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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, December 21, 2010, at 10 a.m.

Senate

SUNDAY, DECEMBER 19, 2010

The Senate met at 12 noon and was called to order by the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado.

PRAYER

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

Let us pray.

For unto us a Child is born. Unto us a Son is given, and the government shall be upon His shoulders. And His name shall be called Wonderful, Counselor, the Mighty God, the Everlasting Father, the Prince of Peace.

King of kings, we thank You for this season that reminds us of Your love for our world. We confess that we sometimes rush into Your presence, breathless with our needs. Calm our spirits. Turn our thoughts to Your majesty. Help the Members of this body today to see Your purposes more clearly. Give them a passionate commitment to keep Your law, until justice rolls down like waters and righteousness like a mighty stream. We pray in Your merciful Name. Amen.

NOTICE

If the 111th Congress, 2d Session, adjourns sine die on or before December 23, 2010, a final issue of the *Congressional Record* for the 111th Congress, 2d Session, will be published on Wednesday, December 29, 2010, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 29. The final issue will be dated Wednesday, December 29, 2010, and will be delivered on Thursday, December 30, 2010.

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

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

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

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PLEDGE OF ALLEGIANCE

The Honorable MICHAEL F. BENNET led the Pledge of Allegiance as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Wahington, DC, December 19, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MICHAEL F. BENNET, a Senator from the State of Colorado, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. BENNET thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, I am meeting and having a conversation with the Republican leader to see if we can come to an agreement on the CR. There are a few issues but nothing we shouldn't be able to work through.

Following any leader remarks, the Senate will resume executive session to resume consideration of the New START treaty. There will be 3 hours of debate with respect to the Risch amendment. The time will be divided as follows: 1 hour under the control of Senator KERRY or his designee, and 2 hours under the control of Senator RISCH or his designee. There will be no amendments in order to this amendment.

At approximately 3 p.m. today the Senate will proceed to a series of up to three rollcall votes. The Risch amendment will be voted on, that is amendment No. 4839; the confirmation of a circuit court judge for the Second District, Raymond J. Lohier, Jr.; and confirmation of a district court judge in Mississippi, Carlton Reeves.

RESERVATION OF LEADER TIME

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

Mr. REID. Mr. President, I note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, I ask unanimous consent that we divide the time appropriately among the 3 hours. I would use perhaps 10 minutes at this moment in time.

EXECUTIVE SESSION

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following treaty, which the clerk will report.

The legislative clerk read as follows:

Treaty with Russia on Measures for Further Reduction and Limitation of Strategic Offensive arms.

Pending:

Risch amendment No. 4839, to amend the preamble to the treaty to acknowledge the interrelationship between nonstrategic and strategic offensive arms.

Mr. KERRY. Mr. President, I ask that the time be divided as follows: I ask unanimous consent that I be permitted to proceed for 10 minutes and then reserve the remainder of our time; the Senator from Idaho will control the time of the Republicans. They will proceed to use up all but 10 minutes of their time. I will come back and respond, at which point they would have 10 minutes held at the back end.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. RISCH. That is agreeable, Mr. President.

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

Mr. KERRY. Mr. President, let me begin very quickly. First of all, I wish to thank the Senator from Idaho for his amendment. I appreciate the thought he has put into the consideration of this treaty and his role on the Foreign Relations Committee and the work he has done over the 4 days, and now the fifth day of consideration of this treaty on the floor of the Senate.

The amendment the Senator proposes to put into the treaty is an amendment to the preamble. So we have the same problem we had yesterday. I would just say that up front. But that said, we have great agreement with the substance of what he is trying to put forward in terms of the need to deal with tactical nuclear weapons. We will say more about that afterwards.

If the Senator would be willing, I think we can find a way to incorporate into the resolution of ratification a genuine, meaningful, adequate statement with respect to this linkage between tactical nuclear weapons and overall strategic understanding. I would like to do that, but I know the Senator wants to proceed with this amendment first. I just want him to have that understanding, that we are prepared to say something important, and I think substantive, about tactical nuclear weapons.

I wish to use a couple of minutes, if I may, to respond to a couple of comments made this morning by the minority leader on one of the morning television shows.

First of all, obviously, I regret he will not support the treaty itself. We had an understanding that was probably going to be the case. It is not a surprise. But I find it disappointing, given the entire Republican foreign policy, national security, experienced statesmen group who are sort of emeritus for our Nation today—including former Secretary of State Larry Eagleburger, former Secretary of State Colin Powell, and former Secretary of State Jim Baker, as well as the list of all of the former Secretaries of State from the Republican side, including former Secretary of State Condoleezza Rice—all support this treaty.

The military supports this treaty. The leader of the Strategic Command, current, and the past former seven, support this treaty. The national intelligence community supports this treaty.

So I hope that in these waning days of this session, as we approach this holiday season which is so focused on the concept of renewal and hope and peace, that we could find the ability in the Senate to embrace in a bipartisan way the security interests of our country.

Particularly with regard to the notion about more time on this treaty, we are now on the fifth day of debate on this treaty. Let's debate today. Even if we had the cloture filing tonight or something, we would still have 2 days more of debate before that ripens and a vote on it, after which we then have 30 hours of debate providing it will pass.

So we are looking at the prospect of having more days of debate on this treaty, a simple building block on top of the START I treaty. We are looking at having more days of debate on this treaty than the START I, START II, and Moscow Treaty all put together.

So I think the Senate, which is appropriate, has time to focus on this treaty. I thought we had a good debate yesterday. The President said:

Regardless of Russia's actions, as long as I am President and as long as the Congress provides the necessary funding, the United States will continue to develop and deploy effective missile defenses to protect the United States.

So I hope our colleagues will give credence to the Secretary of Defense, the Secretary of State, the military, the President of the United States, and to the budget. The chairman of the Appropriations Committee informed me yesterday they have fully funded the

modernization, once again, in the CR, just as we did in the previous CR—a sign of good faith of the direction in which we are going.

So all I can say is we have bent over backwards to meet the concerns of our colleagues in a completely nonpolitical, apolitical, totally bipartisan, substantive way that meets the security concerns of the country. I hope we can find reciprocity with respect to that kind of action in the Senate.

So I reserve the remainder of my time. We will respond appropriately on the substance of this amendment at the appropriate time.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

Mr. RISCH. Mr. President, first of all, I wish to thank the chairman of the committee and the ranking member of the committee for the cooperation we have had throughout this matter. As I said when I started my debate on this amendment, I believe everyone is working in good faith, in the best interests of the United States, to attempt to develop and ratify a treaty that will be in the best interests of the United States.

I was particularly encouraged this morning to hear the chairman of the committee indicate he believes the substance of what we are talking about is an important issue, and I know he believes that. I know the intelligence community believes it. I know a lot of other parties that are involved believe this is a very important issue. We are going to talk about why this is an important issue as we go forward. After all, when we are dealing with a subject such as this, we are talking about the security of the people of the United States of America. It is not a partisan issue. It is not a win or a loss for anyone. It is developing the best we can possibly do to protect the American people.

I am nonetheless disappointed by yesterday's vote regarding missile defense. I am going to talk about that a little bit when I get into the substance of tactical weapons, but the issue of missile defense, just like the issue of strategic versus tactical weapons, is one that has been around for a long time.

It is not new. It is one of a couple of issues that were around 40 years ago when the people who originally brought us to the table with the Russians to do the work that they did. As I said before, those people were real heroes. They were patriots and did a great job of getting us to the table with the Russians, at a time when nuclear weapons was probably the most important issue facing the world.

A lot of us grew up in an era when we remember having air raid drills. I remember going to friends' houses who actually had shelters in their homes, so if indeed there was a nuclear war, they could take shelter. It is hard to believe that was the situation 40 years ago, but it was. Most people today don't have a recollection of what a serious issue that was. Those people who brought us to the table were real patriots. That was 40 years ago.

As I said before, the world has changed greatly in 40 years. Unfortunately, the dialog regarding strategic missiles has not dramatically changed in the last 40 years. We have been focused almost exclusively on numbers and to the great credit of those originally involved and to the credit of the ranking member, Senator LUGAR, who is here with me today, those numbers have been dramatically reduced. We started out with each side having over 6,000 weapons that could be launched on the other side. We have continuously ratchetted that back under this treaty to 1,550. I don't want to, in any way, denigrate the fact that we have greatly reduced the number of those strategic weapons on each side.

Having said that, one has to wonder what is the difference between 6,000 and 1,550? If either party pushes the button at 6,000 or at 1,550, the world is over as we know it. So although it is important to talk about numbers, I think that in today's world, because of changing conditions, we should be as much focused on a couple of other—well, at least two other issues, one being the missile defense issue, which we talked about at great length yesterday, and the other is the relationship between strategic and tactical weapons.

Frankly, we have been pacifying the Russians regarding missile defense and regarding strategic versus tactical weapons in order to get these treaties. I understand that when you are doing treaty work, when you are negotiating, it has to be a give-and-take proposition. Having said that, these two issues have moved to the forefront and have moved to importance, compared to simply the bare number of weapons and the verification process. Again, I don't want to denigrate the verification process itself; that is important.

Today, Russia is not the threat to us when it comes to nuclear issues, as it was 40 years ago. Indeed, there was no truly great threat to us other than Russia 40 years ago. However, today, most everybody agrees the likelihood of Russia pushing the button or us pushing the button and destroying each other is very unlikely. We have a 40-year history, where we have been through good times and bad times. Neither party—with the exception of the Cuban missile crisis—has come close to or remotely close to or even threatened to push the button and start a nuclear war.

In my judgment, and I think in the judgment of people who deal with this regularly, Russia is not the nuclear threat it was 40 years ago. But there are threats out there that indeed are as bad and worse than what the Russian threat was 40 years ago. How many people believe the rogue countries, North Korea and Iran, would not threaten us—at the very least threaten us—to push the button if they indeed had the ability to immediately do so. We all know it has been reported in the press that both those countries are working feverishly to get themselves in the position where they can have a nuclear weapon mounted, poised, and ready to go, so that when they sit down at the table with us, they can look us in the eye and say: Look, we will push the button if you don't—fill in the blank.

Our media today mocks and jokes about Ahmadinejad and Kim Jong Il as being dysfunctional people—I think that is the kindest way of putting it. But they will not be joking about it if they get themselves in the position where they are able to legitimately threaten us with pushing the button or pulling the trigger on us with a nuclear attack.

We need to be focusing on the other aspects, starting with missile defense, because if we sit across the table from Kim Jong Il or his representatives or Ahmadinejad and the best we have to offer is a retaliatory strike, that isn't nearly as effective as having an umbrella over the top of us that can knock an errant missile out of the sky. We need a robust missile defense system.

I believe, as we said earlier, that this treaty chills that, because no matter what you say, if you read the unilateral statements made by the parties, the Russians have said that if we go forward with improving, either quantitatively or qualitatively, our missile defense system, this is grounds for withdrawing from this treaty. I don't think we should have a treaty in place that in any way chills the thinking about what we do to protect the American people with a robust missile defense system that could knock out of the sky an attack by either North Korea or Iran or even an accidental launch by the Russians, which, although remote, is a possibility.

Well, today, let's talk about something we can agree on; that is, the importance of tactical weapons in this discussion. As the distinguished chairman mentioned in his opening statement, the importance of the tactical weapons issue is a matter we should be concerned about and we should talk about. I am delighted to hear his offer that, assuming this goes by the bye, we can talk about getting something into the resolution of ratification as opposed to into the treaty.

First, for those who aren't daily speaking on this issue, the difference between strategic and tactical weapons is important. The difference is distance. A strategic weapon can reach your enemy on the other side of the ocean. A tactical weapon is a theater or short-range weapon that can be used on the battlefield. That is the difference between the two. It is a huge difference in a lot of different ways.

Although we all agree it is an important issue, and we all talk about it, nothing is done about it. Indeed, according to the statements that have

been made, before we ever sat down at the table with the Russians on this issue, it was agreed we would do nothing about this issue. I hope and I urge that the President, the State Department, and all the others involved will pursue this issue aggressively and quickly once we have this treaty behind us, one way or the other.

What I want to do is to amend the preamble to the treaty, once and for all, that lays this issue on the table and tells the Russians this is an important issue and that we are no longer going to look the other way and ignore this issue. They have an advantage on us on this issue. Everyone agrees with that. But this is what I want to put into the preamble, and it is not extensive. I have heard the chairman say over and over again that the preamble doesn't mean anything or very little. With all due respect, I disagree with that. I compare it to the preamble of the Constitution of the United States, which means a lot and is frequently quoted in court cases on constitutional issues.

This is what I want to put in:

Acknowledging there is an interrelationship between nonstrategic and strategic offensive arms, that as the number of strategic offensive arms is reduced [as this treaty does] this relationship becomes more pronounced and requires an even greater need for transparency and accountability, and the disparity between the parties' arsenals could undermine predictability and stability.

That is a factual statement that, on our side, virtually everybody agrees to. Obviously, the Russians, I suspect, probably agree to that but don't want to talk about it.

Well, the problem, in its simplest terms, is that we are greatly outgunned by the Russians at this time on the tactical front. Right now, on the strategic front, according to media sources we have approximately 2,100 strategic weapons. The Russians have approximately 1,100 strategic weapons. From an intelligence standpoint, I am not confirming those numbers, but that is what is reported in the press—assuming those numbers are accurate or modestly accurate. We, obviously, are not in parity. We are in a little better shape than the Russians from a strategic standpoint.

When you consider that neither of us believe we will reach for use of our strategic weapons, it doesn't make a lot of difference that we have 1,000 more than they do and probably not that much of a difference if either one pulls the trigger. On the tactical side, however, that is a very different ball game. As we all know, we have defense treaties. The biggest one is NATO, but we have defense partnerships with many countries around the world. Under our nuclear defense umbrella, many countries take refuge. It is here that the tactical weapons become important.

On these tactical weapons, as I said, the Russians have a 10-to-1 advantage over us. Just as important, without getting into intelligence details, they have a vast array of weapons, not only a delivery system but the weapons themselves, which again outgun us and is a serious problem.

Thirdly, just as important, they continue cranking out every day new designs, new technology, new development, and new production of these tactical weapons—continuing to add to the disparity between us and the Russians.

Well, this disparity in our nuclear posture is very well demonstrated by the report Congress commissioned, entitled ''America's Strategic Posture.'' It is published in a book and known as the Perry-Schlesinger Commission. I am going to refer to that briefly because I think probably this, as much as anything, is what people use as a guide to describe where we are as far as our posture on nuclear weapons and especially on tactical weapons, which is what I am focusing on with this particular amendment.

First, let me say the Russians are relying on more tactical nuclear weapons. The Commission report, at page 12, explained that:

As part of its effort to compensate for weaknesses in its conventional forces, Russia's military leaders are putting more emphasis on nonstrategic nuclear forces [what they call NSNF] particularly weapons intended for tactical use on the battlefield. Russia no longer sees itself as capable of defending its vast territory and its nearby interests with conventional forces.

So in very short order, they have explained why the Russians are doing this, why they have us 10-to-1 on this part of the issue, and why they continue to develop it. Well, they do not have the money or the resources or the ability, because of the large territory they have, to defend with conventional forces, and so they reach for these tactical weapons that are smaller and more easily deployed.

There is a description of the tactical nuclear threat in this document at page 13, which, again, I want to quote because I think it says it as concisely as it can be said:

As the Cold War ended, and as noted above, these NSNF—

That is, nonstrategic nuclear forces, short-range weapons—

were reduced under the auspices of the PNIs—

That is, Presidential Nuclear Initiatives—

and also the Treaty on Intermediate Range Nuclear Forces of 1987. Nonetheless, Russia reportedly retains a very large number of such weapons. Senior Russian experts have reported that Russia has 3,800 operational tactical nuclear warheads with a large additional number in reserve. Some Russian military experts have written about use of very low-yield nuclear ''scalpels'' to defeat NATO forces. The combination of new warhead designs, the estimated production capacity for new nuclear warheads, and precision delivery systems, such as the Iskander short-range tactical ballistic missile (known as the SS–26 in the West), open up new possibilities for Russian efforts to threaten to use nuclear weapons to influence regional conflicts.

That is at page 13.

There is a lack of Russian transparency on this particular issue. One of the things this treaty does that we are talking about today—and I think everyone concedes that this is one of the important aspects of this treaty—is it gives us transparency with the Russians, at least to some degree. One could argue the degree, but at least there is some transparency. Not so with tactical weapons.

This is what the Commission said:

Like China, Russia has not shown the transparency that its neighbors and the United States desire on such matters. It has repeatedly rebuffed U.S. proposals for nonstrategic nuclear forces transparency measures and NATO's request for information. And it is no longer in compliance with its PNI commitments.

So that describes the transparency problem, page 13 of this particular report.

There is a need to have effective deterrence against Russian tactical weapons, and again the report points this out.

Even as it works to engage Russia and assure Russia that it need not fear encirclement and containment, the United States needs to assure that deterrence will be effective whenever it is needed. It must also continue to concern itself with stability in its strategic military relationship with Russia. It must continue to safeguard the interest of its allies as it does so. Their assurance that extended deterrence remains credible and effective may require that the United States retain numbers of types of nuclear capabilities that it might not deem necessary if it were concerned only with its own defense.

Again, this provides a description of the serious issue tactical weapons puts on the table.

Well, there is a very substantial concern about the imbalance between strategic and tactical weapons. As I said, on tactical weapons we are not only balanced, but we probably have an advantage of 1,000, but who cares if neither party really believes it is going to be used. So then you turn to the tactical weapons, which are obviously very different.

This is what the Commission says:

But that balance does not exist in nonstrategic nuclear forces, where Russia enjoys a sizable numerical advantage. As noted above, it stores thousands of these weapons in apparent support of possible military operations west of the Urals. The United States deploys a small fraction of that number in support of nuclear sharing agreements in NATO.

Let me say that again: The United States deploys a small fraction of that number in support of nuclear sharing agreements in NATO.

Precise numbers for the U.S. deployments are classified, but their total is only about 5 percent of the total at the height of the Cold War. Strict U.S.-Russian equivalents in NSNF numbers is unnecessary, but the current imbalance is stark and worrisome to some U.S. allies in Central Europe.

And to this Senator personally.

If and as reductions continue in the number of operationally deployed strategic nuclear weapons, this imbalance will become more apparent and allies less assured.

Further in this report, they say:

The imbalance favoring Russia is worrisome, including for allies, and it will become more worrisome as the number of strategic weapons is decreased.

Which, of course, is what we are trying to do with this treaty.

Dealing with this imbalance is urgent and, indeed, some commissioners would give priority to this over taking further steps to reduce the number of operationally deployed strategic nuclear weapons.

Obviously for the reasons I said because nobody believes we will ever reach to the strategic nuclear weapons to use them.

U.S. policy should seek reductions in Russian tactical weapons. I think everyone agrees on that, and that is precisely what I am attempting to do with this amendment to the preamble.

The Strategic Posture Commission says:

U.S. policy should be guided by two principles. First, the United States should seek substantial reductions in the large force of Russian nonstrategic nuclear forces (Non-Strategic Nuclear Forces). Second, no changes to the U.S. force posture should be made without comprehensive consultation with all its U.S. allies (and within NATO as such). All allies depending on the U.S. nuclear umbrella should be assured that any changes in its forces do not imply a weakening of the U.S. extended nuclear deterrence guarantees. They could perceive a weakening if the United States (and NATO) does not maintain other features of the current extended nuclear deterrence arrangements than the day-to-day presence of U.S. nuclear bombs. Some allies have made it clear to the commission that such consultations would play a positive role in renewing confidence in U.S. security assurances.

Finally, the Perry-Schlesinger Commission endorsed tactical weapons reductions talks.

The Commission said:

The commission is prepared strongly to endorse negotiations with Russia in order to proceed jointly to further reductions in our nuclear forces as part of a cooperative effort to stabilize relations, stop proliferation, and promote predictability and transparency. The large Russian arsenal of tactical nuclear weapons must be considered in this regard.

Well, obviously everyone is concerned. I am not the only one concerned. Obviously, the Commission isn't the only one concerned about this. Members of this body are and have been for a long time concerned about this.

My distinguished colleague from Maine, Senator COLLINS, wrote to the Secretary of State on December 3, 2010, and she stated:

The characteristics of tactical nuclear weapons, particularly their vulnerability for theft and misuse for nuclear terrorism, make reducing their numbers important now.

Senator COLLINS focused on another aspect of this that we haven't really talked about that much, but certainly strategic weapons have very little opportunity—in fact, in the United States, no opportunity—for access by terrorists. Not so much on the other side. But clearly there is a great difference between tactical and strategic weapons, primarily because of the way they are deployed.

Senator COLLINS also said:

President Obama's 2010 Nuclear Posture Review echoes the concern of nuclear terrorism. ''The threat of nuclear war has become remote, but risk of nuclear attack has increased. Today's most immediate and extreme danger is nuclear terrorism. Al-Qaida and their extremist allies are seeking nuclear weapons.''

That probably summarizes as clearly as anything the discussion I had at the outset about the difference of 40 years ago versus today and underscores what, in my judgment, is so important about moving this dialog forward instead of staying in the rut of where we were 40 years ago and focusing just on numbers.

Again, it is not just the Republican side of the aisle. Almost a decade ago, the SORT treaty, or Moscow treaty—another nuclear arms reduction treaty—was discussed here on the floor of the Senate, and a number of my colleagues from the other side of the aisle raised this exact question regarding tactical weapons and also underscored how important it was to take on this issue. Again, even though we have advanced 40 years, nothing has happened, and nothing has happened in the last decade. About 10 years ago, the distinguished Members of this body underscored how important it was to take this issue on, and nothing has happened.

Then-Senator BIDEN said on July 9, 2002, in this Chamber:

My question is, if the impetus for this treaty was going down to 1,700 to 2,200, related to the bottom line of what our consensus in our government said we are going to need for our security, and the rationale for the treaty was in part to avoid this kind of debate that took place over tactical nuclear weapons, then it sort of reflects that this is what the President thinks are the most important things to proceed on relative to nuclear weapons. Does he think that dealing with the tactical nuclear weapons are not that relevant or that important now, or that things as they are relative to tactical nuclear stockpiles are OK? Talk to me about that? You understand where I am going?

Well, I do, Mr. Vice President, because that is where I am going today, but nothing has happened over the last decade.

My distinguished colleague, Senator DORGAN, said in this Chamber, when we were talking about that treaty:

And this treaty deals with only strategic nuclear weapons, not theater nuclear weapons. There are thousands and thousands of theater nuclear weapons, such as the nuclear weapons that go on the tips of artillery shells. That is not part of the agreement. It has nothing to do with this agreement.

He was right then, and he is right now as to this agreement.

Senator REED, the Senator from Rhode Island, stated:

The treaty does not specifically address the problem of tactical weapons or MIRV'd ICBMs. The number of Russian tactical nuclear weapons is believed to be between 8,000 and 15,000, while the United States has approximately 2,000. Russian tactical nuclear weapons are subject to fewer safeguards and more prone to theft and proliferation. These are the proverbial suitcase weapons, often discussed in the press, which are the ones that are most mobile, most difficult to trace and detect. And the treaty does not deal with these weapons at all.

Senator REED was right then on that treaty, and he is right on this treaty.

Regarding that treaty, Senator CONRAD stated:

I was therefore disappointed that a requirement for Russian tactical warhead dismantlement and United States inspection rights were not part of the treaty of Moscow.

Well, he was right, and I share his disappointment today on this, and I think everyone shares that disappointment. That is what I am trying to move forward with this particular amendment.

Senator CONRAD went on to say:

The disconnect between the ability of the United States to maintain current strategic force levels almost indefinitely, and Russia's inevitable strategic nuclear decline due do economic realities, gave our side enormous leverage that I believe we should have used to win Russian concessions on tactical nuclear arms. While I am encouraged that the resolution of ratification before us includes a declaration on accurate accounting and security, it does not mention Russian tactical nuclear reductions. I have prepared a corrective amendment and would welcome the support of the chairman and ranking member of the Foreign Relations Committee.

Thank you, Senator CONRAD. I expect him to come through the door any moment and join me as a cosponsor on this amendment. He had an amendment to the last treaty and that is exactly what I am trying to do on this treaty.

Finally, Senator FEINSTEIN, in talking about that treaty, said:

[T]he treaty does not address tactical nuclear weapons. As my colleagues know, there is a great deal of uncertainty about the number, location, and secure storage of Russian tactical nuclear weapons. Smaller and more portable than strategic weapons, they are vulnerable to theft or sale to terrorist groups. Yet the treaty does not even mention them. This is a glaring oversight and the dangers posed by tactical nuclear weapons—especially now in the post-September 11 world of global terrorism—warrants the immediate attention and action by both Russia and the United States.

She also said:

This treaty marks an important step forward in the relationship between the United States and Russia and reduces the dangers posed by strategic nuclear weapons. Nevertheless, I am concerned that the treaty does not go far enough and I believe its flaws must be addressed if we truly want to make the threat of nuclear war a thing of the past.

What has changed in the last 8 years, indeed in the last 40 years, when it comes to tactical weapons? Not much. As my colleague said 8 years ago, we should have had, in these negotiations, tremendous leverage over the Russians on this particular issue. We have a 1,000-warhead advantage on them. They are already under the numbers, and I am still not clear what we got when we agreed that the number would be 1,550, when they were already below it and we had to get down to 1,550. I am not

sure what we got for that. But it would seem to me at least we should have gotten something in that regard and that something should have had to do with tactical weapons.

As I am winding down, let me correct one thing that is out there in the public domain and that is the State Department's Web site. The State Department has a Web site up that addresses this treaty and deals with many questions surrounding this treaty and has answers for the public, for the media, and for anyone who wants to go there and learn about this particular issue.

I wish to focus on one particular aspect of that; that is, the part that deals with tactical weapons that I am dealing with. The State Department Web site posts—I suppose it is under ''frequently asked questions,'' the question: ''Why doesn't the New START Treaty cover tactical weapons?''

That is a good question: ''Why doesn't the new START treaty cover tactical weapons?''

It goes on and states that:

> From the outset, as agreed by Presidents Obama and [the President of Russia] . . . the issue of tactical weapons was not raised.

I guess that begs the question: Why wasn't it? But nonetheless, the question is still out there: Why doesn't it address that? This is what they state:

> Deferring negotiations on tactical nuclear weapons until after a START successor agreement had been concluded was also the recommendation of the Perry-Schlesinger Strategic Posture Commission.

That is an inaccurate statement. You recall, as I read from the Perry-Schlesinger Report, that is an inaccurate statement. Some members of the Perry-Schlesinger Commission were disturbed by the fact that the Web site said they had recommended they put this off.

On December 17, 2010, half a dozen members of that Commission wrote to Senator KERRY and ranking member Senator LUGAR and were protesting that particular statement on the Web site. I am going to quote from this letter. I am going to put the letter in the RECORD, but I am going to quote some small parts. The letter said:

> As Members of the Strategic Posture Commission, we write to provide our own reality check that this does not resemble the recommendation the commission made on Russian tactical nuclear weapons.

It goes on to say:

> The Commission specifically said on page 67 of its report that, ''The imbalance favoring Russia is worrisome, including for allies, and it will become more worrisome as the number of strategic weapons is decreased. Dealing with this imbalance is urgent and, indeed, some commissioners would give priority to this over taking further steps to reduce the number of operationally deployed strategic nuclear weapons.

