

practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes.

S. 1858

At the request of Mr. DODD, the names of the Senator from Hawaii (Mr. INOUE) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of S. 1858, a bill to amend the Public Health Service Act to establish grant programs to provide for education and outreach on newborn screening and coordinated followup care once newborn screening has been conducted, to reauthorize programs under part A of title XI of such Act, and for other purposes.

S. 1930

At the request of Mr. WYDEN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1930, a bill to amend the Lacey Act Amendments of 1981 to prevent illegal logging practices, and for other purposes.

S. 1944

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1944, a bill to provide justice for victims of state-sponsored terrorism.

S. 1954

At the request of Mr. BAUCUS, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1954, a bill to amend title XVIII of the Social Security Act to improve access to pharmacies under part D.

S. 2042

At the request of Ms. STABENOW, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2042, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 2166

At the request of Mr. CASEY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2166, a bill to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries, and for other purposes.

S. 2172

At the request of Mr. MCCAIN, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2172, a bill to impose sanctions on officials of the State Peace and Development Council in Burma, to prohibit the importation of gems and hardwoods from Burma, to support democracy in Burma, and for other purposes.

S. 2198

At the request of Mr. DEMINT, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of

S. 2198, a bill to require the Architect of the Capitol to permit the acknowledgment of God on flag certificates.

S. 2202

At the request of Mr. DURBIN, his name was added as a cosponsor of S. 2202, a bill to amend the Clean Air Act to increase the renewable content of gasoline, and for other purposes.

AMENDMENT NO. 3335

At the request of Mr. DORGAN, the names of the Senator from Ohio (Mr. BROWN), the Senator from Michigan (Ms. STABENOW), the Senator from Pennsylvania (Mr. CASEY) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of amendment No. 3335 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3347

At the request of Mr. MENENDEZ, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of amendment No. 3347 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3364

At the request of Mr. COLEMAN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of amendment No. 3364 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3376

At the request of Mr. SMITH, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of amendment No. 3376 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3378

At the request of Mr. TESTER, the names of the Senator from Ohio (Mr. BROWN) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of amendment No. 3378 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3400

At the request of Mr. CARDIN, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 3400 proposed to H.R. 3043, a bill making appropriations for the Departments of

Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 3400 proposed to H.R. 3043, supra.

AMENDMENT NO. 3401

At the request of Mr. CARDIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3401 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3428

At the request of Mr. MENENDEZ, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of amendment No. 3428 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3432

At the request of Mr. REED, the names of the Senator from Kansas (Mr. ROBERTS) and the Senator from Rhode Island (Mr. WHITEHOUSE) were added as cosponsors of amendment No. 3432 proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

AMENDMENT NO. 3445

At the request of Mr. DORGAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of amendment No. 3445 intended to be proposed to H.R. 3043, a bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HATCH (for himself and Mr. BIDEN):

S. 2213. A bill to amend title 18, United States Code, to improve prevention, investigation, and prosecution of cyber-crime, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce S. 2213, the Cyber-Crime Act of 2007. I am joined in this effort by my colleague and good friend Senator BIDEN. This bipartisan legislation makes important, appropriate and necessary changes to federal law relating to computer fraud.

Continuous innovation in technology provides remarkable benefits to individuals throughout the world. In the United States, the integration of computer networks has allowed for increased efficiency of American businesses and provided greater access to

services and information for individuals. The ability of individuals and businesses to store vast amounts of data on computer networks has led to innumerable advantages including increased productivity and financial savings.

However, these same networks have proven to be prime targets for criminals seeking to utilize malicious computer code for illicit gain. Criminals are using viruses to exploit technological weaknesses in computer networks. These collections of compromised computers are called "botnets", and serve as zombie networks which can be remotely controlled by an attacker and used for numerous crimes, including identity theft and attacks on critical computer systems. Botnets can consist of hundreds of thousands of computers, and most victims are unaware their computer equipment has been compromised. An underground market has developed for these botnets, as criminals are renting these compromised networks to carry out different types of attacks. Botnets have the ability to grow exponentially and the potential damage from these networks grows accordingly.

Botnets pose a tremendous threat to our national infrastructure, economy, and security. Portions of the federal law relating to computer crime, written in a pre-Internet era, are inadequate and leave several unaddressed loopholes in our criminal code. For example, under current federal law a creator of a botnet can only be charged if the financial loss to one or more persons during one year passes a certain dollar threshold. It can be very difficult to put a price tag on the losses experienced by computer users, as it is not easy to calculate how much money an individual's time is worth in terms diverted from work or in trying to fix a malicious bot. In addition, it is possible for a criminal to create large botnets that can be utilized for future denial of service attacks and other violations, and still not violate this section of law.

In order to address this, the legislation we offer today modifies the Federal criminal code by criminalizing willful damage to 10 or more computers in any one year period. This change will allow the prosecution of criminals who covertly install malicious bots on protected computers with the purposes of making a botnet.

Also, S. 2213, will make other necessary changes to the Federal code, including expanding the definition of cyber extortion, and permit law enforcement seizure of computer equipment and other property used to perpetrate computer crimes. As well, the bill includes a directive to the U.S. Sentencing Commission to consider many highly relevant factors in its review of appropriate sentences for cyber crime.

All of the changes contemplated by this legislation, if aggressively enforced by law enforcement, will have a

positive impact on our security. In this information age, it will not take long for potential criminals to hear about the new tools available to law enforcement personnel and many will be deterred from perpetrating illegal activity over the Internet.

As criminals continue to adapt their tactics to exploit technological changes and loopholes in the law, it is imperative that Congress pass legislation that allows Federal law enforcement to maintain vigorous and tireless efforts in the investigation of cyber crime activity. I am confident that this legislation, once enacted, will provide for the tools needed to pursue those who choose to inflict such harm to our society.

By Mr. INHOFE:

S. 2214. A bill to establish the Federal Emergency Management Agency as an independent agency, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INHOFE. Mr. President, I rise today to introduce the Federal Emergency Management Advancement Act of 2007, a bill to establish the Federal Emergency Management Agency, FEMA, as an independent agency. After a series of winter storms and summer flooding caused extensive damage in Oklahoma, the State encountered problems with FEMA as they sought disaster assistance due to the levels of bureaucracy and a lack of communication. When other natural disasters struck Oklahoma prior to the placement of FEMA under Homeland Security, the State did not encounter the same bureaucratic delays and other problems. Therefore, I support making FEMA an independent agency again in an effort to grant FEMA more autonomy by removing that added layer of bureaucracy. Additionally, after Oklahoma experienced troubles establishing an accurate incident period for the 2007 summer flooding, I have also included in my bill language stating that the administrator should give deference to State documentation when determining disaster incident periods.

