back my time with the understanding that I will have the added pleasure of working with the gentleman between now and our work with the other body.

Mr. ARMEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. RUSH).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 16 printed in House report 107-615.

AMENDMENT NO. 16 OFFERED BY MR. SHAYS

Mr. SHAYS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SHAYS:

At the end of subtitle G of title VII insert the following:

**SEC. 7 . REPORTING REQUIREMENTS.**

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues;

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; and

(3) a report assessing the emergency preparedness of each State, including an assessment of each State's to the responsibilities specified in section 501.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in—

(A) implementing this Act; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Connecticut (Mr. SHAYS) and a Member opposed will each control 5 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would add a section to the bill to require biannual reports to Congress on three matters: The status of efforts to improve border security and emergency preparedness; the status of our overall preparedness to prevent, mitigate and, if necessary, respond to large-scale emergencies; the status of each State preparedness.

These biannual reports are needed to make sure the new Department is achieving the results Congress intends, while not micromanaging so large a reorganization effort.

Additionally, the amendment would require a one-time report to Congress no later than a year after enactment of this act, ensuring the maintenance of core functions transferred to the new Department and recommending statutory changes to facilitate the new changes of this substantial reorganization effort. These reports would provide a needed measure of transparency to the new Department's operations and allow Congress to measure results and meet our oversight responsibilities.

I applaud the work of my Committee on Government Reform and Subcommittee on National Security colleague, the gentlewoman from California (Ms. WATSON) who joins me in offering this amendment. Her approach to oversight is thoughtful, thorough and bipartisan. I do urge support for this amendment.

Mr. Chairman, I yield to the gentlewoman from California (Ms. WATSON).

Ms. WATSON of California. Mr. Chairman, I would like to thank the distinguished gentleman from Connecticut (Mr. SHAYS) for putting forward this needed amendment to the Homeland Security Act of 2002.

This amendment would create a mechanism for the Secretary of Homeland Security to report to Congress on the status of America's emergency preparedness. This type of information is crucial for Congress to make informed decisions about funding and oversight of our Nation's homeland security.

The bill that we are considering sets out an institutional structure for homeland security. Yet this structure is only one of three elements necessary to effectively secure our homeland. Number two is a comprehensive homeland security strategy with the administration produced and delivered to Congress earlier this month. The third element is having a method to assess the progress of our efforts to secure our homeland from attack. This is where our amendment comes in.

By creating a mechanism for the Secretary of Homeland Security to report on the progress of the Federal Government and the various State governments in preparing for emergencies, Congress can better supply the resources necessary to defend our country. In particular, it is important to have a sense of what the various States are doing to prepare themselves.

By requiring the Secretary of Homeland Security to evaluate the preparedness of State governments, we do not seek to impose a particular mandate on the State or demand that their planning conforms to a federally dictated one-size-fits-all approach. Instead, we seek a candid assessment of how well prepared each State government is for emergencies so that we might identify breakdowns in our homeland security infrastructure.

In any emergency, State governments will be tested. The Federal government can supply additional resources and expertise, but often State officials will be the first on the scene in case of a disaster. We will continue to rely on State governments to play a crucial role in emergency preparedness.

I urge Members to permit the Shays-Watson amendment to be introduced during the floor consideration of H.R. 5005.

Mr. SHAYS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. SHAYS).

The amendment was agreed to.

Mr. ARMEY. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. THORNBERRY) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, had come to no resolution thereon.

#### RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 8:30 a.m. today.

Accordingly (at 12 o'clock and 40 minutes a.m.), the House stood in recess until approximately 8:30 a.m. today.

□ 0800

#### AFTER RECESS

The recess having been declared as an approximate time of reconvening and having expired, the House was called to order by the Speaker pro tempore (Mr. HASTINGS of Washington) at 8 a.m.

#### CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SENSENBRENNER submitted the following conference report and statement on the bill (H.R. 333) to amend title 11, United States Code, and for other purposes:

CONFERENCE REPORT (H. REPT. 107-617)

The committee of conference on the disagreeing votes of the two Houses on

the amendment of the Senate to the bill (H.R. 333), to amend title 11, United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective House as follows:

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

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

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

(a) *SHORT TITLE.*—This Act may be cited as the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2002”.

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

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

#### TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.

Sec. 102. Dismissal or conversion.

Sec. 103. Sense of Congress and study.

Sec. 104. Notice of alternatives.

Sec. 105. Debtor financial management training test program.

Sec. 106. Credit counseling.

Sec. 107. Schedules of reasonable and necessary expenses.

#### TITLE II—ENHANCED CONSUMER PROTECTION

##### Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.

Sec. 202. Effect of discharge.

Sec. 203. Discouraging abuse of reaffirmation practices.

Sec. 204. Preservation of claims and defenses upon sale of predatory loans.

Sec. 205. GAO study and report on reaffirmation process.

##### Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.

Sec. 212. Priorities for claims for domestic support obligations.

Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.

Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.

Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.

Sec. 216. Continued liability of property.

Sec. 217. Protection of domestic support claims against preferential transfer motions.

Sec. 218. Disposable income defined.

Sec. 219. Collection of child support.

Sec. 220. Nondischargeability of certain educational benefits and loans.

##### Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.

Sec. 222. Sense of Congress.

Sec. 223. Additional amendments to title 11, United States Code.

Sec. 224. Protection of retirement savings in bankruptcy.

Sec. 225. Protection of education savings in bankruptcy.

Sec. 226. Definitions.

Sec. 227. Restrictions on debt relief agencies.

Sec. 228. Disclosures.

Sec. 229. Requirements for debt relief agencies.

Sec. 230. GAO study.

Sec. 231. Protection of personally identifiable information.

Sec. 232. Consumer privacy ombudsman.

Sec. 233. Prohibition on disclosure of name of minor children.

#### TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.

Sec. 302. Discouraging bad faith repeat filings.

Sec. 303. Curbing abusive filings.

Sec. 304. Debtor retention of personal property security.

Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.

Sec. 306. Giving secured creditors fair treatment in chapter 13.

Sec. 307. Domiciliary requirements for exemptions.

Sec. 308. Reduction of homestead exemption for fraud.

Sec. 309. Protecting secured creditors in chapter 13 cases.

Sec. 310. Limitation on luxury goods.

Sec. 311. Automatic stay.

Sec. 312. Extension of period between bankruptcy discharges.

Sec. 313. Definition of household goods and antiques.

Sec. 314. Debt incurred to pay nondischargeable debts.

Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.

Sec. 316. Dismissal for failure to timely file schedules or provide required information.

Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.

Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.

Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.

Sec. 320. Prompt relief from stay in individual cases.

Sec. 321. Chapter 11 cases filed by individuals.

Sec. 322. Limitations on homestead exemption.

Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.

Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.

Sec. 325. United States trustee program filing fee increase.

Sec. 326. Sharing of compensation.

Sec. 327. Fair valuation of collateral.

Sec. 328. Defaults based on nonmonetary obligations.

Sec. 329. Clarification of postpetition wages and benefits.

Sec. 330. Nondischargeability of debts incurred through violations of laws relating to the provision of lawful goods and services.

Sec. 331. Delay of discharge during pendency of certain proceedings.