I ask unanimous consent to have printed in the RECORD the letter of December 17 I referred to, to Senator KERRY and Senator LUGAR, from members of the Strategic Posture Commission.

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

DECEMBER 17, 2010.

Senator JOHN KERRY,
Russell Senate Office Bldg.,
Washington, DC.
Senator RICHARD LUGAR,
Hart Senate Office Bldg.,
Washington, DC.

DEAR SENATORS KERRY AND LUGAR: During Senate consideration of New START, Members of the Senate have rightly raised their concern that New START leaves untouched Russia's ten-to-one advantage in tactical nuclear weapons. The official State Department response to this concern is provided by a document on its web site purporting to be a ''reality check,'' which states that ''Deferring negotiations on tactical nuclear weapons until after a START successor agreement bad been concluded was also the recommendation of the Perry-Schlesinger Congressional Strategic Posture Commission.'' As Members of the Strategic Posture Commission we write to provide our own reality check that this does not resemble the recommendation the Commission made on Russian tactical nuclear weapons.

The Commission was in fact very concerned about Russian tactical nuclear weapons. At page 21 of its report, the Commission noted that the current imbalance in tactical nuclear weapons between the United States and Russia ''is stark and worrisome to some U.S. allies in Central Europe.'' We took note of the ''evidently rising value in Russian military doctrine and national security strategy'' of tactical nuclear weapons, and found that ''there is a clear allied concern about this development.''

The Commission specifically said on page 67 of its report that ''The imbalance favoring Russia is worrisome, including for allies, and it will become more worrisome as the number of strategic weapons is decreased. Dealing with this imbalance is *urgent* and, indeed, *some commissioners would give priority to this over taking further steps to reduce the number of operationally deployed strategic nuclear weapons.*'' (Emphasis added). In addition, page 68 says, ''The United States will need to consider additional initiatives on those NSNF [non-strategic nuclear forces] not constrained by the INF Treaty—i.e., tactical nuclear weapons. U.S. policy should be guided by two principles. First, the United States should seek substantial reductions in the large force of Russian NSNF.'' Second, ''no changes to the U.S. force posture should be made without comprehensive consultations with all U.S. allies.''

These quotes from the Commission's report demonstrate the error of the State Department's assertion that the administration's approach to New START and tactical nuclear weapons is consistent with the Commission's recommendations.

As members of the Strategic Posture Commission, we have brought this matter to your attention because we believe that the Commission's recommendations regarding negotiations with Russia remain pertinent and that any reference to the Commission's report should be accurate.

Sincerely,

HARRY CARTLAND.
JOHN S. FOSTER, Jr.
FRED C. IKLÉ.
KEITH B. PAYNE.
JAMES R. SCHLESINGER,
Vice-Chairman.
R. JAMES WOOLSEY, Jr.
Commissioner.

Mr. RISCH. Let me conclude. Here we are, 40 years later and, indeed, a decade later than our most recent foray into this. Other than the raw reduction of numbers of strategic weapons, not a whole lot has changed. But the world has changed dramatically and I urge and I suggest our approach with Russia on these very important issues needs to, likewise, change—and it has not.

Once again, in this Senator's humble opinion and that of a number of other Senators also, we have been bested by the Russians on the missile defense issue. They have convinced us that if we even think about improving, either quantitative or qualitatively, missile defense issues, they will withdraw.

Once again, they convinced us before we ever sat down at table that they would not talk about nuclear weapons.

That is wrong. That is wrongheaded thinking. It was wrong to approach this treaty with that type of thing on the table. So when we are all done and the high-fiving starts and the champagne bottles are opened and the fancy documents are signed, before everybody gets all worked up about what a great and glorious thing this treaty is, I would say it is missing some important things. No. 1 is missile defense, and I guess we already crossed that bridge yesterday; but the other is the oh-so-important issue of tactical weapons.

Fellow Senators, this is your opportunity. If you want to press the reset button with Russia, this gives you your opportunity to press the reset button with Russia and take up this issue that is so important and, indeed, in the minds of many, more important than the issue of strategic weapons.

I yield the floor to Senator KYL.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. First, let me thank Senator RISCH on a fine statement about a very important aspect of this START treaty. He covered the waterfront very well. I only wish there were more than two other colleagues on the Senate floor to hear this debate. Part of the reason I suggested, a long time ago, it was not a good idea to bring up the START treaty just before Christmas is Members would be preoccupied, especially if we tried to go through Saturday and Sunday. Here we are on a Sunday afternoon and there are four Senators, in addition to the Presiding Officer, on the Senate floor. This is a shame because it is an important issue.

Yesterday, the Senate rejected an amendment by Senators MCCAIN and BARRASSO. What they said was that there is some language in the preamble of this treaty that states the interrelationship between strategic defensive and offensive weapons and that is not a good idea based upon how the Russians intend to use that language. The argument against it was that it is just a statement of fact, nothing more than that. There is an interrelationship between defense and offense. In effect, what is the big deal?

The Risch amendment is also merely just a statement of fact. In fact, the language of the Risch amendment is virtually identical to the preamble language dealing with missile defenses except it, in effect, substitutes tactical or

nonstrategic nuclear weapons for missile defense. It states the interrelationship. I cannot imagine anyone would deny that interrelationship. The Perry-Schlesinger Commission cited by Senator RISCH confirms that interrelationship.

As I said, I can't imagine anyone denying it, and I can't imagine anyone denying the fact that as we reduce our strategic offensive weapons, then the numbers of tactical nuclear weapons becomes all the more important, especially because of the large difference between the Russians and everyone else in the world. It is said to be about 10 to 1—Russia vis-a-vis the United States in tactical nuclear weapons—and all the more discouraging because there is no transparency in what the Russians have and their military doctrine is to actually use those weapons. Our strategic offensive tactical weapons are a deterrent to attack. To the Russians, tactical nuclear weapons are a battlefield weapon just like artillery. There is clearly an interrelationship between the two. It clearly would be to our detriment if we reduce our strategic offensive weapons down to the point that these tactical nuclear weapons could create an imbalance in power. Because the United States has commitments to 31 other countries, it is very important to them, especially the European countries that are in the backdoor of where the Russian tactical missiles could be most effective.

Yesterday, we were told we had to defeat the McCain amendment because it was simply trying to remove from the preamble this statement of fact of this interrelationship. Today, we have the Risch amendment, which is simply to insert a statement of fact about an interrelationship between the strategic and the tactical. There is no principled argument against the Risch amendment. The only argument is the Russians wouldn't like it and they would require that we renegotiate the preamble. I can't think of a better argument for the Risch amendment. We should renegotiate the preamble. All the statements Senator RISCH quoted from Democratic Senators then—one of the most eloquent by the Vice President, who was then a Senator, who said we have to negotiate further any reductions of these tactical nuclear weapons of the Russians. We should have done it in the 2002 treaty. This was a missed opportunity by the Bush administration. That should be our first order of business.

So the Obama administration, with Vice President—the Obama administration, with Vice President JOE BIDEN, comes into office and was that their first priority? No. Was it any priority? No. Did it get included in the treaty? No. Why? Because the Russians said nyet. All the Risch amendment would do is simply insert the words into the preamble. Remember, this is the document that is meaningless, just a throwaway piece of paper, so what harm could it be of making this statement of fact of the interrelationship?

As I said, there is no principled argument against this. The only argument can be the Russians would require some renegotiation. I say, fine, let's bring it on. That should have been negotiated when the treaty was negotiated, not now after the fact.

I appreciated the fact that Senator RISCH put into the CONGRESSIONAL RECORD the statement of the six Commissioners of the Perry-Schlesinger Commission, who had to correct the State Department Web site, which wrongly asserted that they did not believe we should attack this problem of the disparity in tactical nuclear weapons. Senator RISCH quoted from the Commission report that noted the urgency of dealing with this problem.

But did the Obama administration negotiators deal with the problem? No. Why? Because Russia didn't want to.

OK. Sorry. We are sorry about that. But when they asked us to deal with missile defense, and we said: No, not in this treaty, they insisted we put language about missile defense, and if the interrelationship between that and the strategic weapons in the preamble and more important, not just language about the interrelationship but the fact that as strategic numbers come down, then that relationship becomes even more important because defense becomes more important—precisely the same point about tactical nuclear weapons.

People should understand one other thing. There is not a huge difference between strategic and tactical weapons. The actual explosive power of some tactical weapons exceeds that of some strategic weapons. The difference is in the delivery mechanism. One is intended more as a shorter range kind of weapon and the other is a much longer range, ordinarily an intercontinental range. That is the strategic definition.

I cannot think of a principled argument against this. It is not as if we are saying the treaty has to be renegotiated. It is not as if we are saying we have to deal with tactical nuclear weapons. Then-Senator BIDEN said:

> After entry into force of the Moscow Treaty [that was done in 2002] getting a handle on Russian tactical nuclear weapons must be a top arms control and nonproliferation objective of the United States government.

So why wasn't it a top objective of the Obama and Biden administration?

Let me make some other points and I think there are some other colleagues who would like to speak to this and then there are some quotations from other people who supported this treaty who said this is a problem that needs to be dealt with.

One of the things that came up during the course of the negotiations involved a particular kind of Russian tactical nuclear weapon. These are the weapons that could be deployed on submarines. They are basically cruise missile weapons, nonstrategic nuclear weapons.

These could actually reach the United States when deployed on submarines, so, insofar as the United States is concerned, it is a distinction without a difference as to whether they are tactical or they are strategic.

They could be used against the United States with submarines because they are delivered by cruise missiles. These are exactly the kinds of systems that were limited in a binding side agreement reached between the United States and the Soviet Union during negotiation of the first START treaty. Why did the administration forgo a similar agreement in New START?

In other words, you have a precedent, a particular kind of then Soviet nonstrategic nuclear weapon was dealt within a side agreement to the START I treaty, because we understood its importance. This treaty does not inhibit in the least the Russians' ability to deploy a cruise missile, submarine-based, nonstrategic weapon, nuclear weapon.

They did not want us to have the ability to deploy conventional Prompt Global Strike, at least not without counting it against the vehicles that deliver nuclear weapons. So that got into the treaty. The Russians did not want it, so we acceded to their request. When we wanted to put something in about the cruise missiles that would be delivered by submarine, no, we cannot do that, the Russians said.

I presume the administration made this argument. I do not know that they did in the negotiations. You see, we, the Senate, being asked to give our consent to this treaty, have been denied the negotiating records. The Russians know what our negotiators said, but we do not know. The State Department knows, the Russians know, but we do not know.

I do not even know if the United States tried to get that same agreement that was in the START I treaty in this New START treaty. I do not know. But it is not in there. So either we did not try—negligence—or the Russians said no. This is why it is important to recognize the relationship somewhere—maybe we will get a letter from the President. Maybe he will send another letter to Senator MCCONNELL and say something about this, which, of course, does not mean anything vis-a-vis the Russians.

Why do we not do this in the preamble? Well, we have a chance to do it now, to correct the problem, by adopting the Risch amendment. A final point. The resolution of ratification actually recognizes this little problem, not very effectively, but it recognizes the problem by calling on the President to pursue an agreement with the Russians that would address this disparity in tactical nuclear weapons in the future.

Well, that is what then-Senator BIDEN asked to be done in 2002, when the last treaty was debated in the Senate. We did not do it. So now the resolution of ratification says, well, this is a pretty good idea, actually. We ought to do that in the future sometime. Well, our bargaining power in the future is gone. This is the treaty to do it

in. What is the quid pro quo going to be when we go to the Russians next and say, now we want to talk about tactical nuclear weapons. They are going to say, now we want to talk about U.S. missile defenses. How do you like them apples? What is the Obama administration going to say?

One theory I heard was—and this was from a knowledgeable source—that the Russians actually would like to move the bulk of their tactical nuclear weapons from the European theater to their southern border and their eastern border, where they fear some day they may have to use these weapons against a potential invasion from China or from Muslim states to their south, and that they might agree to a concession—if the United States insisted that they move those weapons back from the European theater, they might be willing to do that. That is exactly the kind of concern we have. The Russians want to do that. They are prepared to move their missiles. They know they are going to have to do so for their own self-interests. They are waiting, however, until we say we wish to bring up this question of tactical nukes. They will say: I tell you what, if you will give us something on missile defense, we will be happy to move them back from the European theatre. That is the kind of thing we are looking at. The Russians are great chess players, the best in the world. And they are great negotiators. With all due respect to our negotiators—I cannot blame our negotiators. I do not know whether it was because of a lack of direction from the Commander in Chief or poor negotiation. But one way or the other, we got snookered. We got snookered on missile defense, we got snookered on conventional Prompt Global Strike, we got snookered on tactical nuclear weapons, we got snookered on verification. All of these are issues that we want to try to deal with in the Senate now during this ratification process.

But Senator KERRY, the chairman of the Foreign Relations Committee, has said, we are not going to amend the treaty. So what are we doing here on a Sunday afternoon? If we are not going to do it, and he has got the votes to see that we do not do it, about all we can do is to make the case to the American people that this was a flawed process and a flawed treaty.

I hope our colleagues will consider the prospect of making some changes here, so that if, in fact, there does have to be some renegotiation, we welcome that. I do not know why the other side believes the Senate is only here as a rubberstamp. You cannot change the treaty, so vote for it. I think that explains this matter of time. Why do you need any time to debate this treaty? Let's get it over with. We have got to ratify the treaty here. Why are you raising all of those objections and questions? We are not going to let you amend it. So why do you think we need to take all of this time?

I think that explains their rationale. I heard one of my colleagues on the other side this morning on national TV say, we have been on this treaty for 2 weeks. No, we have not. We have been on it for 3½ days. That is interspersed with all of the other stuff we have been doing on the Senate floor, which I will not bother to repeat. We are all well aware of it.

But here we are on a Sunday afternoon. We should be debating a very serious proposal by Senator RISCH to simply put wording in the preamble that tracks almost identically the wording that is already in there relative to missile defense, and this would relate to tactical nuclear weapons. Why would we not do that, unless we do not want to change the treaty in any way?

I do not think we should be wasting our time here. The advice and consent clause of the Constitution meant something. The administration did not follow our advice that we gave them when we passed the defense bill last year on missile defense, on Prompt Global Strike. So we do not have to give them our consent, or at least we can say let's make a few changes—a change such as this, that I cannot see any principled argument against. There will be an argument, and the argument will be: Well, the Russians will not like it, we will have to renegotiate. I will be interested to see if there is any other argument.

I hope my colleagues will gradually filter in here on a Sunday afternoon, turn off the football game, come in for a few hours of edification about some very important matters to American security, and, at the end of this afternoon when we vote, support the amendment of my colleague Senator RISCH.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. LUGAR. Mr. President, let me state at the outset that the amendment offend by the distinguished Senator, Mr. RISCH, would, in essence, terminate the treaty. We have been down this trail yesterday with a long debate about missile defense.

But, in fact, the net result of amending the preamble, and thus the text of the treaty, is to kill it. That is the issue before the Senate. There may be Members in our body who do not like the treaty. There have been some, apparently, who from time to time have not been prepared to support any treaty with Russia.

I have recited, at least from my recollection of previous debates, that many Senators simply said, you can never trust the Russians. You cannot deal with the Russians. Simply what we ought to be doing is to build up defenses of our own so that quite regardless of what the Russians have, what the Russians intend to do, we are prepared for that.

Indeed, that was some of the argumentation at the time President Ronald Reagan first seriously got into these issues. There were persons at that point, and there may still be persons, who believe that somehow or other a complex system of missile defense can be set up that would protect our country against intercontinental ballistic missiles flying in from Russia, from North Korea, from Iran, from whomever might obtain them.

That argument has gone on for decades. To this point, there has not been scientific backup that such a comprehensive missile system could be created, quite apart from what its expense might be, and quite apart from the lack of attention to the recognition of what else is going on in the world.

Indeed it is a curious fact that in this debate some Senators have argued that the Russians are one thing, but a rather diminishing focus, as far as they are concerned; that the real problem is not how ever many intercontinental ballistic missiles the Russians may have, how many warheads that are aimed at our military installations and our cities but, rather, that development of a few nuclear weapons in North Korea, or the possibility of development of some in Iran ought to be the focus for those who are moderate as opposed to those who are still talking ancient history.

Let me be very clear. We are talking this afternoon about an amendment that terminates the treaty and that means we have no New START. Some Senators would say, well, that is fine. Now let's go back to work. Let's send our negotiators into the fray, as if, for some reason or other, we anticipate the Russians, after this rejection, are eager to engage.

In the meanwhile, let me say that for what I would call an indefinite period, while these negotiations might come about, although it is dubious given at least the rejection not only to the Russians, but the impression of the rest of the world, that we will have an inability, once again, to inspect what is proceeding in Russia.

In other parts of the debate, we may talk about the verification procedures and their adequacy. Some Senators have already suggested that in their judgment those verification procedures may lack the adequacy that would give us confidence, even though the number of bases on which Russia has weapons has decreased by at least a half, and it is a very different situation with regard to inspection.

But, at the same time, many of us have lamented since a year ago December 5 that we have not had so-called boots on the ground; that is, Americans inspecting what is proceeding. I think that is very important. If we reject the treaty today by passing this amendment, that problem will continue. I believe that has to be faced squarely, regardless of what Senators might feel ought to be in the treaty or left out of it. I would say each day that goes by, I do not predict that the Russians are going to construct something especially new and different, but we have come into a mode of feeling, that although that may be important, it has not been important enough for us to take up this treaty, even though it has

been clearly signed by the two Presidents of the United States and Russia for some months.

Thank goodness we finally have the treaty before us. I would say that the costs associated with requiring renegotiation of the treaty, I believe, far outweigh the benefits the Senate might gain by demanding a new treaty, new changes in due course. I would say, from my perspective, a rejection of the treaty today will make further limitations on Russian tactical nuclear arms far less likely, not more likely.

The United States has made clear that any future nuclear arms reduction agreement with Russia should include tactical nuclear weapons, and I share that objective. Some critics have overvalued the utility, however, of Russian tactical nuclear weapons, and undervalued our deterrent to them.

Only a fraction of those weapons; that is, the Russian tactical weapons, could be delivered significantly beyond Russia's borders. Pursuant to the INF treaty, the United States and the Soviet Union long ago destroyed intermediate range and shorter range nuclear-armed ballistic missiles and ground-launched cruise missiles, which have a range of between 500 and 5,500 kilometers.

In fact, most of Russia's tactical nuclear weapons have very short ranges. They are used for homeland air defense. Most, as has been suggested, are devoted to the Chinese border or are in storage now. A Russian nuclear attack on NATO countries is effectively deterred by NATO conventional superiority, our own tactical nuclear forces, French and British nuclear arsenals, and U.S. strategic forces. In short, Russian tactical nuclear weapons do not threaten our strategic deterrent. Our NATO allies that flank Russia in eastern and northern Europe understand this. I think we need to underline that because we have NATO allies. We have discussed this subject very frequently.

Our NATO allies would seemingly be the most in harm's way of a short-range tactical nuclear weapon. It could be a very short range into the Baltics, for example, or into Poland, but the NATO allies have all strongly endorsed the New START treaty for the reasons I have suggested. They understand the deterrents that are already present to the Russian use of these particular weapons.

It is important to recognize that the science differential between Russian and American tactical nuclear arsenals did not come to pass because of American inattention to this point. During the first Bush administration, our national command authority, with full participation by the military, deliberately made a decision to reduce the number of tactical nuclear weapons we deployed. So it goes back to the first Bush administration, a deliberate decision to reduce the number. They did this irrespective of Russian actions because the threat of a massive ground invasion in Europe had largely evaporated due to the breakup of the former Soviet Union.

In addition, our conventional capabilities had improved to the extent that battlefield nuclear weapons were no longer needed to defend western Europe. That was a military judgment. In this atmosphere, maintaining large arsenals of nuclear artillery shells, land mines, and short-range missile warheads was a bad bargain for us in terms of cost, safety, alliance cohesion, and proliferation risk. In my judgment, Russia should make a similar decision. The risks to Russia of maintaining their tactical nuclear arsenal in its current form are greater than the potential security benefits those weapons might provide. They have not done this in part because of their threat perceptions about their border, particularly their border with China—which, apparently, they want to give an impression to the Chinese who are along a large border and territory largely unoccupied or sparsely occupied by Russians, that these weapons might be utilized against the Chinese.

An agreement with Russia that reduced, accounted for, and improved security around tactical nuclear arsenals is in the interest of Russia and the United States. Rejection of New START, however, makes it unlikely that a subsequent agreement concerning tactical nuclear weapons will ever be reached. One of the basic points of the exercise we are now proceeding on, the passage and ratification of a New START treaty, means we have another opportunity to move ahead with the Russians around the negotiating table.

Logically, rejection of the treaty does not offer a promising benefit for at least the short run, and maybe the intermediate run to either country to proceed.

The resolution of ratification encourages the President to engage the Russian Federation on establishing measures to improve mutual confidence regarding the accounting and security of Russian nonstrategic weapons. That has been deliberately put into the text we are discussing today. For this reason, I oppose the amendment because, in fact, it would require renegotiation of the treaty. I have suggested that is unlikely to come about very rapidly and very readily.

One of the amazing things about the current situation was that with the expiration of the START treaty a year ago December, we were able to get together with the Russians, admittedly on a limited agenda. Those who are proponents of the treaty have said from the start that it is a limited agenda, small reductions in strategic arms, an ideal, once again, of verification and the possibilities that having at least reached limited agreements, we might in fact meet again around the negotiating table to think through the tactical weapons situation and other aspects and the very important objective we do have with the Russians of limiting the building of nuclear weapons or an industry that could field those in other countries.

We believe it will be in the interest of the Russians, as well as our own, to have that cooperation on the basis of our knowledge of how the systems work and how that deterrence might be effected.

I appreciate very much the importance of the issue. But for the reasons I have suggested, I believe it would be unwise to adopt the motion of the distinguished Senator. Furthermore, I would not like to see the treaty completely obliterated today by the adoption of this amendment because that, in fact, would be the effect.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I ask unanimous consent that I be permitted to speak for 15 minutes, to be followed by Senator CORNYN.

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

Mr. CASEY. Mr. President, we are grateful to be here on a weekend talking about a critically important treaty for the country. This treaty has been the subject for many months now of review by the Foreign Relations Committee, as well as other committees. There have been between 900 and 1,000 questions asked of the administration and answered. I think we should start with some basic fundamentals about the context within which this treaty is being debated and, I hope, ratified in the next couple of days.

First, this treaty is entirely consistent with our concern in making sure our nuclear arsenal is safe, secure, effective, and reliable. There is no question about that in terms of our goal. That underpins our national security and is no way reduced or compromised because of this treaty.

I wish to speak to the amendment offered by Senator RISCH. Any amendment to the treaty would require renegotiation with the Russian Federation. That would lead to a prolonged delay for the U.S. nuclear weapons inspectors to return to Russia to get on the ground to inspect and to verify.

As we sit here today on this Sunday, we can say, unfortunately, on this date, Sunday, December 19, we mark day 379 since we have had inspectors on the ground. That is a problem for our security. That is a problem, obviously, for verification. That is one of the reasons—only one, but one—we must ratify this treaty.

Let me get to the amendment offered by Senator RISCH. Senator RISCH and I serve on the Foreign Relations Committee. I am the chairman of the Subcommittee on Near Eastern and South and Central Asian Affairs. Senator RISCH is our ranking member. We work well together. I think we have a basic disagreement about this amendment. This amendment involves what are known as tactical nuclear weapons. I

recognize the importance of addressing the basic imbalance that exists with respect to the Russians and the scores of tactical nuclear weapons at their disposal. It is important that upon ratification of the New START accord, we proceed quickly to negotiations with the Russians on tactical nuclear weapons. But as we engage in this debate, it is also important to clearly define what we are talking about for the American people.

The Congressional Research Service says the United States and the Soviet Union—what we used to call the Soviet Union—both deployed thousands of ''nonstrategic'' nuclear weapons during the Cold War that were intended to be used in support of troops in the field during a conflict. These included nuclear mines, artillery, short, medium, and long-range ballistic missiles, cruise missiles, and gravity bombs.

So we are talking about tactical weapons—in this case, tactical nuclear weapons—which were not included in the New START treaty because this is a strategic weapons treaty. We can all agree future negotiations must take place on tactical nuclear weapons. But the only way to get there, the only path forward, is by finalizing New START and ratifying this important treaty.

Our allies in Europe are perhaps the most vulnerable to the threat posed by tactical nuclear weapons. Our allies in eastern Europe are especially so. Yet here is what Polish Foreign Minister Radoslaw Sikorski wrote on November 20:

> Without a [New START] treaty in place, holes will soon appear in the nuclear umbrella that the US provides to Poland and other allies under article 5 of the Washington Treaty, the collective security guarantee for NATO members. Moreover, New START is a necessary stepping-stone to future negotiations with Russia about reductions in tactical nuclear arsenals and a prerequisite for a successful survival of the Treaty on Conventional Forces in Europe (CFE).
>
> In effect, New START is a sine qua non for effective US leadership on arms-control and non-proliferation issues that matter to Europe—from reviving the CFE treaty to preventing Iran from obtaining nuclear weapons.

The Polish Foreign Minister said this. He represents the very people under direct threat from the Russians and from their tactical nuclear weapons. He believes New START should be done first, followed by negotiations on tactical nuclear weapons.

Secretary General of NATO Rasmussen has said:

> The New START treaty would also pave the way for arms control and disarmament initiatives in other areas that are vital to the Euro-Atlantic security. Most important would be transparency and reductions of short-range, tactical nuclear weapons in Europe which allies have called for in our new ''Strategic Concept.'' This is a key concern for allies—not only those closest to Russia's borders—in light of the great disparity between levels of Russian tactical nuclear weapons and those of NATO. But we cannot address this disparity until the New START treaty is ratified. Which is another reason why ratification would set the stage for further improvements in European security.

Franklin Miller, the Senior Director for Defense Policy and Arms Control under President George W. Bush said:

> If we don't ratify New START, we're back to the drawing boards on some sort of approach to strategic arms and the tactical that are still going to get left behind. I do not see a treaty in the future that will lump the large Russian tactical stockpile in with the smaller strategic stockpiles on both sides.

End of quotation from President George W. Bush's Senior Director for Defense Policy and Arms Control.

Finally, I would note that in April 2009, both President Obama and President Medvedev indicated that arms control would be a step-by-step process, with a replacement for the 1991 START treaty coming first but a more comprehensive treaty that might include deeper cuts in all types of warheads, including nonstrategic weapons, following in the future.

Russian tactical weapons must be decreased, there is no question about that, and experts across the political and international spectrum agree that completing New START is the essential first step in reducing Russian tactical nuclear weapons.

Even if this amendment to the treaty were to be passed, the treaty itself would still be about strategic arms. Nothing in the amendment would actually change that fact. But it would unnecessarily continue to delay U.S. inspectors returning to Russia to verify nuclear weapons. So if this amendment were to pass, we not only make no progress—no progress—on tactical nuclear arms, but efforts to decrease the weapons actually pointed at the American people—the Russian ICBMs would grind to an immediate halt. This is not acceptable to the American people, I would argue, but certainly not to many of us supporting the ratification of the treaty. As a result, I will be voting no on the Risch amendment.