Oklahoma first encountered problems with FEMA and lack of communication and information when wildfires ravaged the state in 2005 and 2006. These devastating wildfires swept through the entire state leading to declarations for Public Assistance, Individual Assistance and hazard mitigation funding. All 77 counties in the State of Oklahoma qualified for Public Assistance while all counties were also eligible to apply for the Hazard Mitigation Grant Program. These wildfires were wide spread and deadly to my State.

More recently, Oklahoma encountered severe winter storms with devastating results in January 2007. These storms led to prolonged loss of power and extensive building damage for many of my constituents. In Muskogee County alone, an estimated 16,000 power company customers experienced

loss of electricity for days at time with temperatures remaining below freezing.

This summer, Oklahoma was hit by heavy rain, tornadoes, and flooding from May through September. The State made a number of disaster declarations during these periods. While I appreciate these declarations and aid, the process it took the state to get to this point was filled with unnecessary difficulty. Oklahoma particularly struggled with FEMA on the dates of the incident periods which is why I have included language in my bill to give deference to the State's documentation regarding the dates of such incidents. It makes sense that the State would be the one to have the most accurate information available regarding the disasters and the cause.

I believe this is an extremely important bill that will free FEMA from additional levels of bureaucracy and allow it to work in a more effective manner.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2214

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Emergency Management Advancement Act of 2007" or the "FEMA Act".

**TITLE I—FEDERAL EMERGENCY MANAGEMENT AGENCY**

**SEC. 101. DEFINITIONS.**

In this title—

(1) the term "catastrophic incident" means any natural disaster, act of terrorism, or other man-made disaster that results in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(2) the term "Director" means the Director of the Federal Emergency Management Agency;

(3) the term "Federal coordinating officer" means a Federal coordinating officer as described in section 302 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5143);

(4) the term "interoperable" has the meaning given the term "interoperable communications" under section 7303(g)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(g)(1));

(5) the term "National Advisory Council" means the National Advisory Council established under section 508 of the Homeland Security Act of 2002;

(6) the term "National Incident Management System" means a system to enable effective, efficient, and collaborative incident management;

(7) the term "National Response Plan" means the National Response Plan or any successor plan prepared under section 104(b)(6);

(8) the term "Nuclear Incident Response Team" means a resource that includes—

(A) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and

technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(B) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions; and

(9) the term "tribal government" means the government of any entity described under section 2(10)(B) of the Homeland Security Act of 2002 (6 U.S.C. 101(10)(B)).

**SEC. 102. ESTABLISHMENT OF AGENCY AND DIRECTOR AND DEPUTY DIRECTOR.**

(a) **ESTABLISHMENT.**—The Federal Emergency Management Agency is established as an independent establishment in the executive branch as defined under section 104 of title 5, United States Code.

(b) **DIRECTOR.**—

(1) **IN GENERAL.**—The Director shall be the head of the Federal Emergency Management Agency. The Director shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall report directly to the President.

(2) **QUALIFICATIONS.**—The Director shall have significant experience, knowledge, training, and expertise in the area of emergency preparedness, response, recovery, and mitigation as related to natural disasters and other national cataclysmic events.

(3) **EXECUTIVE SCHEDULE POSITION.**—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

"Director of the Federal Emergency Management Agency."

(4) **PRINCIPAL ADVISOR ON EMERGENCY MANAGEMENT.**—

(A) **IN GENERAL.**—The Director is the principal advisor to the President, the Homeland Security Council, and the Secretary of Homeland Security for all matters relating to emergency management in the United States.

(B) **ADVICE AND RECOMMENDATIONS.**—

(i) **IN GENERAL.**—In presenting advice with respect to any matter to the President, the Homeland Security Council, or the Secretary of Homeland Security, the Director shall, as the Director considers appropriate, inform the President, the Homeland Security Council, or the Secretary, as the case may be, of the range of emergency preparedness, protection, response, recovery, and mitigation options with respect to that matter.

(ii) **ADVICE ON REQUEST.**—The Director, as the principal advisor on emergency management, shall provide advice to the President, the Homeland Security Council, or the Secretary of Homeland Security on a particular matter when the President, the Homeland Security Council, or the Secretary requests such advice.

(iii) **RECOMMENDATIONS TO CONGRESS.**—After informing the President, the Director may make such recommendations to Congress relating to emergency management as the Director considers appropriate.

(5) **CABINET STATUS.**—The President shall designate the Administrator to serve as a member of the Cabinet in the event of natural disasters, acts of terrorism, or other man-made disasters.

(c) **DEPUTY DIRECTOR.**—

(1) **IN GENERAL.**—The Deputy Director of the Federal Emergency Management Agency shall assist the Director of the Federal Emergency Management Agency. The Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate.

(2) **QUALIFICATIONS.**—The Deputy Director of the Federal Emergency Management Agency shall have significant experience,

knowledge, training, and expertise in the area of emergency preparedness, response, recovery, and mitigation as related to natural disasters and other national cataclysmic events.

(3) **EXECUTIVE SCHEDULE POSITION.**—Section 5313 of title 5, United States Code, is amended—

(A) by striking the following:

"Administrator of the Federal Emergency Management Agency.;"

and

(B) by adding at the end the following:

"Deputy Director of the Federal Emergency Management Agency.;"

**SEC. 103. MISSION.**

(a) **PRIMARY MISSION.**—The primary mission of the Federal Emergency Management Agency is to reduce the loss of life and property and protect the Nation from all hazards, including natural disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk-based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation.

(b) **SPECIFIC ACTIVITIES.**—In support of the primary mission of the Federal Emergency Management Agency, the Director shall—

(1) lead the Nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

(2) partner with State, local, and tribal governments and emergency response providers, with other Federal agencies, with the private sector, and with nongovernmental organizations to build a national system of emergency management that can effectively and efficiently utilize the full measure of the Nation's resources to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents;

(3) develop a Federal response capability that, when necessary and appropriate, can act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other man-made disaster;

(4) integrate the Federal Emergency Management Agency's emergency preparedness, protection, response, recovery, and mitigation responsibilities to confront effectively the challenges of a natural disaster, act of terrorism, or other man-made disaster;

(5) develop and maintain robust Regional Offices that will work with State, local, and tribal governments, emergency response providers, and other appropriate entities to identify and address regional priorities;

(6) coordinate with the Secretary of Homeland Security, the Commandant of the Coast Guard, the Director of Customs and Border Protection, the Director of Immigration and Customs Enforcement, the National Operations Center, and other agencies and offices in the Department of Homeland Security to take full advantage of the substantial range of resources in that Department;

(7) coordinate with the Administrator of the Small Business Administration, the Chief of Engineers of the United States Army Corps of Engineers, and the Secretary of Housing and Urban Development to take full advantage of the resources of those departments and agencies;

(8) provide funding, training, exercises, technical assistance, planning, and other assistance to build tribal, local, State, regional, and national capabilities (including communications capabilities), necessary to respond to a natural disaster, act of terrorism, or other man-made disaster; and

(9) develop and coordinate the implementation of a risk-based, all-hazards strategy for preparedness that builds those common capabilities necessary to respond to natural disasters, acts of terrorism, and other man-made disasters while also building the unique capabilities necessary to respond to specific types of incidents that pose the greatest risk to our Nation.