I would also like to reiterate that the resolution of ratification that came out of the Foreign Relations Committee covers this issue by calling on the President to ''pursue, following consultation with allies, an agreement with the Russian Federation that would address the disparity between the tactical nuclear weapons stockpiles of the Russian Federation and of the United States and would secure and reduce tactical nuclear weapons in a verifiable manner.'' So says the resolution of ratification. This bipartisan resolution passed out of the Senate Foreign Relations Committee by a vote of 14 to 4.

So we have spent lots of time on this treaty. We have spent a good deal of time as well on this basic question. But I think we have to do more than talk tough when it comes to this treaty and when it comes to making sure our arsenal is safe, secure, effective, and reliable. Tough talk is not enough. We need tough actions. The ratification of this treaty is one of those tough actions to make sure the American people are more secure.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise in support of the Risch amendment and would refer all of us to the constitutional provision under which we are discharging our responsibility. Of course, it is article II, section 2 of the Constitution that says:

> [The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties. . . .

The problem here is that even though Congress has told the administration about our concerns about constraining our missile defense capability and has told the administration about our concerns with regard to the exclusion of tactical weapons that are covered by the Risch amendment, in reality, the administration really does not want our advice but merely seeks our consent.

I believe this matter is being treated with the kind of gravity and seriousness on a bipartisan basis that it deserves. But there are some very real differences between those of us who think this treaty is as good as we can get and that Congress's role is really to consent to something negotiated without our advice having been taken, and those who believe the Senate should play more than a rubberstamp role when it comes to matters as serious as these. Indeed, in section 1251 of the national defense authorization bill for fiscal year 2010, the Senate did provide advice on these matters. But, as I indicated earlier, most of that advice was ignored in favor of a strategy of seeking our consent after this treaty was basically a fait accompli.

It concerns me that—and I admire our distinguished floor leader, Senator LUGAR, who has a wealth of experience in this area, and I think we all acknowledge that—it worries me that any attempts by the Senate to offer amendments are called treaty killers. I do not really understand what our role is here if it is not to offer amendments to conform the treaty to what we believe is the best national security interests of the American people.

But one of the treaty's problems that I think the Risch amendment reveals is, that by excluding tactical nuclear weapons, we are giving the Russians a huge advantage and increasing rather than decreasing instability. The Congressional Research Service has written a document that illustrates this, a research document dated January 14, 2010, entitled ''Nonstrategic Nuclear Weapons,'' otherwise called tactical nuclear weapons. On pages 4, 5, and 6, they go through a factual distinction between strategic and nonstrategic nuclear weapons.

Mr. President, I ask unanimous consent that those pages be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CORNYN. I thank the Chair.

Mr. President, the Congressional Research Service points out that the distinction between strategic nuclear weapons that are covered by this treaty and nonstrategic or tactical nuclear weapons that are not covered by this treaty is, frankly, a muddled topic. We do know that some types of weapons, by exclusion, are left out and not included under the treaty. In other words, intercontinental ballistic missiles, sea-launched ballistic missiles, and heavy bombers are included as strategic weapons, and, by definition, everything that is not included would be a nonstrategic or tactical weapon. They also point out in those pages that are being made part of the RECORD that part of the definition has traditionally been determined by the range of delivery vehicles and the yield of the warheads. But I think it is important to try, as well as we can, to paint a clearer picture of what we are talking about when we say nonstrategic or tactical nuclear weapons.

I have in my hand an unclassified report taken from Jane's Information Group publications called ''Strategic Weapon Systems, Fighting Ships, Naval Weapon Systems, and All the World's Aircraft'' that covers a so-called nonstrategic Russian weapon known as the SH–11 Gorgon ABM, otherwise called the UR–96.

The reason I raise this example of a type of weapon that the Russians reportedly have, which is not covered by this treaty, is that the yield of this weapon is 1 megaton—1 megaton. If you look at the size of the nuclear weapon that was used on Hiroshima on August 6, 1945, that killed anywhere from 80,000 to 140,000 people—actually, no one knows the exact number because of radiation-induced injuries and the like, but suffice it to say it caused enormous devastation and brought Imperial Japan to its knees in World War II—that was, by contrast, a 10-kiloton nuclear warhead. In other words, this so-called nonstrategic nuclear warhead not covered by this treaty is 100 times more powerful than the nuclear warhead that killed perhaps 100,000 people or more in Hiroshima in 1945.

So I mention this example—and this is, by the way, an unclassified document. We cannot go into, here on the floor, more detail about the distinction or, frankly, really, what we should call a continuum between tactical and strategic nuclear weapons. But we are not talking about firecrackers. We are not talking about bottle rockets. We are talking about weapons that can wreak death and destruction that really, I think, most of us hesitate to even contemplate.

So this is not an inconsequential amendment. This is a very important amendment that the Senator has brought. I listened to him a little earlier. I was in my office in the Hart Office Building, but I listened to Senator RISCH cite some very distinguished authorities on the other side of the aisle, and this comes from the CONGRESSIONAL RECORD in March of 2003, talking about the Moscow Treaty. Senator after Senator—Senator DORGAN, the distinguished Senator from North Dakota; Senator BIDEN, now Vice President BIDEN but then a Senator from Delaware; Senator REED from Rhode Island, a distinguished expert on the Armed Services Committee on national security matters; Senator CONRAD, the other Senator from North Dakota—to a man, they noted and expressed concern about the failure to deal with tactical nuclear weapons in the Moscow Treaty of 2003. The Senator from California, Mrs. FEINSTEIN, also noted the absence of any dealing with tactical nuclear weapons. I mention this to say, again, no one is talking about divisions among us. We are talking about a unified concern with the threat tactical nuclear weapons poses.

So I think it is simply a mistake—but it is a correctable mistake—that the negotiators of this treaty and the administration have excluded tactical nuclear weapons. As others have stated, the United States has an advantage at this time on strategic nuclear weapons. So basically we are going to have to cut our stockpile, while the Russian Federation, which does not currently have as many weapons as this treaty would allow, would be allowed to build up to that cap. But in the area of tactical nuclear weapons, the Russian Federation has—one classified estimate was around 10 times what the United States has in terms of tactical nuclear weapons.

I was talking in my office with Tom D'Agostino, the head of the National Nuclear Security Administration, someone who has long served in this area and who has confirmed that this tactical nuclear asymmetry is very real. According to him—he said—''the actual numbers are classified''—as I alluded to earlier—but he confirmed that ''there's a ten to one ratio, roughly, give or take. You know, it's a big difference between the two.''

It seems to me that from a bargaining standpoint, it would have made all of the sense in the world for the Obama administration to have insisted on reductions in the Russian tactical nuclear weapons as part of the New START. If not now, I would say, when. If not in 2003—if all of our colleagues whose names I have mentioned earlier thought it was a good idea to deal with tactical nuclear weapons back in 2003, it strikes me as even more important to do it now rather than kick the can down the road and not take advantage of the leverage we would have due to the Russians' desire to maintain their current arsenal of tactical nuclear weapons.

But Vice President BIDEN recognized, in 2003, that this omission was potentially dangerous. I will quote him. He said:

> Getting a handle on Russian tactical nuclear weapons must be a top arms control and nonproliferation objective of the United States Government.

So one has to question why that top objective remains unmet under New START.

James Schlesinger, former Secretary of Defense and Chairman of the now-defunct U.S. Atomic Energy Commission, has testified that ''the significance of tactical nuclear weapons rises steadily as strategic nuclear arms are reduced.'' This is a sobering conclusion, and it helps illustrate the importance of this glaring omission in the New START treaty.

Simply put, this treaty in its current form represents a lost opportunity to compel the Russian Federation to downsize their tactical nuclear arsenal. This amendment provides an opportunity to lay the groundwork for that goal to be accomplished in the future.

Following Senate ratification of the START I treaty, President George Herbert Walker Bush committed the United States to unilaterally reducing our tactical nuclear weapons. Not surprisingly, while the Russians made a similar commitment, they failed to follow through and never completed their promised reductions.

Today, Russia's widespread deployment of tactical nuclear weapons raises concerns with their safety and security. These weapons are often located at remote bases close to potential battlefields, sometimes far from central command authority. Questions have been raised regarding the stability and reliability of those Russian troops charged with monitoring and securing those weapons. In 2008, Secretary Gates said he was worried that the Russians themselves didn't even know the numbers and locations of old land mines, nuclear artillery shells, and so on, that would be of interest to rogue states and terrorists.

In addition, unlike strategic nuclear weapons, tactical weapons have very little transparency and very little accounting. The treaty should at least take a step in the direction to provide more transparency and an accounting requirement.

Achieving reductions in Russian tactical nuclear weapons would also reduce the supply of those weapons that could be acquired by groups such as al-Qaida. Tactical nuclear weapons are among those that are the most susceptible to theft or illicit transfer because they are relatively small and compact, including so-called suitcase nukes. They are the most susceptible to theft and illicit transfer to terrorists and also rogue states.

During the Cold War, the Soviet Union was known to have produced and deployed smaller tactical weapons, sometimes called suitcase nukes, as I mentioned a moment ago. These nuclear weapons—unlike large strategic weapons that New START would limit—are the terrorist's dream. They are easily concealed and highly transportable. They could all too easily be

moved across our border and positioned in almost any building in the United States.

Additionally, the Strategic Posture Commission, in its 2009 report to Congress, found that Russia's tactical nuclear weapons advantage opens up new possibilities for Russian efforts to threaten the use of nuclear weapons to influence regional conflicts and threaten our allies. The Commission observed that there is an ''evidently rising value in Russian military doctrine and national security strategy'' of tactical nuclear weapons.

These fears are coming to fruition, as U.S. officials say that Russia has moved tactical nuclear weapons to facilities near NATO allies several times in recent years, most recently this past spring. These actions, again, would run counter to pledges made by Moscow that they would pull back tactical nuclear weapons and reduce their numbers.

By ratifying the New START treaty without addressing this asymmetry, the United States would squander valuable leverage to negotiate a future reduction in Russian tactical nuclear weapons. The administration says no matter, we must ratify the New START treaty and we can deal with the tactical nuclear weapons sometime in the future. Well, again, we didn't do it in 2003 when Vice President BIDEN and others pointed out the omission and the potential danger, and here we are in 2010 being asked in a lameduck session to ratify this treaty and leave tactical nuclear weapons excluded once again. It leads me to wonder whether instead of the doctrine of ''trust, but verify,'' we are embracing a doctrine of ''ignore it and it will simply go away.'' We all know it won't. Russia would have little reason to agree to reduce its arsenal of tactical nuclear weapons in a future treaty without extracting major concessions from the United States. We can fix this issue now if we would simply adopt the Risch amendment.

I join my colleagues in urging the adoption of the Risch amendment.

Mr. DORGAN. Mr. President, would the Senator from Texas yield for a question?

Mr. CORNYN. I am happy to yield for a question.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. The Senator from Texas has mentioned a statement I and some others have made with respect to the Moscow Treaty. I simply wanted to observe that then and now, I wish we had included tactical nuclear weapons, but I then voted for the Moscow Treaty and I will vote for this treaty. The reason for that is making progress on strategic nuclear weapons, reducing the stock of nuclear weapons, and reducing delivery vehicles, it seems to me, is major progress. This administration has indicated it intends to move forward on tactical weapons negotiations with the Russians. I didn't want it to stand that somehow my concern—back in the discussion about the Moscow Treaty, the concern about not including tactical weapons had me voting against the treaty. I did not. I voted for that, and I will vote for this treaty because I think it advances the ball in a very significant way with respect to arms control.

Mr. CORNYN. Mr. President, I appreciate the Senator from North Dakota coming out and making that statement. I didn't mean to suggest that he voted against the Moscow Treaty, but I do believe I accurately quoted his concerns, which he has reconfirmed here, in the failure to deal with tactical nuclear weapons.

I would say in response to my colleague that we are making a unilateral reduction in strategic nuclear weapons and the Russians are not going to have to reduce any in their current stockpile because we are presently over the cap set by the treaty and they are under the cap. So it seems to me there is even further evidence we got out-negotiated on this, and particularly when it omits this important part of the nuclear arsenal and a threat to the stability of not only the region but also of the world.

EXHIBIT 1

THE DISTINCTION BETWEEN STRATEGIC AND NONSTRATEGIC NUCLEAR WEAPONS

The distinction between strategic and nonstrategic (also known as tactical) nuclear weapons reflects the military definitions of, on the one hand, a strategic mission and, on the other hand, the tactical use of nuclear weapons. According to the Department of Defense Dictionary of Military Terms, a strategic mission is:

''Directed against one or more of a selected series of enemy targets with the purpose of progressive destruction and disintegration of the enemy's warmaking capacity and will to make war. Targets include key manufacturing systems, sources of raw material, critical material, stockpiles, power systems, transportation systems, communication facilities, and other such target systems. As opposed to tactical operations, strategic operations are designed have a long-range rather than immediate effect on the enemy and its military forces.''

In contrast, the tactical use of nuclear weapons is defined as ''the use of nuclear weapons by land, sea, or air forces against opposing forces, supporting installations or facilities, in support of operations that contribute to the accomplishment of a military mission of limited scope, or in support of the military commander's scheme of maneuver, usually limited to the area of military operations.''

DEFINITION BY OBSERVABLE CAPABILITIES

During the Cold War, it was relatively easy to distinguish between strategic and nonstrategic nuclear weapons because each type had different capabilities that were better suited to the different missions.

DEFINITION BY RANGE OF DELIVERY VEHICLES

The long-range missiles and heavy bombers deployed on U.S. territory and missiles deployed in ballistic missile submarines had the range and destructive power to attack and destroy military, industrial, and leadership targets central to the Soviet Union's ability to prosecute the war. At the same time, with their large warheads and relatively limited accuracies (at least during the earlier years of the Cold War), these weapons were not suited for attacks associated with tactical or battlefield operations. Nonstrategic nuclear weapons, in contrast, were not suited for strategic missions because they lacked the range to reach targets inside the Soviet Union (or, for Soviet weapons, targets inside the United States). But, because they were often small enough to be deployed with troops in the field or at forward bases, the United States and Soviet Union could have used them to attack targets in the theater of the conflict, or on the battlefield itself, to support more limited military missions.

Even during the Cold War, however, the United States and Russia deployed nuclear weapons that defied the standard understanding of the difference between strategic and nonstrategic nuclear weapons. For example, both nations considered weapons based on their own territories that could deliver warheads to the territory of the other nation to be ''strategic'' because they had the range needed to reach targets inside the other nation's territory. But some early Soviet submarine-launched ballistic missiles had relatively short (i.e., 500 mile) ranges, and the submarines patrolled close to U.S. shores to ensure that the weapons could reach their strategic targets. Conversely, in the 1980s the United States considered sea-launched cruise missiles (SLCMs) deployed on submarines or surface ships to be nonstrategic nuclear weapons. But, if these vessels were deployed close to Soviet borders, these weapons could have destroyed many of the same targets as U.S. strategic nuclear weapons. Similarly, U.S. intermediate-range missiles that were deployed in Europe, which were considered nonstrategic by the United States, could reach central, strategic targets in the Soviet Union.

Furthermore, some weapons that had the range to reach ''strategic'' targets on the territory of the other nations could also deliver tactical nuclear weapons in support of battlefield or tactical operations. Soviet bombers could be equipped with nuclear-armed anti-ship missiles; U.S. bombers could also carry anti-ship weapons and nuclear mines. Hence, the range of the delivery vehicle does not always correlate with the types of targets or objectives associated with the warhead carried on that system. This relationship between range and mission has become even more clouded since the end of the Cold War because the United States and Russia have retired many of the shorter and medium-range delivery systems considered to be nonstrategic nuclear weapons. Further, both nations may develop the capability to use their longer-range ''strategic'' systems to deliver warheads to a full range of strategic and tactical targets, even if long-standing traditions and arms control definitions weigh against this change.

DEFINITION BY YIELD OF WARHEADS

During the Cold War, the longer-range strategic delivery vehicles also tended to carry warheads with greater yields, or destructive power, than nonstrategic nuclear weapons. Smaller warheads were better suited to nonstrategic weapons because they sought to achieve more limited, discrete objectives on the battlefield than did the larger, strategic nuclear weapons. But this distinction has also dissolved in more modern systems. Many U.S. and Russian heavy bombers can carry weapons of lower yields, and, as accuracies improved for bombs and missiles, warheads with lower yields could achieve the same expected level of destruction that had required larger warheads in early generations of strategic weapons systems.

DEFINITION BY EXCLUSION

The observable capabilities that allowed analysts to distinguish between strategic and nonstrategic nuclear weapons during the Cold War have not always been precise, and may not prove to be relevant or appropriate in the future. On the other hand, the ''strategic'' weapons identified by these capabilities—ICBMs, SLBMs, and heavy bombers—are the only systems covered by the limits in strategic offensive arms control agreements—the SALT agreements signed in the 1970s, the START agreements signed in the 1990s, and the Moscow Treaty signed in 2002. Consequently, an ''easy'' dividing line is one that would consider all weapons not covered by strategic arms control treaties as nonstrategic nuclear weapons. This report takes this approach when reviewing the history of U.S. and Soviet/Russian nonstrategic nuclear weapons, and in some cases when discussing remaining stocks of nonstrategic nuclear weapons.

This definition will not, however, prove sufficient when discussing current and future issues associated with these weapons. Since the early 1990s, the United States and Russia have withdrawn from deployment most of their nonstrategic nuclear weapons and eliminated many of the shorter and medium-range launchers for these weapons (these changes are discussed in more detail below). Nevertheless, both nations maintain roles for these weapons in their national security strategies. Russia has enunciated a national security strategy that allows for the possible use of nuclear weapons in regional contingencies and conflicts near the periphery of Russia. The Bush Administration also stated that the United States would maintain those capabilities in its nuclear arsenal because it might need to counter the capabilities of potential adversaries. The Bush Administration did not, however, identify whether these capabilities would be resident on strategic or nonstrategic nuclear weapons. That distinction will reflect the nature of the target, not the yield or delivery vehicle of the attacking warhead.

Mr. CORNYN. Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KERRY. Procedurally, so not to come out of either side's time, if I can ask: I understand the Senator from Oklahoma wants to propose an amendment, so I think we would both yield to him for that purpose.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

AMENDMENT NO. 4833

Mr. INHOFE. I thank the Senator from Massachusetts. Following the disposition of the Risch amendment, we will be scheduling my amendment No. 4833 having to do with verification and numbers of inspections. I will be wanting to speak on this. I don't want to take time from the Risch amendment.

I ask unanimous consent to temporarily set aside the Risch amendment for consideration of amendment No. 4833.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE] proposes an amendment numbered 4833.

Mr. INHOFE. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To increase the number of Type One and Type Two inspections allowed under the Treaty)

In paragraph 2 of section VI of Part V of the Protocol to the New START Treaty, strike ''a total of no more than ten Type One inspections'' and insert ''a total of no more than thirty Type One inspections''.

In paragraph 2 of section VII of Part V of the Protocol to the New START Treaty, strike ''a total of no more than eight Type Two inspections'' and insert ''a total of no more than twenty-four Type Two inspections''.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Oklahoma.

I will consume such time as I use for a moment. Let me say, first of all, again, I appreciate this amendment. There is not a lot of contention about the importance of addressing a lot of short-range tactical weapons, as we call them. The administration wants to do this as much as our friends on the other side of the aisle do, and I think the Senator from Idaho knows that.

Let me correct one fact for a minute that both the Senator from Texas and the Senator from Idaho said. They said the Russians will not have to reduce their strategic warheads and that they are already below the number of 1,550. That is not accurate. I won't go into detail here. We can reinforce this tomorrow in a classified session. But the Russians do have to reduce warheads under this requirement—not as much as us. Our defense community has made the judgment that because of our triad, which will remain robust, and for other reasons, we have a very significant advantage. Again, I will discuss that tomorrow in the classified briefing.

What I want to say to my colleague is that, again, I am 100 percent prepared to try to embrace this concept even further in the resolution of ratification. But we cannot do it in a way that requires this treaty to go back and be renegotiated. This is not a complicated amendment. There is a very simple reason why we should oppose this amendment as it is: because of the requirement that we go back. Because if we don't pass the START treaty, if we can't reach a bilateral agreement on the reduction of strategic weapons, there will be no discussion about tactical weapons. That is as plain as day. Every negotiator, everybody who has been part of this process, understands that. If we can't show our good faith to reduce and create a mutual verification system for strategic weapons, how are we going to sit in front of them and say, Oh, by the way, let's get you to reduce what is your advantage—it is an advantage, I acknowledge that—you go ahead and reduce it. They are going to laugh at us and we will have lost all of the verification we have today.

It is not just me who says that. The fact is Secretary Gates has been very clear about this, and Secretary Clinton likewise. Secretary Gates said this. I know my colleagues all respect him enormously.

We will never get to that step of reductions with the Russians on tactical nukes if this treaty on strategic nuclear weapons is not ratified.

It is a pretty simple equation, folks. This isn't a one-way street where we can stand here and say, You have to do this and you have to do that and, by the way, we don't care what you think about what we are doing, we are going to do what we want. That is not the way it works. There has to be some reciprocity in the process of reduction and verification and inspection, and so forth. They have things they don't want us to see and we have stuff we don't want them to see. There is plenty in this agreement where we protect our facilities from them being able to intrude on them excessively, because our folks don't want them to. That is the nature of a contentious relationship which is the reason you have to argue out, negotiate out a treaty in the first place.

If the Secretary of Defense is telling us—a Secretary of Defense, by the way, whom we all mutually respect enormously, but who was appointed to the job by President Bush—if he is telling us you have to pass this in order to get to the tactical nukes, I think we have to listen to that a little bit.

Let me point out—I want the RECORD to reflect I agree with the Senator from Idaho. They have many more tactical nukes. They have had for a long time. The reason is they have different strategic needs. They are in a different part of the world. For a long time, the Warsaw Pact and NATO were head to head and squared off, and so they saw a world in which they saw the potential of a land invasion. So for a long time they had tanks and mines and other things that were nuclear capable. What happened is we unilaterally, I might add, decided under President Bush, I think it was, President George Herbert Walker Bush, we decided this is dangerous. It doesn't make sense. It doesn't make sense for us. So we unilaterally announced—after the fall of the Soviet Union, President Bush announced we were going to ratchet down our tactical nuclear forces, and everybody agreed with that. It made sense.

So we did that and what happened is after that, President Boris Yeltsin in 1992 pledged that the production of warheads for ground-launched tactical missiles, artillery shells, and mines had stopped. They stopped it because we stopped it. And all of those warheads would be eliminated. He pledged that Russia would dispose of one-half of its tactical airborne and surface-to-air warheads as well as one-third of its tactical naval warheads. The Russian Defense Ministry said in 2007, the

ground force tactical nuclear warheads had been eliminated. Air defense tactical warheads were reduced by 60 percent. Air Force tactical warheads were reduced by 50 percent. Naval tactical warheads were reduced by 30 percent. Guess what. That didn't happen with the treaty. It happened because we had what we call Presidential nuclear initiatives. Our President made the decision, President Bush: We don't need them, dangerous, reduce them, and the Russians followed.

I heard an estimate earlier of 2,000 or something—this is according to the Bulletin of Atomic Scientists. We estimate they have a large inventory of operational nonstrategic warheads—5,390 is the number of tactical warheads, air defense tactical, et cetera. So they do still have more, and it still is a very legitimate concern to us.

That is why, I say to my colleagues, in the resolution of advice and consent we have the following declaration:

(A) The Senate calls upon the President to pursue, following consultation with allies, an agreement with the Russian Federation that would address the disparity between the tactical nuclear weapons stockpiles of the Russian Federation and of the United States and would secure and reduce tactical nuclear weapons in a verifiable manner.

That is in the resolution. You can vote for that. In addition, we say:

(B) Recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to engage the Russian Federation with the objectives of (1) establishing cooperative measures to give each Party to the New START Treaty improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other Party; and (2) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

I am prepared—if that language doesn't satisfy folks, let's go look further. I am happy to do that. But we are not going to do it in a way that precludes us from going to the very negotiations you want to have. It doesn't make sense, not to mention the fact that it puts the entire treaty back into negotiating play. Who knows how long it would be.

The estimates I have from the negotiating team is it could take 2, 3 years. We have been a whole year now without inspections and knowing what they are doing. I will talk, tomorrow in the security briefing, about the impact that has on our intelligence, and the dissatisfaction in the intelligence community with a prolonged and continued delay in getting that.

So I simply say to my colleagues, let's do what is smart. Secretary Clinton said:

The New START Treaty was always intended to replace START. That was the decision made by the Bush administration.

I emphasize again that President Obama was not the person who made the decision not to extend START I. The Russians didn't do it unilaterally. Neither of us wanted to do it, because under this START agreement, we actually put in a better system, and one, let me say, that General Chilton emphasizes reduces the constraints on missile defense.

So here is what Secretary Clinton said: ''I would underscore the importance of ratifying the New START Treaty to have any chance of us beginning to have a serious negotiation over tactical nuclear weapons.''

Some Senators are saying: Why didn't they address them at the same time and say we have to get this and that done? Well, for a couple reasons. One, Russia's tactical weapons are primarily a threat to our allies in Europe. Knowing the differences of that equation, to have linked our own strategic interests to that negotiation at that time would have left us who knows how long without the capacity to get an agreement, No. 1. No. 2, last year when we began negotiations on New START, NATO was in the midst of working out its new strategic concept. Our allies were in the midst of assessing their security needs. It would have been impossible to have that discussion without them having made that assessment and resolved their own security needs and definitions.

But now NATO has completed that strategic concept. We have heard from a lot of European governments about New START. What do they say and what do our allies say? We are not in this ball game alone. They are united in support for this treaty, in part because they see it as the necessary first step to be able to have the negotiations that bring the reductions in tactical nuclear weapons.

Let me quote Radoslaw Sikorski, Poland's Foreign Minister:

Without a New START Treaty in place, holes will soon appear in the nuclear umbrella that the U.S. provides to Poland and other allies under Article 5 of the Washington Treaty, the collective security guarantee for NATO members. Moreover, New START is a necessary stepping stone to future negotiations with Russia about its tactical nuclear weapons.

So they believe you have to pass START to get to this discussion.

This is the Lithuanian Foreign Minister:

We see this treaty as a prologue, as an entrance to start talks about substrategic weaponry, which is much more endangerous, and it is quite difficult to detect. And we who are living in east Europe especially know this.

The Secretary General of NATO said:

We need transparency and reductions of short-range tactical weapons in Europe. This is a key concern for allies. But we cannot address this disparity until the New START Treaty is ratified.

I don't know how many times you have to make this connection. General Chilton, who is in charge of our nuclear forces, said this to the Armed Services Committee:

The most proximate threat to the United States, us, are the ICBM and SLBM weapons because they can and are able to target the U.S. homeland and deliver a devastating effect on this country. So we appropriately focused in those areas in this particular treaty for strategic reasons. Tactical nuclear weapons don't provide the proximate threat that the ICBMs and SLBMs do.

The disparity in U.S. and Russian tactical arsenals, I repeat, we want to address. I am prepared to put something in here—if the Senator from Idaho thinks we can find the language, as we did with Senator DEMINT, who has strong language in here about missile defense, let's put it in here. But it doesn't put us at a strategic disadvantage.

Secretary Gates and Admiral Mullen stated, in response to our questions, for the record:

Because of their limited range and the very different roles played by strategic nuclear forces, the vast majority of Russian tactical nuclear weapons cannot directly influence the strategic nuclear balance between the United States and Russia.

Donald Rumsfeld said this to the Foreign Relations Committee a few years ago:

. . . I don't know that we would ever want to have symmetry between the United States and Russia [in tactical nuclear weapons]. Their circumstance is different and their geography is different.

General Chilton said:

Under the assumptions of limited range and different roles, Russian tactical nuclear weapons do not directly influence the strategic balance between the U.S. and Russia. Though numerical asymmetry exists in the numbers of tactical nuclear weapons we estimate Russia possesses, when considered within the context of our total capability, and given force levels as structured in New START, this asymmetry is not assessed to substantially affect the strategic stability between the United States and Russia.

There is more here. I will reserve the balance of time because other colleagues want to say something. First, let me say this about the process as we go forward. There is some talk that we are now reaching a point—we are on day five—we had Wednesday afternoon, Thursday, Friday, Saturday, and now Sunday. That is 5 days. START I took 5 days. If we filed a cloture motion at some point in the evening, for instance, we would still have 2 days before we even vote on that. Then, presuming we were to achieve it, we have 30 hours after that, which can amount to almost 2 days in the Senate. That would mean 9 days, if we go that distance on this treaty, which is simpler than START I. We would have more days on this treaty—simpler than START I—than we had on all 3—the Moscow Treaty, START II, and START I treaties put together.

I hope my colleagues will recognize that the majority leader has given time to this effort. We are giving time to it. We want amendments. No amendment, I think, would be struck. We would have time to vote on each amendment and deliberate each amendment. But I think it is important for us to consider the road ahead.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise in support of the Risch amendment. The distinguished Senator from Massachusetts just helped make the case as to why this amendment is so important. In every hearing we have had in Armed Services and Intelligence, every conversation I have had in person, by telephone, with every administration official and everybody in support of this, I raised the issue of not what is in the treaty as being the most significant issue but what is not in there—the issue of tactical nuclear weapons.

I hear what the Senator is saying. What he has reinforced to me is, we have been talking to the Russians about tactical weapons for over two decades, and we have not yet been able to get them to sit down at the table with us. If we don't get them now, when? I understand what the President said, which is that he will make a real effort to get them to the table. You should get them to the table when you have leverage. The Russians want this treaty bad. We had the opportunity, in my opinion, to discuss tactical weapons with them, to get them to the table for this treaty, but we didn't take the opportunity to do that.

So I rise to talk about the issue of tactical nuclear weapons with respect to New START and the two amendments filed on this issue, the Risch amendment, as well as one filed by Senator LEMIEUX.

We all know tactical nuclear weapons is one of the issues the treaty doesn't address and also an area where there is a huge disparity between the United States and the Russians relative to the numbers of weapons. Perhaps, most important, the intent of arms control treaties is to control and limit arms in order to create predictability and security.

By not addressing tactical nuclear weapons in this treaty, we have left the least predictable and the least secure weapons in our nuclear inventories out of the discussion. Russia has somewhere in the neighborhood of 5,000 weapons. There have been numbers bantered around here. But the estimates of exactly how many vary widely. The point is, we don't know. That is part of the real problem with tactical weapons. Many of these nuclear weapons are near Eastern Europe and in proximity to U.S. troops as well as to our allies.

These weapons are different, not primarily in terms of how powerful they are, because the warheads are, in some cases, similar in size to strategic nuclear weapons. Instead, they are different primarily in terms of the range of the delivery systems. The Russian advantage in tactical nuclear weapons is at least 5 to 1, but could be as high as 10 to 1. Again, we don't know because they will not tell us.

It is also the case that the United States and Russia both agreed in the 1990s to reduce tactical nukes. The United States has, but we don't know that the Russians have. They said they have. But do we truly trust the Russians? We should not. In fact, they have cited the expansion of NATO as a change in the strategic landscape since the 1990's.

Tactical weapons are the least secure nuclear weapons in our nuclear inventories. They are deliverable by a variety of means, and for these reasons are more of a threat of being stolen, misplaced or mishandled than strategic nukes. It is a mistake and unfortunate that this treaty doesn't address tactical nuclear weapons because an agreement to reduce and control these weapons is exactly where we need to be focusing and, relative to the overall security of the United States and the world, it is, frankly, more important than reducing and controlling strategic nuclear weapons.

On Senator RISCH's amendment, it would add a statement to the preamble of the treaty which addresses the interrelationship between nonstrategic and strategic offensive arms; that is, the relationship between strategic and tactical nuclear weapons. Senator RISCH's amendment is correct in that ''as the number of strategic offensive arms is reduced, this relationship becomes more pronounced and requires an even greater need for transparency and accountability, and that the disparity between the Parties' arsenals could undermine predictability and stability.''

We are reducing strategic nuclear weapons under this treaty. By doing so, we are making tactical nuclear weapons much more important and much more relevant and, therefore, we should seek to achieve greater transparency and accountability on both our side as well as on the Russian side.

That brings me to the second amendment, which is not pending but is filed and of which I am a cosponsor; that is, Senator LEMIEUX's amendment. That amendment would require the United States and the Russians to enter into negotiations within 1 year of ratification to address the disparity in tactical nuclear weapons. Both these amendments address what I believe is one of the most crucial issues and one of the issues the treaty should have addressed but didn't. I urge my colleagues to support both these amendments but particularly today the Risch amendment.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Who yields time?

Mr. RISCH. Mr. President, the proponents of the amendment have how much time remaining?

The PRESIDING OFFICER. There is 25 minutes remaining.

Mr. RISCH. Does that include my 10 minutes of closing?

The PRESIDING OFFICER. It does.

Mr. RISCH. So we have 15 minutes left to yield time.

The PRESIDING OFFICER. That is correct.

Mr. RISCH. Mr. President, Senator SESSIONS was next, so I yield the floor to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I would ask to be advised after 4 minutes have lapsed.

Mr. President, I think Senator RISCH is correct and Senator CHAMBLISS is correct to make the point that tactical nuclear weapons are more available for theft and to transship than strategic nuclear weapons, and it is a high priority of the United States to reduce the risk of terrorists obtaining weapons of this kind, and this treaty does nothing about that. It does nothing about tactical nuclear weapons, which the Russians do care about.

It is a big part, apparently, of their defense strategy, and they gave not one whit on it; whereas our President, who says he wants to move toward zero nuclear weapons in the world—a fantastical view, really, and one that endangers our country and would create instability around the world and create more national security risks—did not negotiate this in any effective way. I think that was a failure of the treaty, a failure of negotiations, and another example of the fact that we wanted the treaty too badly for what, I guess, are primarily public relations matters rather than substantive matters. That is just the way I see it.

So the Russians have been steadily reducing their strategic weapons, we are reducing ours, and this strategic relationship has been moving along. There does not have to be a treaty. We would like to have a treaty. I think the Russians would probably like to have a treaty. But it is not essential that we have one if they will not agree to some of the things that are important, such as tactical nuclear weapons. I do think this is a weakness in the treaty, and I am disappointed our negotiators didn't insist on it.

As Mr. Feith said, who negotiated with the Russians, and they made a number of demands on a previous negotiation over the SORT treaty in 2002: You just have to say no, and then you can move forward once the Russians know we are not going to give. But they will push, push, push until they are satisfied you are not going to give on it, and then they will make a rational decision at that point whether to go forward with the treaty or not go forward with the treaty.

He said no on curtailment of missile defense in 2002. The Russians insisted, insisted, insisted, and he said, finally, no treaty.

We don't have a treaty with China, we don't have one with England, we don't have one with India, and they have nuclear weapons. We don't have to have one. We would like to, but we don't have to. At that point the Russians conceded and agreed. So I don't think we negotiated this well at all. We do not need to continue with this large disparity of tactical weapons between the United States and Russia, and I appreciate Senator RISCH's raising it.

I will perhaps talk a little later about the national missile defense question in President Obama's letter, but President Obama's letter——

The PRESIDING OFFICER. The Senator has consumed 4 minutes.

Mr. KERRY. Would the Senator be willing to yield for a question?

Mr. SESSIONS. On my time or yours?

Mr. KERRY. We can share the time. It depends on how long you answer.

Mr. SESSIONS. I am not giving up any of mine. I want to finish this 1 minute on the subject of the President's letter.

What it fails to acknowledge is that we were on the cusp of implanting a GBI in Europe by 2016, and that was completely given up in the course of these negotiations. This is the same missile we have in the ground in Alaska and California. That was given up, and we are now proceeding with a phase four theory that might be completed by 2020, if Congress appropriates the money for the next five Congresses and some President who is then in office—not President Obama 10 years from now—is still supportive and pushes it through and Congress passes it.

So this is a big mistake. We made a major concession on national missile defense and even put words in the treaty that compromise our ability to do the new treaty. The statement from Putin that we will be obliged to take action in response did not say just GBI; it also referred to the capabilities of an SM–3 Block IIB, which would be what the President said is going to be deployed in 2020.

I thank the Chair, I thank Senator RISCH, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, if you will let me know when I have used 4 of the 5 minutes I am to have.

Mr. President, I rise today to support the amendment by my friend and colleague and next-door neighbor on the Foreign Relations Committee, as well as my next-door neighbor of State, Senator RISCH.

I want to discuss the issue of nonstrategic nuclear weapons, also known as tactical nuclear weapons. While the United States and Russia have a rough equivalence in their strategic nuclear weapons, there is a significant imbalance in tactical nuclear weapons, and it favors Russia.

Russia currently has a 10-to-1 advantage in tactical nuclear weapons, and it is expected that the number of tactical nuclear weapons in Russia will continue to grow. This imbalance directly impacts our security commitments to NATO and to our other European allies.

Mr. President, I have been to the hearings in the Foreign Relations Committee. As a member of that committee, I have heard statements given by former Secretaries of State of both parties. Henry Kissinger testified before the committee and said:

> The large Russian stockpile of tactical nuclear weapons, unmatched by a comparable American deployment, could threaten the ability to undertake extended deterrence.

Former Secretary James Schlesinger called this imbalance of Russia's tactical nuclear weapons ''the dog that did not bark.'' He called it a ''frustrating, vexatious, and increasingly worrisome issue.''

In the past, many current Members of the Senate have expressed their concerns with Russia's tactical nuclear weapons. Even Vice President BIDEN, when he was a Member of this body and serving on the Foreign Relations Committee, spoke about it, and he said:

> We were hoping in START III to control tactical nuclear weapons. They are the weapons that are shorter range and are used at shorter distances, referred to as tactical nuclear weapons.

Well, Mr. President, as I look at this and work through it, it seems that, clearly, this administration did not make tactical weapons a top arms control and nonproliferation objective in the New START treaty. The negotiators of this treaty did not make this issue a priority, and they gave in to pressure from Russia to exclude the mention of tactical nuclear weapons.

I want to point out that while the administration failed to negotiate the reduction of Russian tactical nuclear weapons in the New START treaty, it did allow a legally binding limitation of U.S. missile defense, and that is, I believe, a mistake.

So I disagree with those who argue that ratifying the New START treaty is needed in order to deal with tactical nuclear weapons in the future. I believe the issue of tactical nuclear weapons should have been addressed—together with the reduction of strategic nuclear weapons—in the New START treaty. The administration lost a real opportunity by not negotiating a deal in this treaty. It is unclear what leverage will remain for us to negotiate a reduction in Russian tactical nuclear weapons.

Mr. President, the Risch amendment tries to resolve the complete failure of the administration to address Russia's advantage in tactical nuclear weapons in the New START treaty. The Risch amendment acknowledges the interrelationship between tactical nuclear weapons and strategic-range weapons, which grows as strategic warheads are reduced. The Risch amendment seeks greater transparency.

The PRESIDING OFFICER. The Senator has consumed 4 minutes.

Mr. BARRASSO. I thank the Chair.

The Risch amendment seeks greater transparency, greater accountability of tactical nuclear weapons, and the Risch amendment recognizes that tactical nuclear weapons can undermine stability.

So with that, Mr. President, I support this amendment, and I urge my colleagues to adopt the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, I understand we have 4½ minutes remaining, plus my 10 minutes at the very end.

The PRESIDING OFFICER. That is correct.

Mr. RISCH. Mr. President, Senator CORKER has indicated he would like to take those 4½ minutes, so I yield the floor to Senator CORKER.

Mr. CORKER. I thank the Senator, and I appreciate the Chair's courtesy.

I think Senator KERRY was down here earlier today talking a little about procedures, and I want to follow up on that. I know we have a number of people back in the cloakroom wondering about how we go forward with the amendment process. So I just thought I could enter into a conversation with him through the Chair.

Unlike most procedures, this is a situation where you have a 60-vote cloture and your ability or your strength on the issue itself rises because it actually takes 67 votes, or two-thirds, of those voting to actually ratify a treaty. So it is not like on a cloture vote on the floor where you go from a 60-vote threshold to 51, where you are weakened. In this case, you are actually strengthened because it takes more votes after cloture to actually pass this piece of legislation.

So I just wanted to, if I could, verify with Senator KERRY the process of actually offering amendments, not just on the treaty—because I know we are still on the treaty—but also on the resolution of ratification, where I think numbers of amendments might actually be approved and accepted.

Mr. KERRY. Mr. President, if the Senator will yield.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, the Senator is absolutely correct. The key question is, Is there sufficient support to ratify the treaty? Once we get to that sort of question postcloture, when and if that is invoked, that is what the threshold would be for the passage of this treaty. It is not as if you have cloture and all of a sudden, boom, only 51 votes are necessary to pass it.

Secondly, I would say to my colleague—and I want to emphasize this—if the majority leader were to put the cloture motion in this evening, it doesn't ripen until Tuesday. So we would have the rest of today, all of tomorrow, and Tuesday to have amendments; to continue as we are now. Then, if it did pass, we would have another 30 hours, which, as we all know, takes the better part of 2 days. So we are looking at Thursday under that kind of schedule, and I know a lot of Senators are hoping not to be here on Thursday.

So I think that is quite a lot of time within the context of this. But the Senator is correct. The answer to his question is yes.

Mr. CORKER. If I could ask one other question. If a Senator comes to the floor and wants to offer an amendment, not on the treaty itself—which we realize is more difficult to pass because of what that means as relates to negotiations with Russia—but to offer an amendment on the resolution of ratification, which is something that might

likely be successful and accepted, it is my understanding all they have to do is come down and offer that amendment, to ask unanimous consent to call it up; is that correct?

Mr. KERRY. Mr. President, without the help of the Parliamentarian, obviously we are entitled to do a lot by unanimous consent, and that is one of those things. We will not object, obviously. We want to try to help our colleagues be able to put those amendments in, so it would be without objection on our side.

Mr. CORKER. So it is my understanding—to be able to talk with other Senators who have an interest on the treaty itself and would like to do some things to strengthen it, it is my understanding that what I just heard was that the chairman of the Foreign Relations Committee would be more than willing to accommodate a unanimous consent request to actually offer amendments to the resolution itself, and he knows of no one on their side, at present, who would object to that. So if people wanted to go back and forth between the actual treaty and the resolution itself, they now can do that on the floor?

Mr. KERRY. That is correct.

Mr. CORKER. Thank you, Mr. President.

Mr. KERRY. Mr. President, I thank the Senator from Tennessee.

I will yield 5 minutes to the distinguished chairman of the Armed Services Committee, Senator LEVIN, to be followed by 7 minutes to the Senator from Oregon.

I ask the Senator from Oregon, is that enough time? Is 7 minutes enough time?

Thank you.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the Risch amendment states a concern which is a legitimate concern. I think probably everybody would agree to that. This concern was there in the START I treaty and it was there in the Moscow Treaty just a few years ago, that we need to address the imbalance or the—the imbalance, I guess, is a good word—between the number of strategic nuclear weapons that exist on both sides and the nonstrategic weapons. But that was true during START I in 1991 when President Bush negotiated it. There was no effort to, in effect, kill the treaty with an amendment stating that concern, although it was a concern then. During the Moscow Treaty debate here in 2002, I believe Senator BIDEN again raised the same concern about this imbalance. It is a legitimate concern. But you don't kill a treaty because there are some legitimate concerns about issues.

The Russians have a concern about our large number of warehoused warheads. We have a big inventory of warheads compared to them. They have a concern. We could state that as a fact, that the Russians have a concern about the number of warheads we have. But putting that into the treaty kills the treaty.

We could make any statement of legitimate concern. If it is in the treaty text, it will kill the treaty.

Senator BIDEN, in 2002, I believe, or it may have even been in the first START treaty, raised this issue about the imbalance. It was a legitimate issue. But there was no effort to kill that treaty which had been negotiated by President Bush by inserting a legitimate concern into the treaty.

There are a number of legitimate concerns. The Russians have legitimate concerns about our conventional capabilities, about accuracy, about our encryption capabilities. They were not addressed adequately for the Russians in this treaty. But they have a concern. Should we state in the treaty the fact of legitimate concern? Should we by amendment attempt to insert in the treaty that the factual statement of a legitimate concern just kills the treaty?

That is what concerns me as to why it is that there is such a determination to try to kill this treaty by means of an amendment which states a legitimate concern, which was true during the last two treaties negotiated by two President Bushes. That is what troubles me. That was the difference Senator CORKER pointed out between seeking to amend a resolution and seeking to amend the treaty.

To Senator RISCH, through the Chair, I happen to share the same concern the Senator has about this imbalance. As chairman of the Armed Services Committee, this imbalance existed in 2002, it existed in 1991, and we ought to address it, but we don't address it by killing this treaty, and that is what this amendment does.

Despite the absence of this language expressing a legitimate concern, we have support for this treaty by former President George H.W. Bush and Secretaries Brown, Carlucci, Cohen, Perry, and Schlesinger. They support this treaty without this language. It was true that former Secretary Schlesinger said, for instance, that he has a concern about this imbalance. I think we all do. He stated that concern. He still supports the treaty without this language, without this expression of concern.

Former Secretaries of the State Albright, Baker, Christopher, Eagleburger, Kissinger, Powell, Rice, and Shulz support the treaty without this language. They have the same concerns. As a matter of fact, I believe it was Senator SESSIONS—it may have been someone else—who said that former Secretary Kissinger has expressed this concern, in fact quoted, I believe, from former Secretary Kissinger's writing on this issue. He has that same concern which Senator RISCH and all of us have about this imbalance. But without the language, former Secretary Kissinger still supports this treaty.

All I can say is that I think there is a legitimate concern which is expressed in this amendment. It is a concern which has existed and needs to be addressed, as former Senator BIDEN said when he was debating a treaty—but not to kill a treaty by an expression of a legitimate concern.

That is what I think is the issue here—not whether the language in the Risch amendment expresses something which is legitimate but whether the absence of that concern being expressed in the treaty should be enough to vote for this amendment and to kill this treaty as a result and to force it back to an open-ended negotiation, which we have no idea where that would lead.

I hope we defeat the Risch amendment not because we disagree with what the concern is but because, understanding that concern, we do not want to do damage to the treaty and kill a treaty which does so much for the security of this Nation.

I yield the floor, and if I have any time, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I would like to add a few comments to those of the Senator from Michigan.

First, I would like to observe that this treaty encompasses fairly modest reductions in our strategic force. We are looking at ICBMs reduced from 450 to 420 and in some cases those ICBMs being reduced in terms of the number of warheads they are carrying—modest reductions.

When we look at some relaunch ballistic missiles, we are looking at a fleet of 14 Trident submarines, and we are looking at keeping all 14 of those, reducing the number of silos on each submarine from about 24 to 20—again, a modest reduction. Indeed, two of those subs will be in drydock at any one point in time, and they do not count against the numbers in this treaty.

In bombers, we are looking at 18 Stealth missiles currently—Stealth bombers, and keeping all 18—or B–2s, as they are known. We look at modest reductions in our aging, ancient, antique fleet of B–52s, modest reductions there.

In its entirety, what this represents is modest changes to the existing structure negotiated by a Republican administration and maintenance of verification regimes incredibly important to our national security. In that context, we have to look at various amendments being raised that, if they were sincere about their purpose, would be added to the resolution we are passing. But if their real purpose is to kill the treaty, then of course it comes in the form of an amendment to the treaty, which would effectively, in fact, do that.

So let's look at the structure of the issues that were put forward here.

First, the goal of this START treaty is to address strategic, not short-range tactical nuclear weapons which have never been covered by a treaty, including those negotiated by a Republican administration.

Second, tactical weapons are categorically different from strategic arms because they do not pose an immediate catastrophic threat to the U.S. homeland that strategic weapons do. With shorter range and smaller yield, they are intended for battlefield use.

I would note the quotation of General Chilton, commander of the U.S. Strategic Command, who said:

> The most proximate threat to the U.S. are the ICBM and SLBM weapons because they can and are able to target the U.S. homeland and deliver a devastating effect to this country.

So we are appropriately focused in those areas in the particular treaty for strategic reasons. Tactical weapons do not have the proximate threat that ICBMs and SLBMs do.

I also note that if you look at this from the Russian perspective, we have tactical weapons deployed in Europe. Numerous European nations have tactical weapons which can reach the Soviet—reach the Russian Federation, formerly the Soviet Union. Meanwhile, because of our superiority at sea, the Russian tactical weapons do not represent the same kind of threat to the United States.

I then note that we have already addressed this issue in the Senate ratification resolution, which states that ''the President should pursue, following consultation with allies, an agreement with the Russian Federation that would address the disparity between the tactical nuclear weapons stockpiles of the Russian Federation and the United States and would secure and reduce the tactical nuclear weapons in a verifiable manner.'' So it is already in the resolution of ratification.

Then I would note that Secretary Gates and Secretary Clinton said in a letter:

> We agree with the Senate Foreign Relations Committee's call in the resolution of Advice and Consent to ratification of the New START treaty to pursue an agreement with the Russians to address them.

Tactical weapons represents a thorny issue because it involves the European powers and it involves disparities of geography. That it is why it has been so hard to link them in the past to a strategic nuclear treaty and why they have not done so in this case. But it is the commitment by the Secretary of Defense, by the Secretary of State, by the President, and by this Senate through this resolution of ratification to pursue this issue that is important, and that is what is before us now.

In terms of addressing this issue, there are changes that need to be made to the language, to the ratification resolution. That would be appropriate. But this treaty, which greatly enhances the security of the United States of America while providing the appropriate verification protocols, is absolutely essential.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, how much time do we still have?

The PRESIDING OFFICER. The Senator has 16 minutes remaining.

Mr. KERRY. Sixteen? And the Senator from Idaho has—

The PRESIDING OFFICER. Ten minutes.

Mr. KERRY. Ten. So somehow we are going past the hour of 3.

MR. RISCH. Unless, of course, you want to yield.

Mr. KERRY. Do you want to yield some time back?

Mr. RISCH. No.

Mr. KERRY. Let me use a portion of it, and I will reserve a little bit at the end.

First of all, both Bill Perry, former Defense Secretary Bill Perry, and Jim Schlesinger have been mentioned, as well as the Commission on which they served. Let me make certain that the record is clear about their position with respect to this treaty.

Secretary Perry said the following:

> The focus of this treaty is on deployed warheads and it does not attempt to counter or control nondeployed warheads. This continues in the tradition of prior arms control treaties. I would hope to see nondeployed and tactical systems included in future negotiations, but the absence of these systems should not detract from the merits of this treaty and the further advance in arms control which it represents.

Jim Schlesinger, from the same Commission, said:

> The ratification of this treaty is obligatory. I wish more of my colleagues on the other side of the aisle were here to hear Jim Schlesinger's comments, but he said ratification is obligatory and the reason it is obligatory is that you really can't get to the discussion you want to have with the Russians about tactical unless you show the good faith to have the strategic and verification reduction structure in place.

Let me just say, supposing the language of the Senator from Idaho was adopted here, would it mean we are reducing tactical nuclear weapons? No. Would it get you any further down the road to be able to reduce them? The answer is, not only would it not do that, it would set back the effort to try to get those reductions because the Russians will not engage in that discussion if you can't ratify the treaty, and if they pass this amendment, this treaty, as Senator LEVIN said, is dead.

It goes back to the Russian Government with a provision that is now linking those weapons in a way that they have not been willing to talk about, even engage in the discussion at this point in time.

In fact, we would be setting ourselves backwards if that amendment were to be put into effect. What is ironic about it is, he is amending a component of the treaty that has no legal, binding impact whatsoever. So not only would they refuse to negotiate, but there is nothing legally binding in the language he would pass that would force them to negotiate. So it is a double setback, if you will. I would simply say to my friend on the other side—I talked to him privately about this, and I think he is openminded on it—we have language in the resolution right now with respect to nuclear weapons. We are not ignoring the issue. The language says: The Senate calls on the President following consultation with allies to get an agreement with the Russian Federation on tactical nuclear weapons.

I am prepared in the resolution of ratification to entertain language as a declaration that would also make the Senate's statement clear about how we see those nuclear weapons in terms of their threat. I hope that would address the concerns of many of our colleagues on the other side of the aisle.

But the bottom line here is that Senator RISCH's language not only does not make any progress on the topic he is concerned about, it actually sets back the capacity to be able to make the progress he wants to make.

If you want to limit Russia's tactical nuclear weapons, and I do, and he does, and I think all 100 Senators do, then you have to pass the New START. You have got to approve the New START. If you reject it, you are forcing a renegotiation, which never gets you not only to the tactical nuclear weapons but which leaves you completely questionable as to where you are going to go on the strategic nuclear weapons, which means the world is less safe; we have lost our leverage significantly with respect to Iran, North Korea; we have certainly muddied the relationship significantly with respect to Russia; we have ''unpushed'' the restart button; and we have opened who knows what kind of can of worms with respect to a whole lot of cooperative efforts that are important to us now, not the least of which, I might add, is the war in Afghanistan, where Russia is currently cooperating with us in providing a secondary supply route and assisting us in other ways with respect to Iran.

So I say, let's not do something that we know unravels all of these particular components. Anytime you change that resolution of ratification, it is like pulling, you know, a piece of string on a sweater or on a yarn roll and everything starts to unravel as a consequence. One piece undoes another piece undoes another piece. That is not where we want to go.

I hope, obviously, we will say no to this amendment and proceed. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. RISCH. Mr. President, under the UC, I believe I have the last 10 minutes. Am I correct on that? I think that was the UC.

The PRESIDING OFFICER. The Chair believes that is correct.

Mr. RISCH. So when I finish, at the conclusion of the 10 minutes, we will vote? Is that my understanding?

The PRESIDING OFFICER. The Chair believes that is correct. Correction. The Senator from Massachusetts still has 10 minutes remaining.

Mr. RISCH. My understanding is he can use that at any time and I get the last 10.

Mr. KERRY. Unless the Senator says something completely outrageous, which he has managed not to do in the course of the last 3 hours, I have no intention of using the time. But I reserve it to preserve my rights. I would be happy to yield it back after the Senator speaks, depending on him.

Mr. RISCH. I thank the Senator. I will try not to disappoint in that regard.

Mr. President, fellow Senators, distinguished chairman and ranking member, I think certainly we have had a civil and a good airing of an issue that is of considerable concern to, I think, every Member of this body. I am a little disappointed in that we started out acknowledging it was a very deep and serious concern to every Member of this body, as it was to the commission, in their Report on America's Strategic Posture.

I felt that along the line a little bit the concern was denigrated. I want to back up on that one more time and say that, in my judgment, and in the judgment of members of this commission, the issue of tactical weapons exceeds, in severity, in concern, the issue of strategic weapons.