**SEC. 104. AUTHORITY AND RESPONSIBILITIES.**

(a) **IN GENERAL.**—The Director shall provide Federal leadership necessary to prepare for, protect against, respond to, recover from, or mitigate against a natural disaster, act of terrorism, or other man-made disaster, including—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team, regardless of whether it is operating as an organizational unit of the Department of Homeland Security, and in consultation with the Secretary of Homeland Security—

(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 National Disaster Medical System, and, in consultation with the Secretary of Homeland Security, the Nuclear Incident Response Team (when that team is operating as an organizational unit of the Department of Homeland Security);

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources, including requiring deployment of the Strategic National Stockpile, in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan;

(7) helping ensure the acquisition of operable and interoperable communications capabilities by Federal, State, local, and tribal governments and emergency response providers;

(8) assisting the President in carrying out the functions under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and carrying out all functions and authorities given to the Director under that Act;

(9) carrying out the mission of the Federal Emergency Management Agency to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a risk-based, comprehensive emergency management system of—

(A) mitigation, by taking sustained actions to reduce or eliminate long-term risks to people and property from hazards and their effects;

(B) preparedness, by planning, training, and building the emergency management

profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) response, by conducting emergency operations to save lives and property through positioning emergency equipment, personnel, and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; and

(D) recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards;

(10) increasing efficiencies, by coordinating efforts relating to preparedness, protection, response, recovery, and mitigation;

(11) helping to ensure the effectiveness of emergency response providers in responding to a natural disaster, act of terrorism, or other man-made disaster;

(12) supervising grant programs administered by the Federal Emergency Management Agency;

(13) administering and ensuring the implementation of the National Response Plan, including coordinating and ensuring the readiness of each emergency support function under the National Response Plan;

(14) coordinating with the National Advisory Council;

(15) preparing and implementing the plans and programs of the Federal Government for—

- (A) continuity of operations;
- (B) continuity of government; and
- (C) continuity of plans;

(16) minimizing, to the extent practicable, overlapping planning and reporting requirements applicable to State, local, and tribal governments and the private sector;

(17) maintaining and operating within the Federal Emergency Management Agency the National Response Coordination Center or its successor;

(18) developing a national emergency management system that is capable of preparing for, protecting against, responding to, recovering from, and mitigating against catastrophic incidents;

(19) assisting the President in carrying out the functions under the national preparedness goal and the national preparedness system and carrying out all functions and authorities of the Director under the national preparedness System;

(20) carrying out all authorities of the Federal Emergency Management Agency; and

(21) otherwise carrying out the mission of the Federal Emergency Management Agency as described in section 103.

(b) ALL-HAZARDS APPROACH.—In carrying out the responsibilities under this section, the Director shall coordinate the implementation of a risk-based, all-hazards strategy that builds those common capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against natural disasters, acts of terrorism, and other man-made disasters, while also building the unique capabilities necessary to prepare for, protect against, respond to, recover from, or mitigate against the risks of specific types of incidents that pose the greatest risk to the Nation.

(c) CONFLICT OF AUTHORITIES.—If the Director determines that there is a conflict between any authority of the Director under this Act, the amendments made by this Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) and any authority of another Federal officer, the Director shall request that the President make such determinations as may be necessary regarding such authorities.

#### SEC. 105. REGIONAL OFFICES.

(a) IN GENERAL.—There are in the Federal Emergency Management Agency 10 regional offices, as identified by the Director.

(b) MANAGEMENT OF REGIONAL OFFICES.—

(1) REGIONAL ADMINISTRATOR.—Each Regional Office shall be headed by a Regional Administrator who shall be appointed by the Director, after consulting with State, local, and tribal government officials in the region. Each Regional Administrator shall report directly to the Director and be in the Senior Executive Service.

(2) QUALIFICATIONS.—

(A) IN GENERAL.—Each Regional Administrator shall be appointed from among individuals who have a demonstrated ability in and knowledge of emergency management and homeland security.

(B) CONSIDERATIONS.—In selecting a Regional Administrator for a Regional Office, the Director shall consider the familiarity of an individual with the geographical area and demographic characteristics of the population served by such Regional Office.

(c) RESPONSIBILITIES.—

(1) IN GENERAL.—The Regional Administrator shall work in partnership with State, local, and tribal governments, emergency managers, emergency response providers, medical providers, the private sector, nongovernmental organizations, multijurisdictional councils of governments, and regional planning commissions and organizations in the geographical area served by the Regional Office to carry out the responsibilities of a Regional Administrator under this section.

(2) RESPONSIBILITIES.—The responsibilities of a Regional Administrator include—

(A) ensuring effective, coordinated, and integrated regional preparedness, protection, response, recovery, and mitigation activities and programs for natural disasters, acts of terrorism, and other man-made disasters (including planning, training, exercises, and professional development);

(B) assisting in the development of regional capabilities needed for a national catastrophic response system;

(C) coordinating the establishment of effective regional operable and interoperable emergency communications capabilities;

(D) staffing and overseeing 1 or more strike teams within the region under subsection (f), to serve as the focal point of the Federal Government's initial response efforts for natural disasters, acts of terrorism, and other man-made disasters within that region, and otherwise building Federal response capabilities to respond to natural disasters, acts of terrorism, and other man-made disasters within that region;

(E) designating an individual responsible for the development of strategic and operational regional plans in support of the National Response Plan;

(F) fostering the development of mutual aid and other cooperative agreements;

(G) identifying critical gaps in regional capabilities to respond to populations with special needs;

(H) maintaining and operating a Regional Response Coordination Center or its successor; and

(I) performing such other duties relating to such responsibilities as the Director may require.

(3) TRAINING AND EXERCISE REQUIREMENTS.—

(A) TRAINING.—The Director shall require each Regional Administrator to undergo specific training periodically to complement the qualifications of the Regional Administrator. Such training, as appropriate, shall include training with respect to the National Incident Management System, the National

Response Plan, and such other subjects as determined by the Director.

(B) EXERCISES.—The Director shall require each Regional Administrator to participate as appropriate in regional and national exercises.