I understand one might argue that you are arguing about how many angels can dance on the head of a pin as opposed to which is of the most concern. But I come back to the reasons I gave as to why I think the tactical issue is important more than the strategic issue. That is, on the strategic issue, we are in about the same position we were 40 years ago, with the exception, and admittedly an important exception, that the raw numbers are down. When we started this 40 years ago, each party had about 6,000 warheads. As I said, if either party pulled the trigger and launched 6,000 or some significant part of that, obviously that is the deterrence that each party was counting on that neither would do that.

Today we are down to—and with all due respect to my good friend from Massachusetts, the numbers reported in the press are 1,100 and 2,100. I understand there is intelligence information that we cannot go into here. But, in any event, I think most people would agree that we have the advantage in numbers from a strategic standpoint.

Indeed, if the numbers are even close to that, the—whether it is 6,000 warheads or 1,000 warheads, when someone pulls the trigger, the party is over for this world. So focusing on the raw numbers, when we have got a 40-year history that we are not going to do that and they are not going to do that, and most people agree that neither side is inclined to pull the trigger, what are the real concerns?

The real concerns are an accidental launch from them, although remote, possible, but, more importantly, an intentional launch by a rogue nation. Obviously one would look at North Korea or one would look at Iran in that regard.

In my judgment, the two issues that need to be focused on are the defensive missile issue and the tactical nuclear weapons issue.

Let me say I agree with my good friend from Massachusetts and Senator LEVIN, that geography is such that the issue of tactical weapons is substantially more important on a direct basis to the Russians than it is to us. After all, we are insulated by oceans on each side of us to the east and the west, which the Russians do not enjoy, and they have a several hundred-year history of seeing invasions come by land and intermediately, which we do not have.

So in that regard I will concede certainly that the tactical issue is important for them. And the good Senator from Massachusetts makes a good point in that I think they would like to relocate, if they could, their tactical weapons to be focused more on the Chinese threat and perhaps more on the threat from the south, from other countries. We ought to help them out in that regard by entering into negotiations in that regard on the tactical weapons.

But I come back to the tactical weapons are an important issue. Senator LEVIN says they are a concern. Senator LEVIN says, we should not kill this treaty simply because of a concern, and I agree with Senator LEVIN. I have not, from day one, said we ought to kill this treaty. I have said from day one, everyone has convinced me, and I think virtually everyone else, that we are much better off with a treaty than we are without a treaty.

I think everyone has worked in good faith in that regard. But, on the other hand, having said that, I do not think we should then throw in the towel and say: Well, okay, we will agree to any treaty. That brings me to the point of where we are. We are exercising our constitutional right that every one of us—not only our right but our duty as a Senator, to advise and consent on this treaty and any other treaty that is put in front of us, and that is where I have problems.

The position we have been put in is these negotiations have gone on, the treaty has been negotiated, it has been signed by the President, and it has been put in front of us, and what we are told is, it is a take it or leave it. If you do not vote for this, you are voting to kill the treaty.

I disagree with that. I think simply because we amend the preamble to this treaty is not a killer. Indeed, my good friend from Massachusetts keeps telling us, the preamble does not mean anything, it is a throw-away, the language is a throw-away, it does not mean anything.

Well, it does mean something, particularly when it comes to the context in which you interpret and you react to the treaty. So to everyone here, I say, you have the opportunity to set the restart button with Russia, and we can do it by focusing on what is an extremely important issue, which most everyone here agrees is an extremely important issue, but nobody ever does anything about it.

So let's tell the negotiators: Go back to the table and at least agree that the interrelationship between the strategic and tactical weapons is an important issue, and we are not going to go on as we have over the last 40 years. The times have changed. We trust you are not going to pull the trigger on us, and you trust that we are not going to pull the trigger on you. But this issue of tactical weapons where we enjoy, if you would, a 10-to-1 disadvantage to the Russians, we have tactical weapons that are out there that can be much more easily gotten ahold of by terrorists than strategic weapons. We have tactical weapons that continue to be designed, continue to be manufactured, and continue to be deployed by the other side, in violation of their admittedly individual Presidential initiatives, which needs to be addressed.

It is so important that people on this commission said that it should be addressed before strategic weapons. You have the opportunity to put that in here. There is no intent to kill this. It is an intent to make it better. We have the right. We have the duty. We must advise and consent. I urge that my colleagues vote in favor of this very good amendment.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Has the time expired?

The PRESIDING OFFICER. The Senator from Idaho has slightly less than a minute left.

Mr. KERRY. Mr. President, let me say, as I yield back——

Mr. RISCH. Mr. President, is the next vote going to be on this amendment or are the judges going to be voted on first?

The PRESIDING OFFICER. That is correct. The next vote is on the Risch amendment.

Mr. KERRY. Mr. President, I will yield back the time momentarily. I want to say one thing. The commission report that the Senator refers to and has held up, the two principal authors are former Secretary of Defense, Bill Perry, who says: The absence of the tactical nuclear should not detract from the merits of this treaty, and he is in favor of our ratifying this treaty, and Jim Schlesinger, who was his coauthor, who worked with Republican Presidents as a Secretary of Defense, Secretary of Energy, said, ''The ratification of this treaty is obligatory.''

The PRESIDING OFFICER. The Senator from Idaho.

Mr. RISCH. Mr. President, I say to Senator KERRY, I respect that. I would remind everyone that I filed a letter dated December 17 to Senator KERRY and Senator LUGAR from six members of the commission, including James Schlesinger, which says that:

Dealing with this imbalance is urgent—

Referring to the tactical weapons—

Dealing with this imbalance is urgent, and, indeed, some Commissioners would give priority to this over taking further steps to reduce the number of operationally deployed strategic nuclear weapons.

I agree. I thank the good chairman and ranking member for a very good dialogue on this particular issue.

I yield back my time.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 4839.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Georgia (Mr. ISAKSON), the Senator from Illinois (Mr. KIRK), and the Senator from Ohio (Mr. VOINOVICH).

Further, if present and voting, the Senator from South Carolina (Mr. DEMINT) would have voted ''yea'' and the Senator from Kentucky (Mr. BUNNING) would have voted ''yea.''

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

The result was announced—yeas 32, nays 60, as follows:

[Rollcall Vote No. 283 Ex.]

YEAS—32

Barrasso	Ensign	McConnell
Bond	Enzi	Murkowski
Brown (MA)	Graham	Risch
Brownback	Grassley	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Snowe
Cochran	Johanns	Thune
Collins	Kyl	Vitter
Cornyn	LeMieux	Wicker
Crapo	McCain	

NAYS—60

Akaka	Feingold	McCaskill
Alexander	Feinstein	Menendez
Baucus	Franken	Merkley
Bayh	Gillibrand	Mikulski
Begich	Gregg	Murray
Bennet	Hagan	Nelson (NE)
Bennett	Harkin	Nelson (FL)
Bingaman	Inouye	Pryor
Boxer	Johnson	Reed
Brown (OH)	Kerry	Reid
Cantwell	Klobuchar	Rockefeller
Cardin	Kohl	Sanders
Carper	Landrieu	Schumer
Casey	Lautenberg	Stabenow
Conrad	Leahy	Tester
Coons	Levin	Udall (CO)
Corker	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	Lugar	Webb
Durbin	Manchin	Whitehouse

NOT VOTING—8

Bunning	Kirk	Voinovich
DeMint	Shaheen	Wyden
Isakson	Specter	

The amendment was rejected.

The PRESIDING OFFICER. The majority leader.

ORDER OF BUSINESS

Mr. REID. Mr. President, we are going to have one more vote today on a circuit judge. It is my understanding the district judge will go by voice.

Mr. President, tomorrow, we are going—first of all, tonight, anyone who wants to work on the START treaty, the managers of the bill, Senator KERRY and Senator LUGAR, have said they are here as long as people want to work on it. We are going to come in at 10 in the morning. We will work from 10 until 2 on the START treaty, and then a number of Senators want to have a closed session. We will do that in the Old Senate Chamber. The Chamber has already been cleared by the security folks, so we will start that at 2 o'clock and go as long as necessary. Then we will come back tomorrow evening and continue working on the START treaty.

We have very few things left to do. The Republican leader and I and our staffs have worked throughout the morning trying to come up with something on the CR. We are very close to being able to get that done, but it is not done. So we have the CR to do. The short-term runs out on Tuesday, so we have to have things done by then. We have this START treaty, and then, of course, we have the 9/11 health bill and the motion to reconsider. Senator LEVIN has been working on some other things, namely defense, on an agreement to get it done.

NOMINATION OF RAYMOND JOSEPH LOHIER, JR., TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Raymond Joseph Lohier, Jr., of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate prior to the vote, equally divided and controlled between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS, or their designees.

The Senator from Connecticut.

Mr. LEAHY. Mr. President, I yield my time to the senior Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, over the last few days, the Senate has finally begun to vote on judicial nominations that have been waiting on the Executive Calendar for months. There are currently three judicial emergency vacancies on the U.S. Court of Appeals for the Second Circuit and the Judiciary Committee has reported qualified nominees to fill each one.

With the consideration of Ray Lohier's nomination, the Senate will finally fill one of those for the people of Vermont, Connecticut, and New York. For the past 13 years, Mr. Lohier has served as a Federal prosecutor in the U.S. Attorney's Office in the Southern District of New York and is currently special counsel to the U.S. attorney. He previously served as the chief and deputy chief of both the Securities and Commodities Task Force, which investigates and prosecutes offenses on Wall Street, and the narcotics unit.

He has the strong support of Senator GILLIBRAND and myself. The Judiciary Committee unanimously reported his nomination on May 13.

I urge confirmation of the nomination.

Mrs. GILLIBRAND. Mr. President, I am pleased to stand in support of Raymond J. Lohier, Jr., who is President Obama's nominee to serve on the U.S. Circuit Court of Appeals for the Second Circuit. Ray is a highly talented and accomplished New Yorker, and I applaud President Obama for this excellent choice.

Ray Lohier has dedicated his career to public service and protecting the rule of law. For nearly a decade, Ray has served with distinction as an assistant U.S. Attorney for the Southern District of New York, where he has been successfully involved in some of the Nation's most challenging and complex cases. He has led that office's efforts to prosecute securities fraud, commodities fraud, insider trading and Ponzi schemes. Notably, he served on the team that successfully prosecuted Bernard Madoff for a Ponzi scheme that defrauded billions of dollars from New Yorkers and individuals across the country. Prior to his service as an assistant U.S. attorney, Ray worked as a senior trial attorney in the Civil Rights Division of the U.S. Department of Justice.

In addition to his impressive professional career, Ray Lohier is actively involved in his community, serving on Brooklyn Community Board 6, where he is currently the first vice chairman and chairman of the Public Safety Committee. While he worked as an attorney in private practice in New York, Ray was a member of his firm's pro bono committee, while also serving the State of New York on the Gubernatorial Task Force on Judicial Diversity on the Bench and the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Court, Subcommittee on Court Appointments. He has also been a member of the National Black Prosecutors Association.

Ray is a cum laude graduate of Harvard College and an alumnus of the New York University School of law, where he earned his juris doctorate and was awarded the Vanderbilt Medal. He also has served as editor-in-chief of the Annual Survey of American law.

In addition to all of these outstanding professional and educational accomplishments, he has been married for the past 10 years to his wife Donna,

a professor at CUNY Law School and former chair of the New York Asian Women's Center. Together they are raising two children, William who is 8 and John who is 6.

I am confident that given his extraordinary background of professional accomplishment, Ray Lohier will be an excellent addition to the U.S. Circuit Court for the Second Circuit. He was unanimously supported by the Judiciary Committee on May 13 of this year, and I urge all of my colleagues to support his confirmation.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, we yield back our time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Raymond Joseph Lohier, Jr., of New York, to be United States Circuit Judge for the Second Circuit?

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from South Carolina (Mr. DEMINT), the Senator from Georgia (Mr. ISAKSON), the Senator from Illinois (Mr. KIRK), and the Senator from Ohio (Mr. VOINOVICH).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''yea'' and the Senator from South Carolina (Mr. DEMINT) would have voted ''yea.''

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 284 Ex.]

YEAS—92

Akaka	Corker	Kohl
Alexander	Cornyn	Kyl
Barrasso	Crapo	Landrieu
Baucus	Dodd	Lautenberg
Bayh	Dorgan	Leahy
Begich	Durbin	LeMieux
Bennet	Ensign	Levin
Bennett	Enzi	Lieberman
Bingaman	Feingold	Lincoln
Bond	Feinstein	Lugar
Boxer	Franken	Manchin
Brown (MA)	Gillibrand	McCain
Brown (OH)	Graham	McCaskill
Brownback	Grassley	McConnell
Burr	Gregg	Menendez
Cantwell	Hagan	Merkley
Cardin	Harkin	Mikulski
Carper	Hatch	Murkowski
Casey	Hutchison	Murray
Chambliss	Inhofe	Nelson (NE)
Coburn	Inouye	Nelson (FL)
Cochran	Johanns	Pryor
Collins	Johnson	Reed
Conrad	Kerry	Reid
Coons	Klobuchar	Risch
Roberts	Snowe	Vitter
Rockefeller	Stabenow	Warner
Sanders	Tester	Webb
Schumer	Thune	Whitehouse
Sessions	Udall (CO)	Wicker
Shelby	Udall (NM)	

NOT VOTING—8

Bunning	Kirk	Voinovich
DeMint	Shaheen	Wyden
Isakson	Specter	

The nomination was confirmed.

NOMINATION OF CARLTON W. REEVES TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

The PRESIDING OFFICER. The clerk will report the nomination.

The assistant legislative clerk read the nomination of Carlton W. Reeves, of Mississippi, to be United States District Judge for the Southern District of Mississippi.

Mr. COCHRAN. Mr. President, I am pleased to support the President's nomination of Mr. Carlton Reeves to be a U.S. District Court Judge for the Southern District of Mississippi.

Mr. Reeves practices law in Jackson, MI. He received his undergraduate degree from Jackson State University and his law degree from the University of Virginia.

He has served as a clerk and staff attorney for the Mississippi Supreme Court, and as the chief of the Civil Division in the U.S. Attorney's Office for the Southern District of Mississippi.

Mr. Reeves has been actively involved with Mississippi Legal Services and other public interest organizations in our State which will serve him well as he takes on this important new responsibility.

Mr. President , I am pleased to recommend this nominee for confirmation by the Senate.

Mr. LEAHY. Mr. President, the Senate will finally vote on the nomination of Carlton W. Reeves to fill an emergency vacancy on the U.S. District Court for the Southern District of Mississippi. Currently a partner in a Jackson, MI, law firm, Mr. Reeves is a former Federal prosecutor. Both of his Republican home State Senators, Senator COCHRAN and Senator WICKER, introduced Mr. Reeves at his confirmation hearing, and they emphasized his outstanding reputation in the Jackson legal community, as well as the bipartisan nature of the Mississippi delegation's support for this fine nominee. The Judiciary Committee reported his nomination on August 5 with the support of all but 1 of its 19 members. That was more than 4 months ago. Senate consideration and confirmation of his nomination has been delayed for months with for no good reason. When he is finally confirmed, Mr. Reeves will become only the second African-American Federal district judge in Mississippi. He will fulfill the pledge made by President Bush that went unfilled.

After the confirmations today, there remain more than two dozen Federal circuit and district court nominations favorably reported by the Judiciary Committee, most of the unanimously, also ready for consideration and a final vote. The practice used to be for the Senate to confirm and confirm consensus nominees within days of their being favorably considered by the Judiciary Committee, certainly those reported without opposition. No longer. Courtrooms are being kept vacant for months and months while justice is, at best, delayed.

During the first 2 years of the administration of President George W. Bush, a Democratic Senate majority proceeded to vote on 100 of his judicial nominations. That included controversial circuit court nominations reported during the lameduck session in 2002. In contrast, during this first Congress of President Obama's administration, the Senate has been allowed to consider just over 50 of the 80 nominations fully considered and reported favorably by the Judiciary Committee.

I congratulate Mr. Reeves and his family on his confirmation today. This day was a long time coming.

The PRESIDING OFFICER. Is there further debate?

There being no further debate, the question is on agreeing to the nomination.

The nomination was confirmed.

The PRESIDING OFFICER (Mr. MERKLEY). A motion to reconsider the vote to the nomination is considered made and laid upon the table. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The Senator from Massachusetts is recognized.

UNANIMOUS-CONSENT REQUEST—S. 2919

Mr. KERRY. Mr. President, I want to clarify this for my colleagues. There are a couple of items, and they will be done quickly in legislative session by unanimous consent. Then we will come right back to the procedure we had talked about previously. For the purpose of that consent, in legislative session, I yield to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. UDALL of Colorado. In legislative session, I wish to make a unanimous consent request.

I ask unanimous consent that the Banking Committee be discharged from further consideration of S. 2919, the Small Business Lending Enhancement Act, and the Senate proceed to its immediate consideration; that a Udall of Colorado substitute amendment, which is at the desk, be agreed to, the bill, as amended, be read the third time and passed, and the motions to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. UDALL of Colorado. Mr. President, if I might, for the record, I will talk briefly about the legislation I referred to. This is a bipartisan bill. I filed it——

Mr. INHOFE. Reserving the right to object, Mr. President——

The PRESIDING OFFICER. Objection has already been heard.

Mr. INHOFE. Well, there are two motions. I am objecting to the discussion of the amendment at this time, until we find out how long it will be.

Mr. KERRY. Mr. President, I ask unanimous consent that the Senator from Colorado have 3 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. UDALL of Colorado. Mr. President, the reason I have offered this consent agreement today is that this would help literally hundreds of small businesses to create hundreds of thousands of jobs at no cost to the American taxpayer.

I did want to, in the spirit of bipartisanship, mention the cosponsors of the bill: Majority Leader REID from Nevada, and Senators SNOWE, COLLINS, SCHUMER, BOXER, BROWN, GILLIBRAND, INOUYE, LIEBERMAN, NELSON of Florida, BENNET of Colorado, SANDERS, and WYDEN.

The bill addresses a problem that everybody in the Chamber agrees needs to be addressed, and that is the trouble small businesses are having accessing capital so they can grow and create jobs.

We saw that our unemployment rate inched up to 9.8 percent in November. That is indicative of the fact that our economy is having trouble gaining traction. We all know that if small businesses expand and grow, our economy will be getting back on track.

If I might, let me tell you how this bill would help small businesses. Under current law, credit unions are doing what they can to help business interests and meet the demands of particularly family businesses. But they are constrained by an arbitrary cap on the size and amount of the loans they can issue. In every State, there are credit unions that would like to lend more, responsibly. But the Federal Government gets in the way.

This legislation would get the Federal Government out of the way and allow credit unions help jumpstart the economy. Under current statute, credit unions are constrained to dedicating no more than 12.25 percent of their total assets to small business lending. Many credit unions have run up against that cap. What this legislation would do is take the most experienced and well-run credit unions and allow them to meet the rising demand for small business loans.

The National Credit Union Administration, the Federal regulator, would have the authority to allow the small business lending cap to slowly increase from the current 12.25 percent limit to a maximum of 27.5 percent of total assets.

Lest you think this has been pulled out of thin air, the proposal has the backing of the Banking Committee, the Treasury Department, and National Credit Union Association. It also has the support of the National Small Business Association, the National Association of Realtors, and even the Conservative Americans for Tax Reform thinks this is a good idea.

The Credit Union National Association projects that these reforms are sensible reforms and would increase small business lending by $10 billion within the first year, with an increase of nearly $200 million in my State, and I am sure it would be similar in all States. It is expected to also increase 100,000 jobs nationwide.

This is disappointing. It is a shame we can't move this legislation forward. We should be helping our economy, but we are embroiled in other things here. I will continue to fight for this, and I hope other Senators here today will join me in helping unleash the power of credit unions and get Americans back to work.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I will yield for a moment for an announcement from the Senator from Montana.

(The remarks of Mr. TESTER are printed in today's RECORD under "Morning Business.")

EXECUTIVE SESSION

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS—Continued

Mr. KERRY. Mr. President, I ask unanimous consent that we go to executive session.

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

Mr. KERRY. We will now consider the START treaty. The Senator from Oklahoma has the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I yield to the Senator from South Dakota, Senator THUNE.

AMENDMENT NO. 4841

Mr. THUNE. Mr. President, I ask that the pending Inhofe amendment be set aside in order to call up my amendment No. 4841.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 4841.

Mr. THUNE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with, and that we resume consideration of the Inhofe amendment.

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

The amendment is as follows:

(Purpose: To modify the deployed delivery vehicle limits of the Treaty)

In section 1(a) of Article II of the Treaty, strike "700, for deployed ICBMs, deployed SLBMs, and deployed heavy bombers" and insert "720, for deployed ICBMs, deployed SLBMs, and deployed heavy bombers".

Mr. INHOFE. Mr. President, I will yield at this moment to the Senator from Wyoming——

Mr. KERRY. Mr. President, I am trying to get a procedure in place. I ask my colleague from Oklahoma if it is possible, with my colleague from South Dakota, to enter into a time agreement. Obviously, we won't ask colleagues to come and vote tonight. Can we get a time agreement and set it aside for a vote at such time that the leadership decides is appropriate?

Mr. INHOFE. Mr. President, I respond by saying that I will object to a time agreement at this time. Several people, including the Senator from Arizona, want to speak on this amendment. That might create a problem because of his activity on this amendment. Let's keep it moving, and I can assure you that I want to get out of here quicker than you do.

Mr. KERRY. If that is true, let's go.

Mr. INHOFE. At this time, I yield to the Senator from Wyoming on a subject of far greater significance than anything we have been talking about. I yield to the Senator from Wyoming to discuss something.

Mr. ENZI. Mr. President, I thank the Senator from Oklahoma. It is a great pleasure for me to be able to make an announcement from the floor of the Senate. I ask unanimous consent to share my joy as in morning business.

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

(The remarks of Mr. ENZI and Mr. INHOFE are printed in today's RECORD under "Morning Business.")

AMENDMENT NO. 4833

Mr. INHOFE. Mr. President, we have another amendment that is up that I think is very significant. It is one having to do with verification.

I think if we look at all of the problems we are trying to address with amendments—we have been talking about missile defense, which is the one I have been most passionate about; we have been talking about other areas, too—in the case of verification, it is very significant to understand that this New START treaty has remarkably less verification than the START I treaty did. There are only 180 inspections over 10 years under New START versus 600 inspections over 15 years in START I. That is a drop of 40 inspections per year to 18 inspections per year.

In a minute, I will tell you why I think it is more precipitous than that because of the significance of the inspections as the arsenals are dropping

down in terms of the percentage of inspections versus the arsenals.

The New START treaty inspections to verify the elimination of nuclear weapons delivery systems have been fundamentally changed from those in START I, replaced with a lesser provision of twice a year permitting the other party to view the debris from half of the eliminated first stages.

In a minute I will break these down, but what I am talking about is that we have a treaty now that addresses two things. Type one is the ICBM bases, the submarine bases and the air bases. These are delivery systems. I think this has to be talked about as well as the actual warheads. The type two refers to the formerly declared facilities to confirm that such facilities are not being used for purposes inconsistent with the treaty.

Now, when I say that, we were talking about trying to verify those things that are in existence today but also those that have been eliminated. In the first START I treaty, we were able to actually witness the destruction of these various warheads and of the systems that are under the consideration of this treaty. As it is now under the New START treaty, we cannot witness it. All we can do is look at the debris that remains after something is destroyed.

Now, my concern is this: If you keep the debris around from something you have destroyed, you could use the same debris, as evidenced under the New START treaty, to show you have destroyed something that was destroyed in the past and not addressing those that are still there today. So in that area, I think this is very difficult.

Finally, under the New START treaty, 24 hours of advance notice is required before an inspection, dramatically increased from the 9 hours of advance notice required under old START. Why is this important? This is important because as we get down to fewer and fewer inspections that would be made because we are limiting the arms under the treaty, then you should actually have a longer period of time of advance notice of the inspections.

So I have an amendment that will correct these inadequacies. The amendment triples the number of inspections under New START for the two types of inspections referred to under START I as the type one and type two inspections. I mentioned the type one and type two, and this would actually triple the number of inspections. Type one would increase from 10 to 30 inspections a year; type two inspections would increase from 8 to 24—the total being 54 inspections.

On July 20, 2010, the Principal Deputy Under Secretary of Defense for Policy, that is James N. Miller, testified before the Senate Armed Services Committee—and I was there—that the Russian cheating or breakout under the treaty would have little effect because of the United States second-strike strategy nuclear capabilities.

I wholeheartedly disagree. The whole idea that we would say the current Under Secretary of Defense in the Obama administration—what he is doing is admitting the Russians cheat, but he is saying it does not matter.

I would say this: The smaller the size of the nuclear arsenal—that is what we have today as in New START—the larger impact cheating has on a strategic nuclear balance. In other words, if you are cheating with a smaller nuclear arsenal, that is much more significant than if it were a large one. It is a percentage of a smaller figure. So if it is 50 percent of a smaller figure, it would have been 10 percent of the larger figure, of the nuclear arsenals that were there under the original START treaty.

Increasing the number of type one and two inspections is critical to New START verification because the total number of inspections has been dramatically reduced in New START from the old START. So as the weapons decreased, inspections should actually increase or be enhanced.

Former Secretary of Defense Harold Brown explained this when he said why this is the case in testimony before the Senate Foreign Relations Committee or the original START treaty, and that was in October of 1991. He said:

> Verification will become even more important as the numbers of strategic nuclear weapons on each side decreases because uncertainties of a given size become a larger percentage of the total force as this occurs.

That was way back in 1991. Since then you had former Under Secretary of State for Arms Control and International Security John Bolton who stated this year, on May 3:

> While [verification is] important in any arms control treaty, verification becomes even more important at lower warhead levels.

They agree, and we are talking about going all the way back to 1997. In 1997, Brent Scowcroft and Arnold Kantor said, in a joint statement:

> Current force levels provide a kind of buffer because they are high enough to be relatively insensitive to imperfect intelligence and modest force changes. . . . As force levels go down, the balance of nuclear power can become increasingly delicate and vulnerable to cheating on arms control limits concerns about ''hidden'' missiles and the actions of nuclear third parties.

That was 1996. You have 1991, 1997, then present, and, of course, in May of this year in front of the Senate Foreign Relations Committee, former Secretary of State James Baker summarized that the New START verification regime is weaker than its predecessor, testifying to Congress that the New START verification program ''does not appear as rigorous or extensive as the one that verified the numerous or diverse treaty obligations under START I. This complex part of the treaty is even more crucial when fewer deployed nuclear warheads are allowed than were allowed in the past.''

They all are consistent, agreeing No. 1: Russians cheat and, No. 2, verification becomes more important as the arsenals decreased in size.

I think we can say Russia has essentially violated every arms control treaty we have had with them in the past. The State Department this year submitted a report on foreign country compliance with their arms control measures. This is a report that came out this year, in 2010. They refer to the last report which was 2005. START:

> There is a number of long-standing compliance issues—such as an obstruction to U.S. right to inspect warheads—raised in the START Treaty's Joint Compliance and Inspection Commission that remained unresolved when the treaty expired in December.

This commission endured the time all the way up to December 2009, in different areas. In the biological weapons convention—there are a lot of different kinds of weapons of mass destruction. They are not all nuclear—biological, chemical, conventional. In the biological weapons convention in 2005, the State Department concluded that ''Russia maintains a mature offensive biological weapons program and its nature and status have not changed.''