(d) AREA OFFICES.—The Director shall establish Area Offices as components in the appropriate Regional Office, as determined appropriate by the Director.

(e) REGIONAL ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Each Regional Administrator shall establish a Regional Advisory Council.

(2) NOMINATIONS.—A State, local, or tribal government located within the geographic area served by the Regional Office may nominate officials, including Adjutants General and emergency managers, to serve as members of the Regional Advisory Council for that region.

(3) RESPONSIBILITIES.—Each Regional Advisory Council shall—

(A) advise the Regional Administrator on emergency management issues specific to that region;

(B) identify any geographic, demographic, or other characteristics peculiar to any State, local, or tribal government within the region that might make preparedness, protection, response, recovery, or mitigation more complicated or difficult; and

(C) advise the Regional Administrator of any weaknesses or deficiencies in preparedness, protection, response, recovery, and mitigation for any State, local, and tribal government within the region of which the Regional Advisory Council is aware.

(f) REGIONAL OFFICE STRIKE TEAMS.—

(1) IN GENERAL.—In coordination with other relevant Federal agencies, each Regional Administrator shall oversee multi-agency strike teams authorized under section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5144) that shall consist of—

(A) a designated Federal coordinating officer;

(B) personnel trained in incident management;

(C) public affairs, response and recovery, and communications support personnel;

(D) a defense coordinating officer;

(E) liaisons to other Federal agencies;

(F) such other personnel as the Director or Regional Administrator determines appropriate; and

(G) individuals from the agencies with primary responsibility for each of the emergency support functions in the National Response Plan.

(2) OTHER DUTIES.—The duties of an individual assigned to a Regional Office strike team from another relevant agency when such individual is not functioning as a member of the strike team shall be consistent with the emergency preparedness activities of the agency that employs such individual.

(3) LOCATION OF MEMBERS.—The members of each Regional Office strike team, including representatives from agencies other than the Department, shall be based primarily within the region that corresponds to that strike team.

(4) COORDINATION.—Each Regional Office strike team shall coordinate the training and exercises of that strike team with the State, local, and tribal governments and private sector and nongovernmental entities which the strike team shall support when a natural disaster, act of terrorism, or other man-made disaster occurs.

(5) PREPAREDNESS.—Each Regional Office strike team shall be trained as a unit on a regular basis and equipped and staffed to be well prepared to respond to natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents.

(6) **AUTHORITIES.**—If the Director determines that statutory authority is inadequate for the preparedness and deployment of individuals in strike teams under this subsection, the Director shall report to Congress regarding the additional statutory authorities that the Director determines are necessary.

**SEC. 106. NATIONAL RESPONSE PLAN.**

(a) **IN GENERAL.**—The Director shall—

(1) in consultation with other Federal departments and agencies and the National Advisory Council, ensure ongoing management and maintenance of the National Incident Management System, the National Response Plan, and any successor to such system or plan; and

(2) periodically review and report to Congress on the integration of Federal authorities to ensure effective response to address response responsibilities and capabilities in the event of a catastrophic incident.

(b) **CHAIN OF COMMAND.**—

(1) **IN GENERAL.**—The Director, in consultation with the Secretary of Homeland Security, shall ensure that the National Response Plan provides for a clear chain of command to lead and coordinate the Federal response to any natural disaster, act of terrorism, or other man-made disaster.

(2) **DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.**—The chain of the command specified in the National Response Plan shall—

(A) provide for a role for the Director consistent with the role of the Director under this Act and the amendments made by this Act; and

(B) provide for a role for the Federal Coordinating Officer consistent with the responsibilities under section 302(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5143(b)).

(3) **PRINCIPAL FEDERAL OFFICIAL.**—The Principal Federal Official (or the successor thereto) shall not—

(A) direct or replace the incident command structure established at the incident; or

(B) have directive authority over the Senior Federal Law Enforcement Official, Federal Coordinating Officer, or other Federal and State officials.

**SEC. 107. CREDENTIALING AND TYPING.**

The Director shall enter into a memorandum of understanding with the administrators of the Emergency Management Assistance Compact, State, local, and tribal governments, and organizations that represent emergency response providers, to collaborate on developing standards for deployment capabilities, including credentialing of personnel and typing of resources likely needed to respond to natural disasters, acts of terrorism, and other man-made disasters.

**SEC. 108. FEDERAL AND STATE COOPERATION FOR DISASTER INCIDENT PERIODS.**

In determining the duration of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)) or other incident, and in establishing the period for public or individual assistance or other disaster relief assistance for which a State or local government or individual may be eligible, the Director shall defer to weather reports and other substantiating documentation submitted by a State.

**SEC. 109. NATIONAL OPERATIONS CENTER.**

(a) **DEFINITION.**—In this section, the term “situational awareness” means information gathered from a variety of sources that, when communicated to emergency managers and decision makers, can form the basis for incident management decisionmaking.

(b) **ESTABLISHMENT.**—The National Operations Center is the principal operations cen-

ter for the Federal Emergency Management Agency and shall—

(1) provide situational awareness and a common operating picture for the entire Federal Government, and for State, local, and tribal governments as appropriate, in the event of a natural disaster, act of terrorism, or other man-made disaster; and

(2) ensure that critical terrorism and disaster-related information reaches government decision-makers.

**SEC. 110. GRANT PROGRAMS.**

(a) **IN GENERAL.**—Title XX of the Homeland Security Act of 2002 (6 U.S.C. 601 et seq.) is amended—

(1) in section 2001—

(A) in paragraph (1)—

(i) in the paragraph heading, by striking “ADMINISTRATOR” and inserting “DIRECTOR”; and

(ii) by striking “Administrator” each place that term appears and inserting “Director”;

(B) in paragraph (4)(A)(iv), by striking “Secretary” and inserting “Director”; and

(C) in paragraph (12), by striking “Secretary” each place that term appears and inserting “Director”;

(2) in section 2002(a), by striking “The Secretary, through the Administrator,” and inserting “The Director”;

(3) in section 2003—

(A) by striking “Administrator” each place that term appears and inserting “Director”; and

(B) by striking “Department” each place that term appears and inserting “Federal Emergency Management Agency”;

(4) in section 2004, by striking “Administrator” each place that term appears and inserting “Director”;

(5) in section 2005—

(A) by striking “Administrator” each place that term appears and inserting “Director”; and

(B) by striking “Department” each place that term appears and inserting “Federal Emergency Management Agency”;

(6) in section 2006, by striking “Administrator” each place that term appears and inserting “Director”;

(7) in section 2007—

(A) by striking “Administrator” each place that term appears and inserting “Director”; and

(B) in subsection (a)(1)(E), by striking “Department” and inserting “Federal Emergency Management Agency”;

(8) in 2008, by striking “Administrator” each place that term appears and inserting “Director”;

(9) in section 2021—

(A) in subsection (a), by striking “Administrator” and inserting “Director”;

(B) in subsection (c)(1), by striking “(acting through the Administrator)” and inserting “, the Director”; and

(C) by striking “Department” each place that term appears and inserting “Federal Emergency Management Agency”; and

(10) in section 2022—

(A) by striking “Administrator” each place that term appears and inserting “Director”;

(B) by striking “Department” each place that term appears and inserting “Federal Emergency Management Agency”;

(C) in subsection (a)(3)(F), in the subparagraph heading, by striking “ADMINISTRATOR” and inserting “DIRECTOR”; and

(D) in subsection (c), in the subsection heading, by striking “ADMINISTRATOR” and inserting “DIRECTOR”.