Then, in 2010, the State Department report said: Russian confidence-building measure declarations since 1992 have not satisfactorily documented whether its biological weapons program was terminated.

What they are saying is even back in 2005 they say it was inadequate because they are still continuing, they are violating the accord. This is back in 2005, on biological weapons. Then that was renewed in 2010, saying they are still not doing it today. That was biological weapons.

On chemical weapons we find the same thing. In 2005 the State Department assessed that ''Russia was in violation of its Chemical Weapons Convention obligations because its declaration was incomplete with respect to declaration of production and development facilities.''

In 2010 the State Department again stated that there was an ''absence of additional information from Russia, resulting in the United States being unable to ascertain whether Russia has declared all of its chemical weapons stockpile, all chemical weapons production facilities, and all of its chemical weapons development facilities.''

With biological weapons, they have not complied there; in the chemical weapons, they have not complied there; with conventional weapons in Europe, the United States notes in the 2010 report that ''Russia's actions have resulted in noncompliance with its treaty obligations.''

The Wall Street Journal recently reported, according to U.S. officials, the United States believes Russia has moved short-range tactical nuclear warheads to facilities near NATO allies as recently as this spring.

I think the Senator from Idaho covered this to some degree. We are concerned about those tactical problems. I guess what we can say is, we know one

thing and nobody seems to disagree with this: Russia cheats. But there are five things to be considered. One is there are fewer inspections than there were under the old one. Second, instead of actually seeing the destruction of these warheads, we depend on the debris that remains after the destruction has taken place.

I think everyone understands if we are depending on debris, we can be looking at debris from one destruction effort and they can declare that they have done it three or four times since then, using the same debris.

Third is, advance notice is three times longer now. It should be shorter now because of more significance. As we get the smaller stockpile, we should have a greater compliance requirement.

The fourth is weapons decrease—we should be paying more attention to them.

No. 5, Russia does cheat.

I believe of all the amendments, the amendments on the missile defense are significant. It concerns me that we have something, as I said on the floor yesterday, and I quoted, several Russians from the very beginning were saying: We don't want the United States—and it is the intent of this treaty—to be able to enhance their missile defense treaties.

Right now, I look at this and, as I said several times: This is fine, the treaty, except it is with the wrong people. This treaty is with Russia, not with where the threat is—not with North Korea, not with Iran. That is where the problem is.

I have had very strong feelings. I disagreed with taking down the termination of the ground-based system that was to be in Poland because our intelligence tells us—it is not even classified—that Iran will have the capability of sending a nuclear warhead and having a delivery system reaching as far as the eastern part of the United States by 2015. We, with a ground-based interceptor site in Poland, would have had that opportunity. But now that that site is down, we would be dependent, as I showed on a chart yesterday, on a 2–B system that we don't even know—they say maybe it will be done by 2020. We have no assurance it will.

Look at that: We the United States will be naked in this effort for a period of time between 2015 and at least 2020. Maybe even longer than that.

All these things are important. But this one is equally important because it does not do any good to have a verification system that is as flawed as this system.

We will have an opportunity to talk about this in more detail. For that reason it is my understanding, and I assure the Senator from Massachusetts that my being unwilling to agree to a time agreement is not—this is not going to shorten it at all. It is my intention to move on with this as soon as we can get to it. I understand it is pretty well locked in for tomorrow.

With that, I yield the floor.

Mr. KERRY. Mr. President, I thank the Senator from Oklahoma. I know he is not trying to prolong it. I was just trying to see if we can get a time certain now, but I am confident we will.

I do not know if the Senator from South Dakota——

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I apologize. I don't know if the Senator from South Dakota is planning to be here? I ask if anybody knows whether he is.

Let me speak to the amendment of the Senator from Oklahoma for a few minutes. I thank him for this amendment on verification. It is an amendment that will help us to flesh out this question of verification, which is important to anybody in the Senate. I guess three words that have become famous beyond what people might have thought when they were first uttered is the pronouncement of President Reagan, ''trust, but verify,'' which at the time was accompanied by his articulation of the Russian words for that.

Obviously, any agreement we would enter into with the Russians, or with anybody, can never rely completely on somebody's word—either word—because neither side is going to be satisfied with somebody's word with whom they have the necessity of actually having to reach this kind of an agreement to reduce weapons that are pointed at each other for lots of different reasons over a long period of time.

I assure the Senator from Oklahoma that every Senator on our side—and most importantly the unbelievably experienced negotiators who put this treaty together, who made a lifetime of trying to understand these kinds of relationships and the ways in which to adequately verify—they would not be standing in front of the country and the world and the Congress saying to us this treaty provides better verification in many ways than we had previously.

Tomorrow, in the classified session, we will have an opportunity to dig into a little bit of what exactly those ingredients are that fill that out—better. I am not going to go into them all now.

But let me talk specifically about the amendment the Senator has proposed. He proposes an amendment to the treaty itself, which we all understand now after two votes, both of which have been to reject a change to the treaty itself because of the implications of changing it. Those do not change here with this particular amendment. But let me go beyond that so we, hopefully, could enlist the opposition to this amendment of some people who will see why it is unnecessary and, in fact, conceivably even counterproductive.

The Senator wants to increase the number of type one inspections. I might add this concept of a type one inspection and a type two inspection is new to the New START treaty. It is new to the process. What the Senator would like to do is triple the number of inspections currently set forth in the treaty.

The second reason, after the question of why you do not want, for this reason particularly, to amend the treaty, there might be a circumstance where a treaty were so egregious or it presented us with such a challenge that the Senate might decide to advise and consent, and we would all say we ought to send this back. But this does not rise to that level, in my judgment, and I think colleagues will share that opinion.

Let me say why.

We can achieve effective verification with the number of inspections that are set forth in the treaty. Admiral Mullen has said we can, the Strategic Command says we can, the national intelligence community says we can—the people responsible for verification. This treaty would never have been sent to the Senate if this treaty did not have adequate verification measures in it that would allow the intelligence community to sign off and say to Senators: Please vote for this treaty.

But let's go underneath that and examine it a little bit. That is the judgment of our military, the State Department, our intelligence community. James Clapper, the Director of National Intelligence, told us we should approve this treaty the earlier, the sooner, the better. I think we need to heed his judgment and the judgment of our military.

The Senator expresses the concern that there are fewer inspections here than the original START treaty had. In sort of on-its-face terms, that is a truth. That is a true statement if you simply compared the total number that existed in START I and you compare the number that are set forth in the New START. But that is not what we are comparing.

The reason for that is, in 1992, when we approved START I, there were four countries that we were approving inspections for—Belarus, Kazakhstan, Ukraine, and Russia—because they all had nuclear facilities. There were about 70 sites that we inspected back then in 1992.

But as we all know, thanks to the extraordinary efforts of cold warriors for years and years from the end of World War II until this historic moment of 1992, the fact is, we were inspecting those 70 sites with a very different relationship and a very different world.

Today, the New START agreement only seeks 35 Russian sites to inspect because Kazakhstan, Belarus, and Ukraine no longer have any nuclear weapons. Those weapons were consolidated in Russia, and the sites in Russia were reduced. So you do not want an apples and oranges comparison here. The comparison of how many fixed number of inspections there were back in 1992 is simply not applicable to what you need in 2010, given the change of locations, the change of relationship,

and the numbers of sites where there are nuclear weapons.

The comparison is also problematic beyond that because, in fact, under the New START, the inspections we do have, because of the way they have been set up in the type one, type two and the way they have been laid out, they are actually about two inspections equivalent to one inspection under START I.

Let me explain that. Under the original START treaty, an inspection of a missile to see whether it had too many warheads, that inspection of a missile was counted as a separate inspection from so-called update inspections of the base. In other words, there was an inspection of the base, which might take place because we had been told or learned that there was some change in delivery vehicles or other aspects of the base. So we could go to the base and have an update inspection, and that was counted as a separate inspection from the inspection of a missile that might have been located there.

But under the new START, we are allowed to conduct up to ten type one inspections a year, and each inspection includes both the counting of the warheads mounted on one missile bomber and the conducting of the equivalent of the START I treaty separate update inspection. So you get two for one—two inspections for one.

So you cannot compare these inspections in the way the Senator from Oklahoma has. Ten type one and eight type two inspections per year, under the New START agreement, is at least comparable to the 15 data update inspections and 10 reentry vehicle inspections we had under the old START. The 10 reentry vehicle inspections per year under New START are the same as under the old START. So the truth is, the inspection numbers under New START are comparable to those under the original START treaty.

That is precisely why our military and intelligence officials told us this number would be sufficient to comply, to provide verification compliance with this treaty. As I said, we can discuss more of this in the closed session tomorrow. I wish to remind my colleagues, tripling the number of inspections per year, as the Senator's amendment would require, is not a freebie. It is not something we can just say to the Russians: we are going to triple your inspections. Guess what. They are going to demand the same number of inspections of us.

Our military bases would have to be prepared to host three times as many inspections per year as they are currently preparing for. Frankly, that could certainly disrupt day-to-day operations of strategic forces. Anytime the Russians select one of our bases for inspections, we would have to lock down the movements of any treaty items at that base for 24 hours before and throughout the inspection, which is at least another day. That means dropping everything, stopping any movements of our delivery vehicles, halting any work on these systems, and you have to get ready to protect any unrelated classified information that you do not want the Russians to see.

So I think it is one thing to ask our strategic nuclear forces to do that 10 times a year or less than once a month. It is another thing for them to be waiting for 30 inspections a year. We have two submarine bases, three bomber bases, and three ICBM bases that are going to be subject to type one inspections. If we follow through with those amendments, frankly, I think our base commanders, not to mention the Pentagon, would be less than satisfied. Right now, they are comfortable with what we have in this treaty. But far more important, they are comfortable we can verify, which is the key to the ratification of any treaty.

Let me also remind my colleagues that the verification provisions in this treaty were developed with the concerns and the perspective of the U.S. Department of Defense totally in that mix. They helped guide what came out here. ADM Mike Mullen agreed. Let me quote him: ''The verification regimes that exist in the New START treaty is in ways better than the one that has existed in the past.''

Why would we want to challenge that? Why would we want to open now a whole new can of worms of renegotiation when we think what we have is better than what we had previously?

Admiral Mullen also stated he is convinced the verification regime is as stringent as it is transparent and borne of more than 15 years of lessons learned under the original START treaty.

General Chilton has said:

> Without New START, we would rapidly lose some of our insight into Russian strategic nuclear force developments and activities, and our force modernization planning and hedging strategy would be more complex and more costly.

Let me also quote a letter Secretary Gates sent me this summer about whether Russia could cheat on this treaty in a manner that would be militarily significant. He said:

> The Chairman of the Joint Chiefs of Staff, the Joint Chiefs Commander, the U.S. Strategic Command, and I, assess that Russia will not be able to achieve militarily significant cheating or breakout under New START due to both the New START verification regime, and the inherent survivability and flexibility of the planned U.S. strategic force structure. Our analysis of the NIE and the potential for Russian cheating or breakout confirms that the treaty's verification regime is effective, and that our national security is stronger with this treaty than without it.

I mentioned before that Ronald Reagan was one great advocate for this kind of verification. So I wish to quote what Condoleezza Rice wrote the other week:

> The New START treaty helpfully reinstates on-site verification of Russian nuclear forces which lapsed with the expiration of the original START treaty last year. Meaningful verification was a significant achievement of Presidents Reagan and George H. W. Bush, and its reinstatement is crucial.

Finally, I would like to point out that we addressed the importance of this verification question in condition 2 of the resolution of ratification. That condition requires that before New START can enter into force, and every year thereafter, the President has to certify to the Senate that our national technical means, in conjunction with the verification activities provided for in the New START treaty, are sufficient to ensure the effective monitoring of Russian compliance with provisions of the New START treaty and timely warning of any Russian preparation to breakout of the limits. So we are going to remain seized of this issue for every year the treaty is in force.

So not only could we lose the treaty if this amendment were to pass, not only could we impose unwanted and unneeded requirements on our military bases and our military, not only would we not effectively increase the verification because of the advantages that were built into the New START treaty by our negotiators, which have been attested to by the very people who need to enforce it, not only that, but we could be without any verification at all for maybe 1 year, 2 years, longer, who knows whether we get any agreement or not.

Clearly, that exposes our country in ways I do not think we want to, and it certainly is no guarantee of an increase in the inspections themselves.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me make a couple of comments and observations. I know the Senator from Massachusetts started out by saying we have to take someone's word for it. My concern is, and I agree with his statement in reference to quotes that were made by Ronald Reagan, the ''trust, but verify.''

He also said, and when I look at this, I think this is—I think it is flawed in all the ways we talked about this before. But I remember the statement actually, I was here, when Reagan came back from Iceland. He said what Mr. Gorbachev was demanding at Reykjavik was that the United States agree to a new version of the 14-year-old ABM Treaty that the Soviet Union had already violated. I told him we don't make those kinds of deals in the United States. We prefer no agreement than to bring home a bad agreement to the United States.

I think we are—most of us who have questions that were unanswered and we want amendments—are those who do not believe this is a good treaty.

When the Senator talks about the number of inspections, let's keep in mind when we did the first treaty, we were only inspecting new facilities, existing facilities, facilities that could be used, warheads that could be used, looking at the MIRV situation.

But now, on this one, we also want to inspect to make sure those things they had agreed to destroy they actually

have destroyed. That is why I talked about the debris—rather than seeing something destroyed, they look at the debris that is left over.

On the argument, on the fact that you talked about the one time in Kazakhstan and Ukraine. When you look at the vastness of Russia, I remember—and one thing the Senator from Massachusetts and I have in common is we both are aviators. I had occasion—I will share with my friend from Massachusetts—a few years to fly an airplane around the world, replicating the flight of Wiley Post, a very famous Oklahoman.

In doing this, I went all the way from Moscow to Provideniya, all the way across Siberia. I can remember going from time zone after time zone and not seeing anything except vast wilderness and perhaps a few bears now and then.

When I think about the areas they have where things can be hidden, compared to any of these other countries, including our own, it is kind of a scary thing.

I do believe we need to have the opportunity to increase the inspections because there is so much more area to inspect. The idea that it is not a freebie—I know it is not. I know anything in this treaty that I would change, such as the number of inspections, would apply to us as well as them. I understand that. But in that respect, I don't mind doing it because there is one big difference between the United States and Russia: They cheat and we don't. It is fine with me if we have to subject ourselves to a greater number of inspections so long as we can do the same with them.

I will stand by the statements made and also the statements that were discovered in the 2010 Department report which I quoted from having to do with biological weapons, chemical weapons, and conventional forces in Europe. I am glad to repeat the quotes, but I don't think I have to. In 2010, the State Department said that Russia's confidence-building measure declarations since 1992 have not satisfactorily been documented, whether it is biological weapons or any other program, such as chemical weapons. So with the fact that they have not complied as they stated they would in the past—and we are now dealing with that—I think we have to take more precautions, more inspections, more verifications, because they have demonstrated clearly that they are not telling the truth, and they have not complied with commitments in the past.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will not engage in a long discussion. I don't know if the Senator from Indiana wants to say something.

First of all, I am envious of that flight. I would love to have made that. Secondly, as the Senator knows—and I think I will reserve most of this for the classified session tomorrow—we have great ability to observe construction in Siberia or any part of Russia and to notice changes of various kinds, notwithstanding the vastness. Yes, there have been occasions when there have been some misunderstandings or differences of opinion about enforcement requirements. We have had some differences on those things. We can again discuss some of those in closed session. But the treaties have worked. The process set up by which we get into dispute resolution and sort of raise these issues has worked. When we notice something they are doing that we think is, in fact, not in compliance or likewise when they have with us, we have gotten together, and, because of the treaty, we have come into a discussion, and we have worked those things through.

I think our intelligence community's conclusion is that they have never exceeded the limits, though there have been some misunderstandings about sort of the process of getting from one place to another with respect to one system or another.

Let's have that discussion in a place where we can do it without a sense of restraint, but I think it is a good one to have. I look forward to continuing that with my colleague.

I don't know if the Senator from Indiana has anything he wants to add.

Mr. President, I understand the Senator from South Dakota will not be here, so unless there is another Senator seeking recognition or looking for an amendment to be acted on at this point, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INHOFE. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. INHOFE. Let me make one last comment. I think the Senator from Massachusetts is right that we have covered enough of this tonight. There are some things that would be worth going into in a closed session. One thing that doesn't have to be in a closed session is the fact that there is a long record of Russians not complying with the first treaty. I would rather use another word than ''cheating,'' but that is one that everyone understands, and that has characterized Russia's behavior in previous treaties.

The statement we are making right now, everyone is in agreement that the lower the arsenal becomes, the more significant it is for inspections for verification. I think everyone is in agreement with that. That is something that is probably the strongest point of our argument.

The last thing I will say is just to repeat something I said for which I was a little bit overwhelmed when I said it. This is the first in 51 years that we have missed our wedding anniversary. And what I was trying to say before I got choked up is to my wife at home: I love you more today than I did 51 years ago.

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

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate return to legislative session from executive session.

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

CELEBRATING ALLISON'S BIRTH

Mr. ENZI. Mr. President, I got an early Christmas present on the day it was expected! On Wednesday, December 15, Allison Quinn McGrady was born to my daughter Emily and husband Mike. I have been able to hold each grandchild on the day they were born. This baby, Allison, was a bit more difficult. I voted in committee and four times on the floor and made a mad dash for Dulles Airport. I flew to Denver. I rented a car and drove to Cheyenne, WY. I got to the hospital. It was late enough all the desks were shut down. I found my way to the maternity ward and got help to find the right room and once again got to hold another grandchild on the day she was born. There is no greater feeling of wonder and awe and appreciation on this planet than to hold another generation in my hands. To welcome a new life to this Earth is always breathtaking—but the thrill a grampa feels is indescribable—it is a feeling—it is incredible love and is only known to those who are also grandparents.

As I hold her and she tests this new world with eyes that recognize little, but absorb sights by the moment; as mouth and tongue explore a new atmosphere; as a tiny hand with small fingers opens and closes in a new freedom; I watch changing expressions as tiny ears hear sounds that have been muted before. I now have some instant replay memories of that little face and a moving hand and all those blankets and the tiny stocking cap to hold body heat, locked in my mind. She was 6 pounds 12.5 ounces and 19 inches long. Oh, to see such a miniature person and such a huge miracle! The wonder of life!!!

My own first child came into the world almost 3 months early. We didn't get to hold her for over 2 months. We could only watch as she struggled for life. and I am often doing little instant replays in my mind and thanking God for that and the other opportunities he's given me—from finding Diana who became my wife, to learning about prayer with our first child—the daughter who was born premature, who showed us how worthwhile fighting for life is—then the birth of our son, then

the birth of our youngest daughter, who just had this baby. And to the birth of my grandson, Trey, and then his sister Lilly—both born to son Brad and his wife, Danielle—followed closely by Mike and Emily's Megan, who just became ''the big sister'' of Allison.

The call to let me know I was a grampa again came from 3-year-old Megan Riley McGrady, who enthusiastically said, ''I'm a big sister.'' Gramma wanted the phone to give me some details, but big sister said, ''No, I'm talking to grampa.''

About 6 weeks ago Megan started pointing to her mom's tummy and saying, ''That's my sister Allison.'' They are not sure where Megan came up with the name, but she stuck with the same name all the time—and the new baby looked like an Allison, so Mike and Emily named her Allison and gave her a good Irish middle name of Quinn.

Shortly after our first grandchild was born I found a message on my answerphone from our youngest daughter who simply said, ''Remember me? I used to be the baby of the family!'' So, now, Diana's and my youngest child, the ''baby of the family'' has had another baby! Emily and her husband, Mike McGrady met at the University of Wyoming. Mike fortunately broke his family's Florida University Gator tradition to come to the University of Wyoming, but it was part of God's plan. Emily and Mike fell in love and got married. Emily worked for the university while Mike went to law school. He clerked for Federal Circuit Judge Terry O'brien and now works in a private practice. Three years ago they called to ask what we were planning for Memorial Day and suggested we might want to be near them for the birth of a grandchild. The Senate was on recess and we were nearby. We were in Wyoming when each of the other two grandchildren were born. This time I wasn't so lucky. I was a nation away, but got back to hold Allison that first day too.

I ask to be called Grampa! That is not Grandfather—that would be too stilted for me. The name is also not Grandpa. That's a great title, but still too elevated. Grampa is spelled with an M and no D—Grampa. My grampa was a most memorable person to me. My Grampa Bradley took me on some wonderful adventures. He taught me a lot—fishing, hunting, and work. He believed in work. When I was 4, he ''let'' me help him plant and water trees. He showed me how to chop sagebrush and make flagstone walks. He covered up holes he encouraged me to dig—he covered them so people wouldn't drive a car into them. That was when I was 7. Later he taught me how to spade a garden and mow and trim a lawn ''properly.'' When I was a teenager, he even showed me the point in life when you are supposed to start carrying ''the heavy end of the log.'' He liked to be called Grampa—and I am now delighted to have the opportunity to earn that name. In my opinion, Grampa is the greatest title anyone can have! And I wish I could adequately share with you the joy in my heart!

Allison, I want to pass on to you your Great Gramma's admonition: ''Do what is right. Do your best. Treat others as they want to be treated.'' I use that guideline every day and expect everyone on my staff to measure legislation and case work requests by it too. Now, because of you and Trey and Lilly and Megan, I have an additional measure for myself. I don't ever want my grandkids to say, ''My Grampa could have fixed that, but he didn't.''

Allison, I hope I am around to see a lot more of you, to listen to you, to watch as you discover, learn, play, and grow—to get to know you—and especially to visit with you, to hear your dreams, your ideas, your puzzlements, to comfort you through difficulties, and to encourage you in whatever you try. But in case I am not around I have a few things to pass on to you that I hope you will remember and, hopefully, pass on to your children.

Be proud of your reputation. That is really all you have that is really yours—although you borrow part of it from those who went before—and you have a debt to those who follow.

Learn from the mistakes you make, but, more importantly, learn from the mistakes of others. You don't have time to make them all yourself, and it will save you a lot of grief. When you see something wrong say, ''I hope I never do that!'' and file away a plan to avoid it. And don't do anything you wouldn't want to read about on the front page of the newspaper.

Learn everything you can. Read everything you can. See everything you can. Listen for new ideas. Watch for things you can change. Everything can be improved ideas and thoughts as well as things. So while you are at it, invent something that will improve the world or that will help those around you.

The most important decision you will make in your life is marriage. My hope is that you will find someone who can be your best friend—someone you miss when away and enjoy waking up with every morning, someone different enough to cover your weaknesses and strong enough to rely on you for your strengths, someone who shares your faith and someone mutually faithful.

Finally and most importantly, find faith in God. There will be times that will try you. With faith you can pray for help through the suffering, and with faith, God will always answer that prayer. No matter what you may have done, or what may have happened to you or to someone you love, there is always a way through the crisis. Don't try to live life on your own strength. No one has ever been that strong.

I thank God for helping me through open heart surgery 15 years ago so I might have this chance to hold you in my hands. I think of the Prayer of Jabez in Chronicles where he says, ''Lord, please continue to bless me, indeed,'' and to that I add my thanks for all the blessings, noticed and unnoticed, but especially for this new life.

Allison Quinn McGrady, Granddaughter, welcome to this world of promise and hope and faith and love! I am excited to have you in our lives!!

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Wyoming for a grounding moment in the Senate. We are enormously appreciative of his words.

I especially know what he was saying because my wife and I had the pleasure of welcoming a young grandchild about a month ago. As the Senator was standing there speaking, I couldn't help but think this is the son of Christopher Heinz, who was Jack Heinz's youngest, and the child is called Jack—Little Jack.

So I think you gave us a good reminder, and I thank you.

Mr. ENZI. I thank the Senator.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Before my friend from Wyoming leaves the floor, let me just say I can identify with the things he has said, and to prove it, let me put this up here. These are my 20 kids and grandkids. While maybe he has his name they have given him, my name is PopI. The I is for Inhofe, so it is MomI and PopI. Is that OK? That is what all these kids call me.

As I was listening to the great words my colleague was sharing for his grandchildren and their lives, I would like to ask unanimous consent those same words go to each one of these little grandkids up here. As you mentioned one after another of your experiences, I remember this little girl here, she was one of them for me. She was only 4 pounds and you could hold her with one hand. The same thing was true with this one over here.

So when I look at this, I get very excited. It is what is important. We talk about a lot of things around here, but this is what is important. One of the criticisms I have had in considering this thing is hearing: I want to get back during this Christmas season—and I think most of the others do too—and want to be with them.

This little girl right here, she is my wife. Today is our 51st wedding anniversary. So I just want to say that some things are important, and I want to deliver my message to my wife who is back in Oklahoma—where she should be with all the rest of these kids—but, Kay, I love you as much today as I did 51 years ago.

CARROLL COLLEGE FIGHTING SAINTS

Mr. TESTER. Mr. President, I rise today in honor of the Carroll College Fighting Saints—a tough-as-nails football team from Helena, MT, that won the NAIA championship last night.

It was one of those Saturday night games football fans live for. And before I say more about the Saints, I want to extend my congratulations to the University of Sioux Falls Cougars, which put up a heck of a fight, after a heck of a season.

But with last night's win, Carroll held a perfect season. They were undefeated every step of the way. And every step of the way, Montanans watched with pride as they showed us what it takes to work as a team. And to win.

Carroll's Fighting Saints are no stranger to making football history. This isn't the first year they have returned to Montana with a national trophy.

What does it take?

It takes hard work. Strong leadership—especially under Coach Mike Van Diest—and old-fashioned Montana grit.

Most importantly, it takes teamwork and trust. Place kicker Tom Yarekmo missed two field goals. But Coach Van Diest trusted Yarekmo to try again—and he made the winning field goal.

Mr. President, I ask my colleagues to join me in congratulating the team, the coaches and a whole lot of dedicated fans.

Their hard work and their victory is a warm reminder that hard work pays off.

We're already looking forward to next year.

Mr. President, I yield the floor.

VOTE EXPLANATIONS

VOTE NO. 278

Mr. MANCHIN, Mr. President, had I been present on Saturday, December 18, I would have voted nay on the motion to invoke cloture on the Development, Relief, and Education for Alien Minors DREAM Act:

''While sympathetic to those who passionately support it, I cannot support the DREAM Act; as is, at this time.

''I strongly believe the DREAM Act should require the completion of a degree. As currently written, the legislation does not. Requiring the completion of a degree is exactly what the DREAM Act should be about, as it will help ensure that the young people who qualify have a real chance to fulfill the American dream and become the productive citizens they aspire to be.

''In fact, I have had sincere discussions with my fellow Senators and committee staff as to whether it would be possible to change the legislation to address my concerns. At this time, it is not.

''All that being said, I do believe, as most Americans do, that our immigration system is broken and must be fixed. During the next session of Congress, I sincerely hope to work with my Republican and Democratic colleagues to achieve true comprehensive immigration reform.''

VOTE NO. 279

Mr. President, had I been present to vote on Saturday, December 18, I would have voted nay on the repeal of the military's don't ask, don't tell policy:

''Over the past several days, I have spoken with many passionate West Virginians who hold different views on this policy. I greatly appreciate all of the feedback that my office has received.

''As I have said before, my primary concern with repeal of ''Don't Ask, Don't Tell,'' DADT, stems from the Armed Services Committee testimony by two Service Chiefs, Army Chief of Staff General George Casey and Marine Corps Commandant General James Amos. Their issues are with the timing and the impact of the repeal's implementation on our front line combat troops during a time of war.

''While it may be little solace to those who disagreed with my earlier vote, over the last 9 days, I have had sincere discussions with my fellow Senators and other officials as to whether it would be possible to change the legislation to address my concerns over timing and implementation. With the legislative process nearing an end, it was simply not possible to alter the proposed DADT legislation.

''As such, while I believe the DADT policy will be repealed, and probably should be repealed in the near future, I cannot support a repeal of the policy at this time.''

FEDERAL FUNDING

Mr. LEAHY. Mr. President, earlier this week, Republican Members who had pledged to support the fiscal year 2011 Omnibus appropriations bill changed their minds and chose instead to walk in lockstep with the House and Senate Republican leaders who believe that freezing spending at the fiscal year 2010 level is good politics.

On the face of it that approach has an appeal to it—no new spending. What a nice sound bite. It makes everything seem so simple.

But while one Senator of the minority party gleefully remarked on the Senate floor ''we won,'' it is worth taking a minute to consider what a continuing resolution means—not for the Republican Party but for the American people.

That it is a short-sighted abdication of Congress's responsibility over Federal funding almost goes without saying. But in fact it is worse than that.

The Senators who profess to care about the security of this country but refuse to put their money where their mouth is, bear responsibility for the consequences.

Every American family—yours and mine—knows that in a year's time our budget priorities and the necessities of our families change from the year before. So do the budget priorities of a diverse country of more than 300 million people in a rapidly changing and dangerous world.

Those who celebrated after defeating the Omnibus—a bill that is supported by a majority of Senators—are implicitly promoting the myth that priorities and circumstances do not change from one year to the next.

They would substitute the mindlessness of a copy machine for the judgment that the American people pay their representatives to use in making these decisions.

A robo budget is a disservice to the American people, to our national security, and to this Nation's needs and interests here at home. Yet that is the option we are left with.

What is our job here? Is it to rubberstamp what we did last year, despite different circumstances and the passage of a year's time? I won't speak for the chairs of the other Appropriations subcommittees.

They know the consequences of a continuing resolution for the programs in their jurisdictions better than I.

But as chairman of the Department of State and Foreign Operations Subcommittee, I can say unequivocally that freezing spending for global security programs—as we are about to do—will shortchange the American people—this generation and future generations, compromise the security of this country, and cost the lives of countless people in the world's poorest countries.

Contrary to what some of our friends in the minority seem not to fully appreciate, the United States is a global power. We have vital interests around the world, from the Korean Peninsula to Mexico, that are important to the lives and livelihoods of every American.

We are involved in two wars, with over 150,000 troops deployed in harm's way—wars that will not be won by military force alone.

Our economy is tied to the economies of countries far and wide. Our security depends on what happens thousands of miles from our shores, as much as it does at our borders.

Americans are traveling, working, studying and living in every country on Earth. We have diplomats and military personnel stationed on every continent.

Our environment, the health of our citizens, the security of our borders, and relations with our allies as well as our adversaries, are not static. Time does not stand still. It marches on, either with us or without us.

What the other party is saying is that while China and our other competitors aggressively expand their influence, the United States will pull back. While other countries become global markets, we will freeze our export promotion programs.

While international terrorism, transnational crime and corruption threaten American businesses and fragile democracies, including in our own hemisphere, we will retrench.

That is the vision of the minority. It is myopic. It is self-defeating. It pretends to help solve the deficit, when in fact it will have virtually no impact on the deficit. But it will weaken our influence around the world.

In contrast, the Omnibus appropriations bill that was abandoned 3 nights ago would have cut spending below the President's budget request by some $29 billion, as our Republican friends insisted just a few short months ago. Then they moved the goal posts.

And 3 nights ago they walked off the playing field altogether, when those who said they would support it changed their minds—or had their minds changed for them.

The Omnibus would have cut the budget for the Department of State and Foreign Operations by $3.2 billion below the President's request.

The funding for the Department of State and Foreign Operations, which represents 1 percent of the Federal budget—1 percent—is a far cry from what we should be allocating to protect America's interests.

Fifty years from now I suspect our grandchildren or great-grandchildren will look back and wonder why we were so penny wise and pound foolish, when so much was at stake.

But if one asks which would be better for our national security, a continuing resolution or the Omnibus; or which would be better for protecting America's interests in the global economy; or which would be better for strengthening our alliances and improving our image around the world? There is no comparison.

Let me cite a few examples.

The Omnibus would have funded global health programs, including vaccines and nutrition for children, maternal health, and programs to prevent or treat infectious diseases like HIV/AIDS, West Nile, the Asian Flu, and drug-resistant tuberculosis.

These and as yet unknown viruses can become raging pandemics overnight. They can spread across the globe to our shores with the ease of an airplane flight.

The other party may not want to talk about cutting these programs. But when there is an outbreak of a deadly disease like the Asian flu that could endanger the lives of millions of Americans, we can predict they will demand to know what the State Department is doing about it.

It won't matter that they just cut the budget for disease surveillance and prevention.

At a time when there are more than 7,000 new HIV infections each day, a continuing resolution will reduce the U.S. contribution to the Global HIV/AIDS fund by $75 million. That will almost certainly cause other donors to reduce their contributions too. Millions of people who need drugs to stay alive, won't get them.

The Pakistan Counterinsurgency Capability Fund, which is a cornerstone of our partnership with the Pakistani Armed Forces in fighting al-Qaida, will be cut by $300 million in a continuing resolution. It makes no sense.

A continuing resolution will cut funding by more than $700 million for agriculture and food security programs, small business development, clean water, energy, basic education, trade capacity, and other priorities of both Democrats and Republicans, as well as of American businesses, universities, and other organizations that implement these programs.

There are thousands of American diplomats stationed in almost every country of the world, assisting American citizens and businesses, defending our interests and our security. They risk their lives in countries where Americans are targeted, and many have lost their lives in the line of duty.

A continuing resolution will provide half a billion dollars less than the Omnibus would have for the State Department's overseas operations, including for Afghanistan and Pakistan, requiring cuts to personnel, information technology, and public diplomacy programs that counter extremist propaganda and other misinformation about the United States.

How, in the world, does that make sense? Will anyone advocating this recklessness come forward to explain it to the American people? Apparently not. Better to declare ''we won,'' and hope the public never finds out that they lost.

A continuing resolution will cut funding for U.S. Embassy security, construction, and maintenance programs, delaying the completion of new facilities to replace the most vulnerable embassies in some of the most dangerous locations.

Security costs money, but the minority will cut these programs. Any delay in the completion of these facilities will extend the risks to American diplomats, consular officers, and other personnel overseas.

A continuing resolution will cut funding for educational and cultural exchange programs—programs that Republicans have claimed to strongly support. That means thousands fewer participants in exchange programs, including those from Muslim-majority countries and Muslim communities worldwide, and a corresponding retreat for our national security interests.

A continuing resolution will cut hundreds of millions of dollars for clean technology and other programs to reduce global warming. Whatever one may think about climate change, 95 percent of new births are occurring in the world's poorest countries, where the demand for energy is exploding. The environmental consequences of this exponential growth in energy consumption are staggering, and we ignore it at our peril.

There are dozens of other examples, but the point is simple. The other party may think this is good politics at home, but it represents a dereliction of duty.

It will have no appreciable impact on the deficit. In fact, over time, it is just as likely to cost the taxpayers more. But most important, the Omnibus, while billions of dollars below the President's budget request, would have at least enabled us to not lose ground.

We would have at least been able to respond to new threats as they develop.

We would have at least been able to continue the effort started by former Secretary of State Colin Powell, and strongly supported by Secretary of Defense Gates, to build the diplomatic corps we need.

We would have at least been able to compete in new and emerging export markets. We would have at least been able to maintain programs with Mexico and Pakistan, transfer responsibility in Iraq from the Department of Defense to the Department of State, support public diplomacy and exchange programs with countries where large majorities have hostile and distorted opinions of the United States, and continue initiatives that are strongly supported by both Democrats and Republicans.

That is the choice. It is not theoretical; it has very real consequences. It should not be a political or partisan choice.

Senator GREGG and I worked hand in hand to write our portion of the Omnibus within the allocation we were given, an allocation that was $3.2 billion below the President's budget request.

I am not among those who believe the Congress should hand over our responsibility for the budget to an unelected, unaccountable bureaucracy, but there were no earmarks in our portion of the Omnibus. That has been the practice of our subcommittee for many years.

The minority has elevated hypocrisy to a new level over the issue of earmarks. There are earmarks I have felt were a waste of money. Many of them were Republican earmarks. Other earmarks, by both parties, have been enormously beneficial to the people of our States.

Less than 1 percent of the Omnibus appropriations bill consisted of earmarks—many of them requested by Republicans. Many of them would have improved the lives of their constituents.

But to score cheap political points those same Republicans who took credit for earmarks, now want the American people to believe that eliminating a few billion dollars in earmarks will fix the deficit.

And so they would hand to the administration total discretion to earmark every dollar of the budget. There will come a time, I predict, when they will regret having done so.

I want to thank the chairman of the Appropriations Committee, Senator INOUYE, for the herculean efforts he made this year—first to get 12 individual appropriations bills reported by the Committee, and then to try to get the Omnibus passed.

He did everything humanly possible, right up to the bitter end. But when those who had pledged their support walked away, there was nothing more he could have done. As he has said, this is no way to run a government.

I also want to thank Senator GREGG, who is retiring this year, for the many

years he has served on the Appropriations Committee, and as ranking member of the Department of State and Foreign Operations Subcommittee.

It has been a pleasure working with him. He cares about these programs, he supports the people who serve in our embassies, he understands what is at stake for our country, he asks important questions, and he insists on accountability for the use of funds.

Contrary to what some might think or guess, there were not many times when Senator GREGG, a conservative Republican Senator, and I, a liberal Democratic Senator, disagreed over the need to find the funds to support these programs. We will miss him greatly.

One year ago, 37 Senators—Democrats and Republicans—wrote to the chairman and ranking member of the Appropriations Committee urging full funding of the President's budget request for the Department of State and Foreign Operations. The funding in the Omnibus was $3.2 billion below that amount.

Rather than voting for a sound bite, Senators should consider the consequences. The consequences are unmistakable.

A continuing resolution says whatever was OK last year is OK this year. I understand that is where we are. Even though a majority of the Senate would support the Omnibus, the minority party has made it impossible to pass anything without 60 votes.

It is no way to govern, and when it involves issues of national security, it is foolhardy.

TRIBUTES TO RETIRING SENATORS

ARLEN SPECTER

Mr. HATCH. Mr. President, I rise to speak today to recognize the departure of my good friend, the senior Senator from Pennsylvania. Senator ARLEN SPECTER has been present here in the Senate through some of its most contentious times. He and I have worked side-by-side—sometimes in agreement, other times in opposition—for many years. His presence will be sorely missed.

ARLEN is the son of immigrant parents. He was born in Wichita, KS, in 1930 to Lillie Shannin and Harry Specter. Harry served in World War I in the U.S. infantry, just a few years after migrating to the U.S. from Russia. While in combat in France, ARLEN's father was seriously wounded. Yet a few years later, the Federal Government, strapped for funds, broke its promise to pay World War I veterans a bonus. This, of course, led to a veterans march on Washington and a tragic encounter between the U.S. Army and the protesting veterans. It also led, indirectly, to Senator SPECTER's career in public service as he has been fond of saying that he came to Washington to get his father's bonus and that he would run for reelection until he got it.

ARLEN attended college at both the University of Oklahoma and the University of Pennsylvania, graduating from the latter in 1951. He served in the Air Force during the Korean war as an officer in the Office of Special Investigations. In 1953, he married Joan Levy, with whom he has raised two sons and four grandchildren. In 1956, he graduated from Yale law school and entered into private practice.

Senator SPECTER's career in public service began in 1959 when he became an assistant district attorney in Philadelphia. In 1963, he was appointed to serve as assistant counsel on the Warren Commission, investigating the assassination of President John F. Kennedy. Two years later, he was elected to serve as the district attorney for the city of Philadelphia, a position he held for 8 years. After another brief stint in the private sector, ARLEN was elected to the Senate in 1980 and has been the longest serving Senator in Pennsylvania's history.

ARLEN has had his hand in a number of high-profile efforts here in the Senate. However, I will always remember him for his role in some of the most contentious Supreme Court confirmation fights in our Nation's history. He and I both served on the Judiciary Committee during the confirmation hearings for Judge Robert Bork, which were, at the time, the most contentious in our Nation's history. In the end, ARLEN and I reached different conclusions as to whether Judge Bork should have been confirmed. I still think ARLEN was wrong to oppose Judge Bork, but, I have never doubted that his decision to do so was sincere.

ARLEN and I once again found ourselves at the center of a Supreme Court fight during the nomination hearings for Justice Clarence Thomas. During those hearings, Senator SPECTER had the daunting task of questioning Ms. Anita Hill for the Republican side. I was and continue to be impressed with the manner in which he handled that responsibility. Those were difficult, sensitive issues. None of us wanted to disrespect Ms. Hill, but we believed it was important to ensure that the truth be examined and brought to light, and I've always thought that ARLEN handled the matter with the necessary professionalism and respect.

In the years that followed the Thomas hearings, a number of people expressed their displeasure for the way I treated Ms. Hill during those hearings. I was always quick to remind them that it was ARLEN who questioned her, not me. I was the one who questioned Justice Thomas. But, in the end, I think the historical memory of that time has tied the two of us together.

Senator SPECTER has a reputation for being a fighter. And, having been on both sides of the debate with ARLEN, I have to concur with that assessment. His was among the sharpest minds we have known here in the Senate and I am grateful for the privilege I've had to serve alongside him.

I want to wish ARLEN and his family the best of luck.

SAM BROWNBACK

Mr. President, I rise today to speak in honor of my good friend, the senior Senator from Kansas. Senator SAM BROWNBACK has been a devoted public servant and a friend to all of us here in the Senate. And, at the end of this session, he will be moving on to bigger and better things. I will miss him dearly.

Senator BROWNBACK was born in Parker, KS, in 1956. He was raised on a farm—a farm on which his parents still live to this day. SAM was leader in all aspects of his life before coming to the Senate. In high school, he was the State president of the Future Farmers of America. While attending college at Kansas State University, he was student body president. And, he was president of his class when he attended law school at the University of Kansas.

After law school, SAM went to work as an attorney in Manhattan, KS. In 1986, he was the youngest person ever appointed to serve as the Kansas Secretary of Agriculture. In 1990, he went to work in the White House of President George H.W. Bush as a White House fellow. After another stint as Kansas's Secretary of Agriculture, SAM was elected to the House of Representatives as part of the 1994 Republican revolution. And, in 1996, he was elected to replace the former Senate majority leader, and my good friend, Senator Bob Dole. The people of Kansas have kept him here ever since.

Looking over his career in public service, it is clear that SAM BROWNBACK is Kansas man in every sense. The voters of Kansas have recognized this more than anyone else. That is why they have elected him three times to serve in the Senate. And, of course, that is why he is currently the State's Governor-elect.

Throughout his time in the Senate, SAM has been a tireless advocate for the rights of those who have no voice, whether it is the rights of the unborn, the rights of refugees, or the rights of the victims of human trafficking. I believe this is due, in no small part, to SAM's religious faith. For as long as I have known him, SAM has never been afraid to speak publicly about his religious convictions and his belief that those convictions required action on his part. As a religious man myself, I have always admired that part of Senator BROWNBACK's personality and found his openness refreshing.

Over the years, SAM and I have typically found ourselves in agreement on most issues. We have worked together on numerous occasions. While I regret that we won't be working together any more after this session, I want to congratulate him once again on his recent victory in the Kansas gubernatorial election. I am confident that he will be an effective and popular governor for the people of the State he loves so much.

KIT BOND

Mr. President, I rise today to speak in honor of my good friend Senator KIT

BOND. Senator BOND has represented the people of Missouri in the U.S. Senate for the last 24 years, and, at the end of this session, he will depart for greener pastures. I think I speak for all of my colleagues when I say that his presence will be missed.

KIT was born in St. Louis, MO, in 1939. He is a sixth generation Missourian and, after knowing Senator BOND for many years, I know that the people of Missouri have never been far from his thoughts. As a young man, he left Missouri for a short time to attend college at Princeton University and law school at the University of Virginia, where he graduated first in his class. After law school, he served as a law clerk for the Fifth Circuit Court of appeals before going to Washington, DC, to practice law with the renowned law firm Covington & Burling.

Senator BOND returned home to Missouri in 1967 to begin a long career in public service. After losing a brutally close congressional election in 1968, KIT went to work for the Missouri attorney general's office, serving under the great former Senator John Danforth. In 1970, KIT was elected Missouri State Auditor at the age of 31. Then, 2 years later, when he was only 33 years old, he was elected Governor of Missouri. KIT was the first Republican Governor that State had seen in nearly three decades.

For me—and this may be a little selfish—the most important accomplishment of KIT's first term was rescinding Executive Order No. 44, which had been issued by Missouri Governor Liburn Boggs in 1838 and ordered the expulsion or extermination of all Mormons from the State of Missouri. On June 25, 1976, then-Governor BOND rescinded that order and issued an apology to the Mormons on behalf of all Missourians. I remember that day clearly. And, while I was not yet acquainted with KIT, he earned my gratitude and respect.

As Governor, Senator BOND's star rose dramatically. He was even considered as a potential running mate for President Gerald Ford in 1976. Yet, in a surprising upset, KIT lost his reelection bid for governor that year. But, Missourians soon came to regret this mistake and reelected him to the Governor's office in 1980.

After finishing his second term as Governor—a successful term by almost all accounts—KIT was elected to the Senate in 1986. And, thanks to his good judgment, his commitment to his home State, and to his character, he was relected in 1992, 1998, and 2004.

For several years, I have had the pleasure of serving with KIT on the Senate Intelligence Committee, where he currently serves as vice chairman. From that position, I have been able to see his wisdom and good judgment firsthand. It can be difficult serving on that committee, working on important issues that, if everything goes right, will never see the light of day. But, I can say this—Senator BOND's commitment to our Nation's security is second to none.

Mr. President, it has been an honor and privilege to serve next to Senator BOND for these many years. I want to wish him, his wife Linda, and their family the best of luck in any future endeavors.

JIM BUNNING

Mr. President, I rise today to speak in honor of my good friend, Senator JIM BUNNING. Senator BUNNING will be departing from the Senate at the end of this session. I wanted to take a few moments to offer some remarks.

Now, JIM is a distinguished two-term Senator whose career in public service has spanned more than three decades. Yet when the history books are written, it is likely that he will be more well known for his first love, the game of baseball.

JIM was born in Southgate, KY, in 1931. He graduated from Xavier University in Cincinnati, OH, with a degree in economics.

Most know that Senator BUNNING was a Major League pitcher for 17 years, mostly with the Detroit Tigers and the Philadelphia Phillies. He was, not to put too fine a point on it, one of the greatest pitchers to ever put on a glove. JIM retired with the second-highest strikeout total in baseball history. He was only the second pitcher in history to record 1,000 strikeouts and 100 victories in both the American and National Leagues. Before JIM, only the legendary Cy Young had accomplished that feat. And, of course, on June 21, 1964, JIM pitched a perfect game against the New York Mets, achieving one of the rarest and most sought-after feats in all of sports. Senator BUNNING was inducted into the Baseball Hall of Fame in 1996, 2 years before he came to the Senate.

After retiring from baseball, JIM chose a life of public service. In 1977, he was elected to the city council of Fort Thomas, KY. Two years later, he was elected to the Kentucky State Senate, where he became the Republican Leader. And, in 1986, he was elected to the first of his six terms in the U.S. House of Representatives. And, in 1998, Senator BUNNING was elected to the Senate and has served here ever since.

Throughout his time in Washington, Senator BUNNING has been an advocate for a number of causes, including the preservation of Social Security for seniors, fiscal and financial reform, and ending America's dependence on foreign energy sources. He's played a key role on some of this chamber's most influential committees, including the Banking, Energy, Budget, and Finance Committees.

For the last several years, I have had the opportunity to work with Senator BUNNING on the Finance Committee. I have always admired his commitment to his principles and his willingness to speak plainly when it became necessary to do so. His presence on the committee and in this Chamber will certainly be missed.

I want to wish JIM and his family the best of luck going forward.

JUDD GREGG

Mr. President, I rise to speak today to recognize the departure of my good friend Senator JUDD GREGG. Senator GREGG has been a tireless advocate for the people of his State and devoted public servant. He will most certainly be missed.

Senator GREGG is a New Hampshire man through and through. He was born in Nashua, NH, in 1947. His father, Hugh Gregg, served as Governor of New Hampshire when JUDD was just 6 years old. JUDD graduated from Phillips Exeter in 1965 before going on to earn his baccalaureate from Columbia University and his law degree from Boston University School of Law.

After finishing law school 1972, JUDD returned to Nashua to commence his law practice, though it wouldn't be long before he would answer the call into public service. From 1978 to 1980, JUDD served on the New Hampshire Governor's Executive Council. Then, in 1980, he was elected to serve in the U.S. House of Representatives, where he served for four terms. In 1988, he followed in his father's footsteps and was elected Governor of New Hampshire and was reelected in 1990.

In 1992, after two successful terms as Governor, in which he was able to balance the budget and leave the State with a surplus, JUDD was elected to represent New Hampshire here in the U.S. Senate. And, after serving for three terms, he is stepping down at the end of this session.

If one were to describe JUDD's political philosophy, I think they would have to say that he was for fiscal discipline even when fiscal discipline wasn't cool. As chairman and ranking member of the Senate Budget Committee and senior member of the Banking Committee, his has always been a voice of warning and restraint, even when restraint wasn't the status quo around Washington. His knowledge and expertise on these issues made him one of the most respected voices in our debates over health care, economic and fiscal policy, and financial regulatory reform.

While JUDD has always been a conservative, he's never let go of his independence, refusing to put party before his principles. Everyone in Washington claims that they are that way, but Senator GREGG is one of the few that has walked the walk. That, more than anything, is why he has won the respect and admiration of his colleagues on both sides of the aisle.

The State of New Hampshire has been well-represented here in the Senate and I know the people of his State are grateful for JUDD's service. It has been both an honor and a privilege to have served alongside Senator GREGG. While I am certain that JUDD will be successful in whatever endeavor he chooses next, I am even more certain that the Senate will be a lesser place without him here.

I want to wish JUDD and his wife Kathleen and their family the very best.

GEORGE LEMIEUX

Mr. President, I rise today to pay tribute to the junior Senator from Florida. Though Senator GEORGE LEMIEUX has only been here a short time, he has been an effective advocate for the good people of Florida. I want to wish him the best of luck.

Senator LEMIEUX was born in Homestead, FL. He is the son of a building contractor. He grew up in Coral Springs, FL, and attended college at Emory University, earning a degree in political science. GEORGE then went on to obtain his law degree from Georgetown University.

Senator LEMIEUX's career in public service began in 2003 when he went to work in the Florida attorney general's office. He would eventually be named deputy attorney general, a position he held for 2 years. He would later serve as the Florida Governor's chief of staff, overseeing numerous state agencies.

After his time in the Governor's office, GEORGE returned to the private sector and was headed down what had to be a lucrative career path in the private sector at one of Florida's most prestigious law firms. But, he answered the call to public service once again in 2009 when Senator Mel Martinez announced his retirement and Florida was in need of a Senator.

Since being appointed to the Senate, GEORGE has served on the Armed Services Committee, the Commerce Committee, and the Special Committee on Aging. He has had a reputation for being pro-growth, pro-business, and a deficit hawk. In fact, he has been one of the few people in the Senate who put their money where their mouth is and actually proposed a plan to address our fiscal problems. Frankly, I think we could use more people like that here in the Senate.

It is just a difficult fact that, here in the Senate, some are here only for short periods of time. But, every State deserves to be represented in this Chamber. Senator LEMIEUX answered the call to serve during what has been an extremely difficult time in the Senate. He has done so with dignity and an unwavering commitment to the people of Florida.

Once again, I want to offer my best wishes for George and his family in all their future endeavors.

BYRON DORGAN

Mr. President, I rise today to recognize the departure of junior Senator from North Dakota. Senator BYRON DORGAN, a devoted public servant who has spent most of his life serving of the good people of North Dakota, will be leaving the Senate at the close of this session. He will certainly be missed.

Senator DORGAN was born in Dickinson, ND, in 1942 and was raised in Regent, ND. His family worked in the petroleum and farm equipment business and they also raised horses and cattle. BYRON attended college at the University of North Dakota and graduate school at the University of Denver. He began his career in public service at the young age of 26, when he was appointed to be the North Dakota State Tax Commissioner. He was youngest constitutional officer in the history of North Dakota.

Senator DORGAN came to Washington, DC, in 1980 when he was elected to serve in the House of Representatives. He served six terms in the House before coming to the Senate in 1992. And, for three full terms, he has ably and energetically represented his native State. During his time here, he has been a senior member of the Appropriations Committee, chairman of the Indian Affairs Committee, and, of course, chairman of the Democratic Policy Committee. The people of North Dakota have benefitted from his efforts on those committees and, I think he would be the first to tell you, that his home State has never been far from his thoughts here in the Senate.

While Senator DORGAN and I have, more often than not, disagreed on the issues, he has always been sincere in his belief that what he was doing was in the best interest of our country. Such commitment to principle has to be admired, even if, in the end, you disagree with the conclusion that is reached. And, I should note that there have been times, actually in some high-profile moments, in which BYRON has voted differently than the majority of his party. In the Senate, which, of late, has been highly polarized and extremely partisan, going against the grain takes courage and independence, qualities I have admired in Senator DORGAN.

Senator DORGAN is a good man. I want to wish him, his wife Kim, and their family the very best of luck.

BLANCHE LINCOLN

Mr. President, I rise today to speak in honor of my good friend, the senior Senator from Arkansas. Senator BLANCHE LINCOLN will depart from Senate at the end of this session. She will certainly be missed.

Senator LINCOLN is seventh-generation Arkansan. She was born in Helena, AR, in 1960 to family of wheat, soybean, and cotton farmers. Her first elected office was president of the student council at Helena Central High School. She got a bachelor's degree from Randolph Macon Women's College in Lynchburg, VA, and then went to work on the congressional staff for Representative Bill Alexander.

She left the Congressman's office after 2 years to pursue private sector work in Washington, DC, but would return home to Arkansas to run against her former boss in 1992. Her campaign for Congress was successful and BLANCHE became the first woman ever to represent the Arkansas First District in the House of Representatives.

All told, Senator LINCOLN served two terms in the House before running for Senate in 1998. That year, at the age of 38, Senator LINCOLN became the youngest woman ever elected to the U.S. Senate and only the second female Senator in the history of Arkansas.

BLANCHE's career in the Congress has been defined by her willingness to reach across the aisle and work with Senators from both parties. She is a proud Democrat but has never been an ideologue. Her devotion has never been to a party line or platform, but to her own convictions and to the people of Arkansas.

I have had the privilege of working close with Senator LINCOLN on a number of occasions. Much of the time, we found ourselves on different sides of the issues. But, there were also a number of times where we were in agreement. In fact, I can think of several occasions where she defied her own party's leadership and was, at the end of the day, a difference-maker on a number of important efforts.