(b) **OTHER GRANT PROGRAMS.**—

(1) **EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM.**—Section 662 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 762) is amended by striking “Administrator” each place that term appears and inserting “Director”.

(2) **INTEROPERABLE EMERGENCY COMMUNICATIONS GRANT PROGRAM.**—Section 1809 of the Homeland Security Act of 2002 (6 U.S.C. 579) is amended—

(A) in subsection (a), by striking “Secretary” and inserting “Director of the Federal Emergency Management Agency”;

(B) in subsection (b), by striking “Director for Emergency Communications” and inserting “Director of the Federal Emergency Management Agency”;

(C) by amending paragraph (1) of subsection (c) to read as follows:

“(1) **IN GENERAL.**—The Director of the Federal Emergency Management Agency shall administer the Interoperable Emergency Communications Grant Program.”; and

(D) by striking “Administrator” each place that term appears and inserting “Director of the Federal Emergency Management Agency”.

**SEC. 111. MODEL STANDARDS AND GUIDELINES; GUIDANCE AND RECOMMENDATIONS; VOLUNTARY PRIVATE SECTOR PREPAREDNESS.**

Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended—

(1) in section 522, by striking “Administrator” each place that term appears and inserting “Director of the Federal Emergency Management Agency”;

(2) in section 523—

(A) by striking “Administrator” each place that term appears and inserting “Director of the Federal Emergency Management Agency”; and

(B) in subsection (b)(2), by striking “Secretary” and inserting “Director of the Federal Emergency Management Agency”; and

(3) in section 524—

(A) by amending subsection (a) to read as follows:

“(a) **ESTABLISHMENT.**—The Administrator (hereinafter referred to in this section as the ‘designated officer’) shall establish and implement the voluntary private sector preparedness accreditation and certification program in accordance with this section.”; and

(B) by amending subsection (b)(2)(E)(ii)(I) to read as follows:

“(I) private sector related programs of the Department; and”.

**SEC. 112. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) **IN GENERAL.**—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended—

(1) in section 501, by striking all after “In this title” and inserting “the term ‘tribal government’ means the government of any entity described under section 2(10)(B).”;

(2) by striking sections 503 through 507, 510, and 515;

(3) in section 508—

(A) by striking “Administrator” each place that term appears and inserting “Director of Federal Emergency Management Agency”;

(B) in subsection (b)(2), by striking “Department” and inserting “Federal Emergency Management Agency”; and

(C) in subsection (c)—

(i) in paragraph (1), by inserting “in consultation with the Secretary,” before “and shall, to the extent practicable”; and

(ii) in paragraph (3), by inserting “, in consultation with the Secretary,” before “shall designate”;

(4) in section 509—

(A) in subsection (a), by striking “Agency” and inserting “Department”; and

(B) by striking subsection (c);

(5) in section 512(c), by striking “Administrator” each place that term appears and inserting “Secretary”;

(6) in section 513—

(A) by striking “Administrator” each place that term appears and inserting “Secretary”; and

(B) in subsection (b)(2), by striking “Agency” and inserting “Department”; and

(7) in section 514—

(A) by striking subsection (a); and

(B) redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(b) TABLE OF CONTENTS.—The table of contents for the Homeland Security Act of 2002 (6 U.S.C. 101) is amended by striking the items relating to sections 503 through 507, 510, and 515.

#### SEC. 113. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to detract from the Department of Homeland Security’s primary mission to secure the homeland from terrorist attacks.

### TITLE II—TRANSFER AND SAVINGS PROVISIONS

#### SEC. 201. DEFINITIONS.

In this title, unless otherwise provided or indicated by the context—

(1) the term “Federal agency” has the meaning given to the term “agency” by section 551(1) of title 5, United States Code;

(2) the term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(3) the term “office” includes any office, administration, agency, institute, unit, organizational entity, or component thereof.

#### SEC. 202. TRANSFER OF FUNCTIONS.

There are transferred to the Federal Emergency Management Agency established under section 101 of this Act all functions which the Director of the Federal Emergency Management Agency of the Department of Homeland Security exercised before the date of the enactment of this title, including all the functions described under section 505 of the Homeland Security Act of 2002 (before the repeal of that section under section 104 of this Act).

#### SEC. 203. PERSONNEL PROVISIONS.

(a) APPOINTMENTS.—The Director of the Federal Emergency Management Agency may appoint and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as may be necessary to carry out the respective functions transferred under this title. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Director of the Federal Emergency Management Agency may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate such experts and consultants for each day (including traveltime) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of such title. The Director of the Federal Emergency Management Agency may pay experts and consultants who are serving away from their homes or regular place of business, travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of such title for persons in Government service employed intermittently.

#### SEC. 204. DELEGATION AND ASSIGNMENT.

Except where otherwise expressly prohibited by law or otherwise provided by this title, the Director of the Federal Emergency Management Agency may delegate any of the functions transferred to the Director of the Federal Emergency Management Agency by this title and any function transferred or granted to such Director after the effective date of this title to such officers and employees of the Federal Emergency Management

Agency as the Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions by the Director of the Federal Emergency Management Agency under this section or under any other provision of this title shall relieve such Director of responsibility for the administration of such functions.

#### SEC. 205. REORGANIZATION.

The Director of the Federal Emergency Management Agency is authorized to allocate or reallocate any function transferred under section 202 among the officers of the Federal Emergency Management Agency, and to establish, consolidate, alter, or discontinue such organizational entities in the Federal Emergency Management Agency as may be necessary or appropriate.

#### SEC. 206. RULES.

The Director of the Federal Emergency Management Agency is authorized to prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Director determines necessary or appropriate to administer and manage the functions of the Federal Emergency Management Agency.

#### SEC. 207. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this title, subject to section 1531 of title 31, United States Code, shall be transferred to the Federal Emergency Management Agency. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

#### SEC. 208. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized to make such determinations as may be necessary with regard to the functions transferred by this title, and to 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 title. The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

#### SEC. 209. EFFECT ON PERSONNEL.

(a) IN GENERAL.—Except as otherwise provided by this title, the transfer pursuant to this title 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 of such employee under this title.

(b) EXECUTIVE SCHEDULE POSITIONS.—Except as otherwise provided in this title, any person who, on the day preceding the effective date of this title, 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 Federal Emergency Management Agency 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.

#### SEC. 210. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title, and

(2) which are in effect at the time this title takes effect, or were final before the effective date of this title and are to become effective on or after the effective date of this title,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the Federal Emergency Management Agency or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before the Federal Emergency Management Agency at the time this title takes effect, with respect to functions transferred by this title but such proceedings and applications shall continue. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Federal Emergency Management Agency, or by or against any individual in the official capacity of such individual as an officer of the Federal Emergency Management Agency, shall abate by reason of the enactment of this title.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Federal Emergency Management Agency relating to a function transferred under this title may be continued by the Federal Emergency Management Agency with the same effect as if this title had not been enacted.

#### SEC. 211. SEPARABILITY.

If a provision of this title or its application to any person or circumstance is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.

**SEC. 212. TRANSITION.**

The Director of the Federal Emergency Management Agency is authorized to utilize—

(1) the services of such officers, employees, and other personnel of the Federal Emergency Management Agency with respect to functions transferred by this title; and

(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this title.

**SEC. 213. REFERENCES.**

Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—

(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or

(2) to such department, agency, or office is deemed to refer to the department, agency, or office to which such function is transferred.

**SEC. 214. ADDITIONAL CONFORMING AMENDMENTS.**

(a) **RECOMMENDED LEGISLATION.**—After consultation with the appropriate committees of the Congress and the Director of the Office of Management and Budget, the Director of the Federal Emergency Management Agency shall prepare and submit to Congress recommended legislation containing technical and conforming amendments to reflect the changes made by this Act.

(b) **SUBMISSION TO CONGRESS.**—Not later than 6 months after the effective date of this title, the Director of the Federal Emergency Management Agency shall submit the recommended legislation referred to under subsection (a).

By Ms. COLLINS (for herself, Mr. PRYOR, Mr. SUNUNU, Mr. JOHNSON, Mr. COLEMAN, Mr. BIDEN, Mr. THUNE, Mr. ENZI, and Mr. CARPER):

S. 2215. A bill to amend the Homeland Security Act of 2002 to establish the Protective Security Advisor Program Office; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President. I rise to introduce a bill that would formally establish and enhance the Protective Security Advisor Program Office within the Department of Homeland Security.

The PSA program, which operates under the DHS Office of Infrastructure Protection, has proven its worth on many occasions. For example, when the Interstate 35-W bridge in Minneapolis collapsed in August of this year, PSAs provided valuable support to the Minnesota Department of Public Safety, providing assessments of infrastructure impacts relating to emergency services, postal and shipping operations, public transit, fuel deliveries, public utilities, and rail operations.

DHS has deployed more than 70 PSAs in major metropolitan areas around the country. These are skilled and savvy people, averaging more than 20 years of law-enforcement, military, or counter-terror experience. They regularly interact and develop working relationships with Government agencies at all levels and with private-sector en-

ties, and they can be among the first on the scene when disaster strikes.

Critical infrastructure is not, however, confined to large urban areas. Yet, 10 States—Delaware, Idaho, Maine, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming—do not have a resident PSA dedicated to serving the interests and protecting the citizens of those States.

The bill I introduce today will enhance our national preparedness, response capability, and security by providing a minimum Protective Security Advisor presence in every State, while preserving the risk-based principle that provides extra coverage in areas of dense population or concentrated critical infrastructure.

The bill will also enhance the PSA program by providing for 10 supervisory PSAs for regional coordination and management, and by authorizing additional PSAs at DHS headquarters. These headquarters PSAs will help manage participation in training and exercises, PSA training and certification programs, and day-to-day operations that help our Nation prevent, respond to, and limit the consequences of terrorist attacks and natural disasters.

This bill also will advance the goals of the National Infrastructure Protection Plan. It will promote governmental and private-sector efforts to assess risks to and vulnerabilities of critical infrastructure, help stakeholders share information and coordinate activities, assist with multi-jurisdictional planning, and provide counsel to any designated Principal Federal Official when a joint field office must be established.

State emergency managers recognize the importance of this legislation. The Maine Emergency Management Agency has already provided a letter of support. Its bipartisan list of cosponsors—Senators PRYOR, SUNUNU, JOHNSON, COLEMAN, BIDEN, THUNE, ENZI, and CARPER—includes three other members of the Senate Homeland Security Committee. These facts attest to the bill's merit.

Mr. President, 300 million Americans live in a society that depends on a complex and tightly interrelated network of critical infrastructure and services including food supply, finance, energy, sanitation, transport, and communications.

The DHS Protective Security Advisors have demonstrated that they are a critical element of our homeland-security defenses. This bill will expand their numbers, extend their coverage, strengthen their organization, and make all of us safer.

I urge my colleagues to support this measure.

By Mr. BAUCUS (for himself, Mr. CRAPO, Mr. WYDEN, Mr. SALAZAR, Ms. CANTWELL, Mr. INHOFE, Mrs. DOLE, Mr. BURR, Mr. COBURN, and Mrs. HUTCHISON):

S.J. Res. 22. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to Medicare coverage for the use of erythropoiesis stimulating agents in cancer and related neoplastic conditions; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I am introducing a joint resolution to disapprove of the Medicare National Coverage Decision on cancer care announced by the Centers for Medicare & Medicaid Services on July 30, 2007. I am taking this action out of concern for America's seniors who are afflicted with cancer, a terrible disease that affects thousands of Medicare beneficiaries each year.

At the outset, I want to make very clear that Congress should not wantonly second-guess the scientific processes at CMS. The National Coverage Decision process is a very important component of the agency's governance of the Medicare program and its mission to protect the safety of beneficiaries. The agency makes several National Coverage Decisions each year that are implemented without any congressional involvement. Several more coverage determinations are made by regional Medicare carriers at the local level. When scientific evidence supports doing so, CMS clearly has authority to limit Medicare coverage for drugs and other medical products and services to an extent less than the Food and Drug Administration label would otherwise allow. In fact, I am working on a proposal that may provide more clinical evidence to guide CMS in making these decisions.

There are some rare occasions, however, when CMS makes a decision that intrudes on the clinical judgment of doctors without the support of scientific evidence, prompting virtually unanimous opposition from the clinicians who treat the patients whose care is at stake. In these cases, I believe that Congress not only may but must intervene. This National Coverage Decision regarding the use of erythropoiesis-stimulating agents, or ESAs, for Medicare beneficiaries with cancer and cancer-related conditions is precisely such an instance.

Mr. President, when a cancer patient receives an ESA, the goal is not to manage a person's hemoglobin back to the level of a healthy, non-anemic person. That is because there can be health risks associated with raising the hemoglobin to such a level through ESA use. The FDA label makes it clear that patients may only be administered enough of an ESA to avoid a transfusion, and that ESAs should never be used to bring a patient's hemoglobin level above 12 grams per deciliter. So there can be risks when a patient does not get enough of an ESA, including severe anemia and the need for blood transfusions. And there are

risks when a patient gets too much of an ESA. The FDA label establishes parameters to guard against under-utilization and over-utilization of these products.

Now let us compare the FDA label with the National Coverage Decision announced by CMS. The National Coverage Decision limits ESA treatment to hemoglobin levels less than 10 grams per deciliter. This cap fails to recognize the natural fluctuations in a patient's hemoglobin. This cap is simply incongruous with the FDA label, which recommends that patients should not be treated over 12. I should note that the FDA label was recently changed, with the addition of new "black box" warnings and recent safety information. If the FDA believes that scientific evidence warrants changing the label yet again, then clearly Medicare should not cover treatments that are not consistent with that new label.

Furthermore, there are other aspects of the CMS National Coverage Decision that are contrary to accepted standards of care and scientific evidence. CMS imposed 4-week dose limitations that are not based on the clinical needs of patients. The FDA labels allow ESAs to be administered three times a week, every week, every 2 weeks, or every 3 weeks. Also, for patients who are slow to respond to ESAs or do not respond, CMS has created a one-time dose escalation rule of 25 percent of the initial ESA dose. This limitation is contrary to FDA-approved dosing instructions. For instance, the FDA approved labeling allows doubling the dose for some regimens.

Mr. President, over the past months, I have seen an outpouring of concern with this National Coverage Decision by patients, providers, and the professional scientific community for many reasons. The American Society of Clinical Oncology, the world's leading professional organization representing physicians of all oncology subspecialties who care for cancer patients, wrote this to CMS:

Under the new CMS policy, a patient's hemoglobin could repeatedly fall below 10 following termination of coverage at the end of 4-week periods. This consequence would be inconsistent with the FDA-approved labeling, which, as noted above, states that ESA dosing should be titrated to the individual patient to maintain the hemoglobin level. . . . We strongly urge CMS to reconsider these restrictions in light of the concerns detailed above.

The current NCD does not allow for interpretation consistent with clinical practice, national guidelines, or the FDA-approved labels in this area. This reopening [of the National Coverage Decision] should occur as soon as possible to avoid continued confusion and uncertainty [for] both physicians and patients. Until these issues are clarified, we also strongly recommend that CMS delay the effective date for the entire NCD.

The American Society of Hematology, the leading clinical authority on disorders affecting the blood, bone marrow, and the immunologic, hemostatic, and vascular systems, has stated:

Consequently, the clinical scenario that is problematic is when a patient's hemoglobin goes above 10 g/dL after 4 weeks of treatment because the physician would then need to discontinue the ESA treatment entirely. This is of concern because some patients might then drop below 10 g/dL justifying a renewal of the ESA treatment and leading to a 'roller coaster' of treatment potentially involving stopping and starting ESA treatment several times. This is extremely difficult for both the patient and the physician.

The Leukemia and Lymphoma Society wrote this in a recent letter to CMS:

As a reimbursement authority, CMS and the Medicare program it administers should be guided by science and data in order to achieve the best result for cancer patients. Accordingly, CMS should defer to the expertise of FDA and of the academic scientists who contribute to the ASCO/ASH guidelines.

Additionally, I share the concerns of many in the oncology community who worry about exposing seniors to the avoidable safety risks of blood transfusions, as well as the effect of this policy on our nation's blood supply. It has been clearly documented that certain areas of the country are already at risk of running out of their blood supply or have ongoing shortages. Some areas have 24 hours worth of blood left before they completely run out. According to the 2006 Nationwide Blood Collection and Utilization Survey, the number of transfusions of red blood cells in 2004 was nearly equivalent to the number of units collected. This policy, which patients are already telling us are forcing them into transfusion units, could put in jeopardy a U.S. blood supply that is already fragile and stretched thin.

The American Red Cross has indicated in their guidelines that transfusions are not appropriate for chemotherapy patients when alternative treatments are available:

Red blood cells should not be used to treat anemia that can be corrected with a non-transfusion therapy such as iron or recombinant erythropoietin.

To my great concern, the CMS National Coverage Decision responds to this vital issue with the following:

The concern about the adequacy of the nation's blood supply is not a relevant factor for consideration in this national coverage determination. Our focus is whether the use of ESA is reasonable and necessary to treat a particular illness.

The sole purpose for using ESAs, as stated on the FDA label, is to avoid a blood transfusion. But CMS has decided that this issue is not relevant to a decision regarding the coverage of ESAs. Well, I can guarantee you that it is important to the patients who will now be forced to seek transfusions as a result of CMS' shortsighted decision.

Congress continues to demonstrate that it shares the concerns of patients and the clinical community about the new CMS policy and the detrimental effect that it could have on patient care. Earlier this summer, prior to the CMS issuance of the final National Coverage Decision, 52 Senators and 235 Members of the House of Representatives wrote to CMS expressing an over-

whelmingly bipartisan, bicameral concern with the CMS policy. CMS, however, ignored these concerns and issued a final National Coverage Decision on July 30 that was even more onerous than the one proposed.

On September 4, the Senate sent a strong message of dissatisfaction when we passed S. Res. 305, without one Senator objecting. S. Res. 305 called on CMS to immediately reconsider the National Coverage Decision. But CMS has refused to reopen the National Coverage Decision and work with the clinical community to develop an appropriate patient-centered policy that is consistent with scientific evidence.

Because CMS has repeatedly ignored our concerns, we now are forced to take legislative action that compels CMS to change this flawed policy. That is why today I am asking my Colleagues to support this resolution of disapproval.

Let me tell you what this resolution does not do. This resolution does not replace the medical judgment of CMS or the FDA with that of Congress. This resolution does not ignore the safety concerns of ESAs used when a patient's hemoglobins are above the FDA label. Finally, this resolution does not reject the notion of any National Coverage Decision related to ESAs. This resolution simply asks CMS to go back to the drawing board. It compels CMS to work with the oncology community—the experts and clinicians and patients—to come up with a policy that is based on scientific evidence and that the community can support, or at least understand. That is why I ask my Colleagues to join me in supporting this important legislation.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the text of the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 22

Whereas the Centers for Medicare & Medicaid Services issued a final Medicare national coverage determination on the use of erythropoiesis stimulating agents in cancer and related neoplastic conditions (CAG-000383N) on July 30, 2007;

Whereas the Centers for Medicare & Medicaid Services submitted to the Congress a copy of the national coverage determination rule, a detailed description of the rule, and the proposed effective date of the rule;

Whereas 52 Senators and 235 Members of the House of Representatives, representing bipartisan majorities in both chambers, have written to the Centers for Medicare & Medicaid Services expressing significant concerns with the proposed national coverage determination on the use of erythropoiesis stimulating agents in cancer and related neoplastic conditions, issued on May 14, 2007;

Whereas the leading national medical organization representing physicians who treat patients with cancer has noted that the national coverage determination's hemoglobin level restriction is inconsistent with both the FDA-approved labeling and national guidelines and that its dosing and titration regimen restrictions are inconsistent with established studies, the FDA label, and clinical guidelines and, therefore, has formally

requested that the Centers for Medicare & Medicaid Services reconsider these restrictions;

Whereas the leading national medical organization representing physicians who treat patients with disorders affecting the blood and bone marrow, the Nation's leading health care services network dedicated exclusively to cancer treatment and research, and other national, nonprofit organizations dedicated to improving patient access to care have expressed similar concerns regarding the national coverage determination and have called for its reconsideration; and

Whereas despite the strong concerns of the oncology and hematology community, the Centers for Medicare & Medicaid Services has failed to take any action: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Congress disapproves the rule (CAG-000383N) submitted by the Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to Medicare coverage for the use of erythropoiesis stimulating agents in cancer and related neoplastic conditions, and such rule shall have no force or effect.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3447. Mr. SMITH (for himself and Mr. BIDEN) submitted an amendment intended to be proposed by him to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table.

SA 3448. Mr. SMITH (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER) to the bill H.R. 3043, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 3447. Mr. SMITH (for himself and Mr. BIDEN) submitted an amendment intended to be proposed by him to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title II, insert the following:

SEC. \_\_\_\_ (a) Notwithstanding any other provision of this Act, there shall be made available under this Act a total of \$7,500,000 for the National Violent Death Reporting System within the Centers for Disease Control and Prevention.

(b) Amounts made available under this Act for travel and administrative expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be further reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$7,500,000.

SA 3448. Mr. SMITH (for himself and Mrs. LINCOLN) submitted an amendment intended to be proposed to amendment SA 3325 proposed by Mr. HARKIN (for himself and Mr. SPECTER)

to the bill H.R. 3043, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:  
SEC. \_\_\_\_ (a) The amount made available under the heading "AGING SERVICES PROGRAMS" under the heading "ADMINISTRATION ON AGING" in this title shall be increased by \$10,000,000 of which—

(1) \$5,000,000 shall be used to carry out part B of title III of the Older Americans Act of 1965 (42 U.S.C. 3030d) for fiscal year 2008 (for supportive services and senior centers to allow area agencies on aging to account for projected growth in the population of older individuals, and inflation);

(2) \$2,000,000 shall be used to carry out part C of title III of such Act (42 U.S.C. 3030d-21 et seq.) for fiscal year 2008 (for congregate and home-delivered nutrition services to help account for increased gas and food costs); and

(3) \$3,000,000 shall be used to carry out part E of title III of such Act (42 U.S.C. 3030s et seq.) for fiscal year 2008 (for the National Family Caregiver Support Program to fund the program at the level authorized for that program under that Act (42 U.S.C. 3001 et seq.)).

(b)(1) The 3 amounts described in paragraph (2) shall be reduced on a pro rata basis, to achieve a total reduction of \$10,000,000.

(2) The amounts referred to in paragraph (1) are—

(A) the amount made available under the heading "SALARIES AND EXPENSES" under the heading "DEPARTMENTAL MANAGEMENT" in title I, for administration or travel expenses;

(B) the amount made available under the heading "GENERAL DEPARTMENTAL MANAGEMENT" under the heading "OFFICE OF THE SECRETARY" in this title, for administration or travel expenses; and

(C) the amount made available under the heading "PROGRAM ADMINISTRATION" under the heading "DEPARTMENTAL MANAGEMENT" in title III, for administration or travel expenses.

#### PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Caitlin Parton of my staff be granted floor privileges for the duration of today's session.

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

#### DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT OF 2007—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. REID. Madam President, I was going to ask unanimous consent that the Senate proceed to the consideration of S. 2205 at a time to be determined, but I am advised that there would be a Republican objection. Therefore, I will not ask that unanimous consent. In view of that objection that would have been lodged, I now move to proceed to Calendar No. 431, S. 2205, the DREAM Act, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 431, S. 2205, DREAM Act.

Richard J. Durbin, Robert Menendez, Daniel K. Inouye, Robert P. Casey, Jr., Joe Lieberman, Patty Murray, Jeff Bingaman, Jack Reed, Patrick Leahy, Charles Schumer, Daniel K. Akaka, Frank R. Lautenberg, Benjamin L. Cardin, John Kerry, S. Whitehouse, Barbara Boxer, Harry Reid.

Mr. REID. Madam President, I ask unanimous consent that the mandatory quorum be waived.

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

Mr. REID. Madam President, I withdraw the motion.

The PRESIDING OFFICER. The motion is withdrawn.

#### DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT OF 2007

Mr. LEAHY. Madam President, I am pleased that the Senate will have an opportunity to consider and adopt the DREAM Act. I have, again, cosponsored Senator DURBIN's initiative along with Senators LUGAR and HAGEL and urge all Senators to join us in proceeding to consideration of S.2205, the latest version of the Development, Relief, and Education for Alien Minors Act.

The DREAM Act was first introduced in 2001, during the 107th Congress. The Judiciary Committee favorably reported the bill with bipartisan support in 2002 and, again, in 2003 during the 108th Congress. When the Senate Judiciary Committee took up comprehensive immigration reform in 2006 during the 109th Congress, the DREAM Act was adopted by voice vote as an amendment to the comprehensive immigration reform bill reported by the Judiciary Committee, and it was included in the comprehensive immigration reform measure that the Senate ultimately passed in 2006. Senator DURBIN worked hard to have the DREAM Act included in the bill the Senate took up this past summer. I hope the spirit of bipartisanship that has been evident throughout this bill's history in the Senate can carry it to final passage this year.

The bill sets the right tone and policy. It seeks to enhance educational opportunities for thousands of young people who wish to enter college, but who are prevented from doing so due to circumstances over which they have little control. We should send the clear signal that the Senate majority is committed to doing what it can to move positive immigration reforms forward. It makes good sense to invest in our future by enhancing educational opportunities for our Nation's young people.

Children brought to the United States by their parents or guardians