Here in the Senate, things have a tendency to get contentious in a hurry. Far too often, partisanship gets in the way of good policymaking. We should commend those who are willing to see past the politics of the day and focus on the long-term impact of the things we do here in the Senate. Senator BLANCHE LINCOLN is one of those people.

I want to wish Senator LINCOLN and her family the very best of luck going forward.

DREAM ACT

Mr. HATCH. Mr. President, I ask the RECORD reflect that if I would have been present for yesterday's vote on the Development, Relief, and Education for Alien Minors—DREAM—Act of 2010, H.R. 5281, that I would have voted against cloture. My wife and I had a long standing family commitment to attend my grandson's graduation.

The American people sent us a clear message on November 2, 2010, to focus on getting our economy moving again. It bears repeating: our country's unemployment rate is nearly 10 percent. Yet instead of listening to the true needs of this Nation, the majority in the Senate is moving full speed ahead with legislation in order to curry favor with political constituencies.

Pushing this bill through during a lameduck session of Congress is not how Utahns or Americans want Congress to operate. The bill before us is one of many versions of the DREAM Act introduced in the last 2 months. Though H.R. 5281 would result in a significant change to U.S. immigration law, the bill never received 1 day of a committee markup. An issue as important as this one needs to follow the regular order of the legislative process.

Now more than ever, our Nation's porous border is flowing over with increasingly violent crimes—fueled by drugs, gangs and even human trafficking. Unfortunately, this chaos is spilling into our communities. That is why, when it comes to immigration, my primary focus is on how we can finally secure our borders and how best to fix our broken immigration system.

The fight to control the border is no longer isolated to just the physical

boundary between the United States and Mexico. Indeed, it now includes addressing Mexican cartels; prohibiting mass deferral or parole; streamlining the visa process; requiring participation in key law enforcement programs; clamping down on identity theft; tracking the amount of welfare benefits being diverted by illegal immigrant households; ensuring that dollars are being used to cover newly eligible American children in CHIP and Medicaid; and keeping our great national parks and federal lands safe and free from drug traffickers, drug cultivation, and environmental damage. All of these important issues are addressed in my recently introduced bill, the Strengthening Our Commitment to Legal Immigration and America's Security Act, S. 3901.

Mr. President, I remain understanding about individuals who, through no fault of their own, were brought to this country for a better life. However, the urgent challenges facing our country must take priority.

DON'T ASK, DON'T TELL REPEAL ACT

Mr. HATCH. Mr. President, I was regrettably absent for the vote on the cloture motion to H.R. 2965, The Don't Ask, Don't Tell Repeal Act as my wife and I had a long standing family commitment to attend my grandson's graduation. If I had been present, I would have voted against cloture.

I have long stated that our troops should not be held hostage to controversial social policy changes at a time when our Nation is at war. Several top military leaders have concluded that changing military policy could jeopardize our soldiers fighting for our Nation. That is something I cannot support.

These concerns were only reaffirmed a few days ago when the Commandant of the Marine Corps, GEN James Amos was quoted as saying, ''I take that very, very seriously . . . I don't want to lose any marines to the distraction [of implementing the repeal of Don't Ask, Don't Tell] . . . I don't want any marines that I'm visiting at Bethesda [National Naval Medical Center military hospital in Maryland] with no legs be the result of any type of distraction.''

This opinion was echoed by Air Force Chief of Staff Norton Schwartz, who stated in testimony before the Senate Armed Services Committee that he opposed implementing any reform until 2012 because he did ''not agree with the study assessment that the short-term risk to military effectiveness is low.''

Moreover, the recent report also showed that the percentage of those servicemembers in combat arms units which predicted a negative or very negative effects on their unit's ability to ''work together to get the job done'' stood at an alarming 48 percent within Army combat arms units, and 58 percent within Marine combat arms units.

Our military leaders and front-line forces have spoken. They do not believe repealing don't ask, don't tell is appropriate at this crucial time in our Nation's history and neither do I.

ADDITIONAL STATEMENTS

REMEMBERING JOY RUSHMORE HILLIARD

• Mr. UDALL of Colorado. Mr. President, I would like to take the time to honor the memory of Ms. Joy Rushmore Hilliard, a supporter of the environment, outdoor enthusiast, and a friend of Colorado. Joy passed away peacefully this past August at the age of 86.

As an avid outdoorswoman, Joy was well known as a great angler and lover of nature. She climbed all 54 of the 14-ers in Colorado well before it became a popular pursuit. Barbara Mandrell might even say Joy was a climber, outdoorswoman, and environmentalist before it became ''cool.'' In fact, when I look back and think of her heart and passion for life, she reminds me of what being an authentic Coloradan is all about.

Joy even reminds me a lot of my own mother. Of the same generation and cut from the same cloth, Joy not only enjoyed hiking, climbing, skiing and fly-fishing, but managed to balance that love with raising a family. She also was a world traveler and was part of the 1963 expedition that trekked from Katmandu to the base camp on Mount Everest. In addition to her love of the outdoors and traveling, Joy was also a passionate philanthropist who donated her entire life to bettering her community and the world around her.

Not only was she actively involved with many environmental organizations, Joy also was the chairwoman of Colorado Outward Bound, a nonprofit organization that teaches hands-on life lessons using the environment. As you may know, I was a former educator and mountain guide for Outward Bound. Its programs have greatly helped struggling teens and groups with health, educational, or social needs to not only experience the outdoors, but to also learn about the potential embodied in themselves. As the chairwoman, Joy led Outward Bound to new heights and was the inspiration for many participants as well as staff.

In addition to her chairwomanship of Outward Bound, Joy was also president of the Rocky Mountain Planned Parenthood, and an avid participant in other organizations such as Trout Unlimited, Silver Trout Foundation, and Colorado Open Lands. Her involvement in all of these civic groups reflects not only her respect and love for the environment and Colorado, but also her passion for life.

For her many sacrifices and hard work, Joy received several recognitions, including the Lifetime Achievement Award from the Colorado Environmental Coalition, the George E. Cranmer Award from Colorado Open Lands, and the Margaret Sanger Award from Planned Parenthood. Joy's other philanthropic actions include helping to establish the conservation wing of the Denver Public Library and a 10th Mountain Division Hut in memory of her late husband Ed, who was a partner of the Redfield Gun Sight Company.

Joy's service to her community, to Colorado and to the environment will always live on in our hearts; she was truly an inspiration for all of us.•

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 6523. An act to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year , and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DODD, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 1619. A bill to establish the Office of Sustainable Housing and Communities, to establish the Interagency Council on Sustainable Communities, to establish a comprehensive planning grant program, to establish a sustainability challenge grant program, and for other purposes.

ADDITIONAL COSPONSORS

AMENDMENT NO. 4851

At the request of Mr. SESSIONS, the names of the Senator from Florida (Mr. LEMIEUX), the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of amendment No. 4851 intended to be proposed to Treaty Doc. 111–5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4853

At the request of Mr. CORNYN, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Louisiana (Mr. VITTER) and the Senator from Florida (Mr. LEMIEUX) were added as cosponsors of amendment No. 4853 intended to be proposed to Treaty Doc. 111–5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4854. Mr. KYL submitted an amendment intended to be proposed by him to

Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table.

SA 4855. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4856. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4857. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4858. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4859. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4860. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4861. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4862. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4863. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4864. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4865. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4866. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4867. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4868. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4869. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4870. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4871. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4872. Mr. CORNYN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4873. Mr. INHOFE submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4874. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4875. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4876. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4877. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4878. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4879. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4880. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4881. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4882. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4883. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4884. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4885. Mr. REID proposed an amendment to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

SA 4886. Mr. REID proposed an amendment to amendment SA 4885 proposed by Mr. REID to the bill H.R. 3082, supra.

SA 4887. Mr. REID proposed an amendment to the bill H.R. 3082, supra.

SA 4888. Mr. REID proposed an amendment to amendment SA 4887 proposed by Mr. REID to the bill H.R. 3082, supra.

SA 4889. Mr. REID proposed an amendment to amendment SA 4888 proposed by Mr. REID to the amendment SA 4887 proposed by Mr. REID to the bill H.R. 3082, supra.

SA 4890. Mr. HARKIN (for Mr. REID) proposed an amendment to the bill H.R. 2751, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

SA 4891. Mr. HARKIN (for Mr. REID) proposed an amendment to the bill H.R. 2751, supra.

TEXT OF AMENDMENTS

SA 4854. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In Article II of the New START Treaty, amend paragraph 2 to read as follows:

2.(a) Subject to subparagraph (b), each Party shall have the right to determine for itself the composition and structure of its strategic offensive arms.

(b) Each Party undertakes not to produce, flight-test, or deploy silo-based ICBMs with more than one warhead. This limitation does not apply to existing types of ICBMs as of the date of the signature of this Treaty.

SA 4855. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In Part One of the Protocol to the New START Treaty, in paragraph 45. (35.), strike ''and the self-propelled device on which it is mounted'' and insert ''and the self-propelled device or railcar or flatcar on which it is mounted''.

SA 4856. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In the preamble to the New START Treaty, insert after ''reduction in nuclear arsenals at the turn of the 21st century'' the following: '', as well as the negative effects on the world situation of the proliferation efforts of rogue regimes such as North Korea, Iran, Syria, Venezuela and others''.

SA 4857. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In the preamble to the New START Treaty, strike ''Expressing strong support for on-

going global efforts in non-proliferation'' and insert ''Expressing the need for increased support for on-going global efforts in non-proliferation, especially in dealing with North Korea, Iran, Syria, Venezuela, and other rogue regimes''.

SA 4858. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In Part One of the Protocol to the New START Treaty, in paragraph 57. (45.)(c), insert ''or railcar or flatcar'' after ''self-propelled device''.

SA 4859. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) CONVENTIONAL PROMPT GLOBAL STRIKE SYSTEMS.—It is the understanding of the United States that conventional prompt global strike systems that may be deployed by the United States will not be counted towards the central limits of the New START Treaty pertaining to either delivery vehicles or warheads.

At the end of subsection (c), add the following:

(14) CONVENTIONAL PROMPT GLOBAL STRIKE SYSTEMS.—The Senate declares that the United States will work with the Russian Federation to allay any legitimate concerns the Russian Federation has about verification and notification related to conventional prompt global strike systems.

SA 4860. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) LIMITATION ON NUCLEAR-ARMED SEA-LAUNCHED CRUISE MISSILES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President has negotiated a legally binding side agreement with the Russian Federation that the Russian Federation will not deploy a significant number of nuclear-armed sea-launched cruise missiles during the duration of the New START Treaty.

SA 4861. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Treaty of Ratification, add the following:

(4) TREATY EXTENSION.—It is the understanding of the United States that any extension of the New START Treaty under Article XIV may enter into force for the United States only with the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

SA 4862. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Treaty of Ratification, add the following:

(11) TELEMETRIC EXCHANGES ON BALLISTIC MISSILES DEPLOYED BY THE RUSSIAN FEDERATION.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the New START Treaty.

SA 4863. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) CONVENTIONAL GLOBAL STRIKE CAPABILITIES.—In interpreting the authority of the Bilateral Consultative Commission under Part Six of the Protocol, it is the understanding of the United States that it shall not be in the jurisdiction of the Bilateral Consultative Commission to complete any agreement limiting the conventional global strike systems of the United States or otherwise limit the conventional global strike systems of the United States.

SA 4864. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) STRATEGIC NUCLEAR DELIVERY VEHICLES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) modernize or replace the triad of strategic nuclear delivery systems: a heavy bomber and air-launched cruise missile, an ICBM, and an SSBN and SLBM; and

(B) maintain the United States rocket motor industrial base.

SA 4865. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b), add the following:

(4) MISSILE DEFENSE TARGET VEHICLES.—It is the understanding of the United States that missile defense target vehicles do not count against the United States limit on deployed or non-deployed ICBMs or SLBMs.

SA 4866. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) TELEMETRIC INFORMATION ON MISSILE DEFENSE SYSTEMS.—It is the understanding of the United States that the United States will not provide the Russian Federation any telemetric information on its missile defense systems for the duration of the New START Treaty.

SA 4867. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b), of the Resolution of Ratification add the following:

(4) BILATERAL CONSULTATIVE COMMISSION.—It is the understanding of the United States that no provision adopted in the Bilateral Consultative Commission can take effect until 30 days after it has been notified to the majority and minority leaders, the Committees on Armed Services and Foreign Relations, and the National Security Working Group of the Senate.

SA 4868. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of condition (6) of subsection (a) of the Resolution of Ratification, add the following new subparagraph:

''(D) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the Department of Defense will deploy conventional prompt global strike systems during the duration of the New START Treaty.''.

SA 4869. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (c) of the Resolution of Ratification, add the following:

(14) MODERNIZATION OF WARHEADS.—It is the sense of the Senate that modernization of warheads must be undertaken on a case-by-case basis using the full spectrum of life extension options available based on the best technical advice of the United States military and the national nuclear weapons laboratories.

SA 4870. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) MODERNIZATION.—It is the understanding of the United States that failure to fund the nuclear modernization plan would constitute a basis for United States withdrawal from the New START Treaty.

SA 4871. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (c) of the Resolution of Ratification, add the following:

(14) REDUCTIONS AND LIMITATIONS IN ARMED FORCES OR ARMAMENTS.—The Senate declares that any agreements obligating the United States to reduce or limit the Armed Forces or armaments, including the development and deployment of missile defenses or of any offensive or defensive space capabilities, of the United States in any manner may be made only pursuant to the treaty-making power of the President as set forth in Article II , section 2, clause 2 of the Constitution of the United States.

SA 4872. Mr. CORNYN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In subsection (a) of the Resolution of Ratification, at the end of paragraph (9), add the following:

(C) If the President submits an annual budget request that fails to meet the resource requirements set forth in the President's 10-year plan, that shall constitute an extraordinary event that has jeopardized the supreme interests of the United States under Article XIV, paragraph 3 of the New START Treaty, and the President shall exercise the right to withdraw from the New START Treaty under Article XIV, paragraph 3 of the New START Treaty.

SA 4873. Mr. INHOFE submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) SPACE ARMS.—(A) Prior to entry into force of the New START Treaty, the President shall certify that the United States shall not be bound by any international agreement entered into by the President that would in any way limit the research, development, testing, or deployment of military space systems of the United States or that would limit the options of the United States military in operating such systems unless the agreement is entered pursuant to the treaty making power of the President as set forth in Article II, section 2, clause 2, of the Constitution of the United States.

(B) In this paragraph, the term ''military space systems'' means—

(i) weapon or non-weapon systems that are located in or transit space in order to perform military missions; and

(ii) systems that are located on or in or transit the land, sea, or air or operate in cyberspace that are used to support and control the systems that are located in or transit space.

SA 4874. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) CONSIDERATION OF TREATY BY DUMA.—The New START Treaty shall not enter into force until 180 days after the President certifies to the Senate that—

(A) the Russian Duma has completed the constitutional process necessary for ratification of the New START Treaty by the Russian Federation; and

(B) the Duma has not adopted, in its ratification of the New START Treaty, any resolution or other legislation containing any provision related to missile defense, prompt global strike capabilities, rail-mobile ICBMs, Treaty verification, or submarine launched cruise missiles that is in conflict or inconsistent with any provision of this resolution.

SA 4875. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In subsection (c) of the Resolution of Ratification, strike paragraph (11) and insert the following:

(11) TACTICAL NUCLEAR WEAPONS.—

(A) DECLARATION.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the declaration that it is the sense of the Senate that—

(i) as the number of strategic nuclear weapons, both operationally deployed and non-deployed, are reduced, the implications of non-strategic nuclear weapons for strategic stability becomes more important, and it is regrettable, therefore, that the imbalance in United States and Russian non-strategic nuclear weapons, substantially in favor of the Russian Federation, was not addressed in the Treaty;

(ii) dealing with the imbalance in United States and Russian non-strategic nuclear weapons is urgent;

(iii) until the Russian Federation substantially reduces its non-strategic nuclear weapons in a transparent manner, the Senate shall not support future negotiations to further reduce the number of strategic nuclear weapons and delivery vehicles; and

(iv) recognizing the difficulty the United States has faced in ascertaining with confidence the number of tactical nuclear weapons maintained by the Russian Federation and the security of those weapons, the Senate urges the President to seek an agreement with the Russian Federation with the objectives of—

(I) establishing cooperative measures to give each Party to the New START Treaty improved confidence regarding the accurate accounting and security of tactical nuclear weapons maintained by the other Party;

(II) verifying that the Russian Federation has fulfilled the commitments it made under the President's Nuclear Initiatives in 1991 and 1992; and

(III) providing United States or other international assistance to help the Russian Federation ensure the accurate accounting and security of its tactical nuclear weapons.

(B) CONDITIONS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the condition that the President may not permanently remove United States tactical nuclear weapons in Europe until—

(i) tactical nuclear weapons of the Russian Federation are substantially reduced; and

(ii) the members of the North Atlantic Treaty Organization decide by consensus in favor of such removal.

SA 4876. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (b) of the Resolution of Ratification, add the following:

(4) CONVENTIONAL PROMPT STRIKE.—It is the understanding of the United States that any additional New START Treaty limitations on the development or deployment of strategic-range, conventional weapons systems beyond those contained in paragraph 1. of Article II of the New START Treaty, including any limitations agreed under the auspices of the Bilateral Consultative Commission, would require an amendment to the New START Treaty which may enter into force for the United States only with the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

SA 4877. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In subsection (c) of the Resolution of Ratification, strike paragraph (13) and insert the following:

(13) MODERNIZATION AND REPLACEMENT OF UNITED STATES STRATEGIC DELIVERY VEHICLES.—

(A) DECLARATION.—In accordance with paragraph 1 of Article V of the New START Treaty, which states that, ''Subject to the provisions of this Treaty, modernization and replacement of strategic offensive arms may be carried out,'' it is the sense of the Senate that—

(i) United States deterrence and flexibility is assured by a robust triad of strategic delivery vehicles; and

(ii) to this end, the United States is committed to accomplishing the modernization and replacement of its strategic nuclear delivery vehicles, and to ensuring the continued flexibility of United States conventional and nuclear delivery systems.

(B) CONDITION.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the condition that, not later than 60 days after exchanging the instruments of ratification, the President shall certify to the Senate that—

(i) the President has made a commitment to develop and deploy a next generation long-range nuclear-capable bomber, a new nuclear-capable air-launched cruise missile, and a modernized Minuteman III and successor system; and

(ii) the President is taking actions to preserve the rocket and missile industrial base of the United States and will pursue steps to maintain the nuclear weapons in the United States deterrent to the highest possible standards of safety, security, reliability, and credibility.

SA 4878. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) RETURN OF STOLEN UNITED STATES MILITARY EQUIPMENT.—Prior to the entry into force of the New START Treaty, the President shall certify to the Committees on Armed Services and Foreign Relations of the Senate that the Russian Federation has returned to the United States all military equipment owned by the United States that was confiscated during the Russian invasion of the Republic of Georgia in August 2008.

SA 4879. Mr. RISCH submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) WITHDRAWAL OF RUSSIAN MILITARY FORCES FROM GEORGIA.—Prior to the entry into force of the New START Treaty, the President shall certify to the Committee on Foreign Relations of the Senate that the Russian Federation has fully honored its obligations under the ceasefire agreement of September 9, 2008, with the Republic of Georgia and withdrawn its military forces from the Georgian regions of Abkhazia and South Ossetia.

SA 4880. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) RECOVERY OF SA-24 MISSILES DELIVERED TO VENEZUELA.—The New START Treaty shall not enter into force until the President certifies to the Senate that the Russian Federation has recovered all SA-24 missiles delivered to the Government of Venezuela.

SA 4881. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) PROHIBITION ON SALE OF S–300 MISSILE SYSTEM TO VENEZUELA.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the Russian Federation has no plans to sell the S-300 missile system to the Government of Venezuela and that it has guaranteed the United States that it will not sell the S–300 missile system to the Government of Venezuela.

SA 4882. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) MODERNIZING ICBMS.—(A) The United States is committed to maintaining and modernizing a robust land-based strategic nuclear deterrent force. The Intercontinental Ballistic Missiles (ICBM) force of the United States is the most stabilizing leg of the nuclear triad. ICBMs are safe, reliable, available, and cost effective. A total of 450 Deployed and Non-Deployed ICBMs are critical to our national security.

(B) Prior to entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the Department of Defense will maintain 450 Minuteman ICBMs as part of the 700 Deployed and 800 Deployed and Non-Deployed Strategic Nuclear Delivery Vehicles (SNDVs); and

(ii) the President will modernize command and control infrastructure to support existing ICBM launchers.

SA 4883. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) ICBM FOLLOW-ON.—(A) The United States is committed to maintaining and modernizing a robust land-based strategic nuclear deterrent force. The Intercontinental Ballistic Missiles (ICBM) force of the United States is the most stabilizing leg of the nuclear triad. ICBMs are safe, reliable, available, and cost effective. ICBMs are critical to our national security.

(B) Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President will review alternatives for an ICBM follow-on system that do not consider continued reductions in our land-based strategic nuclear deterrent.

SA 4884. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) PRESERVING ICBMS.—(A) The United States is committed to maintaining and modernizing a robust land-based strategic nuclear deterrent force. The Intercontinental Ballistic Missiles (ICBM) force of the United States is the most stabilizing leg of the nuclear triad. ICBMs are safe, reliable, available, and cost effective. ICBMs are critical to our national security.

(B) Prior to entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the President will deploy not fewer than 450 ICBMs; and

(ii) the President has taken action to maintain and modernize 450 ICBMs.

SA 4885. Mr. REID proposed an amendment to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

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

TITLE I—CONTINUING APPROPRIATIONS AMENDMENTS

SECTION 1. (a) The Continuing Appropriations Act, 2011 (Public Law 111–242) is further amended by—

(1) striking the date specified in section 106(3) and inserting ''March 4, 2011''; and

(2) adding the following:

''SEC. 147. (a) For the purposes of this section—

''(1) the term 'employee'—

''(A) means an employee as defined in section 2105 of title 5, United States Code; and

''(B) includes an individual to whom subsection (b), (c), or (f) of such section 2105 pertains (whether or not such individual satisfies subparagraph (A));

''(2) the term 'senior executive' means—

''(A) a member of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code;

''(B) a member of the FBI–DEA Senior Executive Service under subchapter III of chapter 31 of title 5, United States Code;

''(C) a member of the Senior Foreign Service under chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following); and

''(D) a member of any similar senior executive service in an Executive agency;

''(3) the term 'senior-level employee' means an employee who holds a position in an Executive agency and who is covered by section 5376 of title 5, United States Code, or any similar authority; and

''(4) the term 'Executive agency' has the meaning given such term by section 105 of title 5, United States Code.

''(b)(1) Notwithstanding any other provision of law, except as provided in subsection (e), no statutory pay adjustment which (but for this subsection) would otherwise take effect during the period beginning on January 1, 2011, and ending on December 31, 2012, shall be made.

''(2) For purposes of this subsection, the term 'statutory pay adjustment' means—

''(A) an adjustment required under section 5303, 5304, 5304a, 5318, or 5343(a) of title 5, United States Code; and

''(B) any similar adjustment, required by statute, with respect to employees in an Executive agency.

''(c) Notwithstanding any other provision of law, except as provided in subsection (e), during the period beginning on January 1, 2011, and ending on December 31, 2012, no senior executive or senior-level employee may receive an increase in his or her rate of basic pay absent a change of position that results in a substantial increase in responsibility, or a promotion.

''(d) The President may issue guidance that Executive agencies shall apply in the implementation of this section.

''(e) The Non-Foreign Area Retirement Equity Assurance Act of 2009 (5 U.S.C. 5304 note) shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments in section 1914(2) and (3) of such Act.

''SEC. 148. Notwithstanding section 101, the level for 'Department of Commerce, National Telecommunications and Information Administration, Salaries and Expenses' shall be $40,649,000.

''SEC. 149. The following authorities shall continue in effect through the earlier of the date specified in section 106(3) of this Act or the date of enactment of the National Defense Authorization Act for Fiscal Year 2011:

''(1) Section 1021 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2042), as amended by section 1011 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2441);

''(2) Section 1022 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 10 U.S.C. 371 note), as amended by section 1012 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2441);

''(3) Section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), as amended by section 1014 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84; 123 Stat. 2442);

''(4) Sections 611, 612, 613, 614, 615, 616, 1106, 1222(e), 1224 and 1234 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84);

''(5) Section 631 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181); and

''(6) Section 931 of the National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364).

''SEC. 150. Subject to the availability of appropriations, the Secretary of the Navy may award a contract or contracts for up to 20 Littoral Combat Ships (LCS).

''SEC. 151. Section 8905a(d)(4)(B) of title 5, United States Code, is amended—

''(1) in clause (i), by striking 'October 1, 2010' and inserting 'December 31, 2011'; and

''(2) in clause (ii)—

''(A) by striking 'February 1, 2011' and inserting 'February 1, 2012'; and

''(B) by striking 'October 1, 2010' and inserting 'December 31, 2011'.

''SEC. 152. Notwithstanding section 101, the level for 'Special Inspector General for the Troubled Asset Relief Program, Salaries and Expenses' shall be $36,300,000.

''SEC. 153. Public Law 111–240 is amended in section 1114 and section 1704 by striking 'December 31, 2010' and inserting 'March 4, 2011' each time it appears and in section 1704 by adding at the end the following:

''''(c) For purposes of the loans made under this section, the maximum guaranteed amount outstanding to the borrower may not exceed $4,500,000.'

''SEC. 154. The appropriation to the Securities and Exchange Commission pursuant to this Act shall be deemed a regular appropriation for purposes of section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) and sections 13(e), 14(g), and 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e), 78n(g), and 78ee).

''SEC. 155. Section 302 of the Universal Service Antideficiency Temporary Suspension Act is amended by striking 'December 31, 2010' each place it appears and inserting 'December 31, 2011'.

''SEC. 156. Notwithstanding section 503 of Public Law 111–83, amounts made available in this Act for the Transportation Security Administration shall be available for transfer between and within Transportation Security Administration appropriations to the extent necessary to avoid furloughs or reduction in force, or to provide funding necessary for programs and activities required by law: *Provided*, That such transfers may not result in the termination of programs, projects or activities: *Provided further*, That the House and Senate Appropriations Committees shall be notified within 15 days of such transfers.

''SEC. 157. Up to $21,880,000 from 'Coast Guard, Acquisition, Construction, and Improvements' and 'Coast Guard, Alteration of Bridges' may be transferred to 'Coast Guard, Operating Expenses': *Provided*, That the Coast Guard may decommission one Medium Endurance Cutter, two High Endurance Cutters, four HU–25 aircraft, the Maritime Intelligence Fusion Center, and one Maritime Safety and Security Team, and make staffing changes at the Coast Guard Investigative Service, as outlined in its budget justification documents for fiscal year 2011 as submitted to the Committees on Appropriations of the Senate and House of Representatives.

''SEC. 158. Notwithstanding section 101, the final proviso under the heading 'Science and Technology, Research, Development, Acquisition, and Operations' in Public Law 111–83 (related to the National Bio- and Agro-defense Facility) shall have no effect with respect to all amounts available under this heading.

''SEC. 159. Notwithstanding sections 101 and 128, amounts are provided for 'Department of the Interior—Minerals Management Service—Royalty and Offshore Minerals Management' in the manner authorized in Public Law 111–88 for fiscal year 2010, except that for fiscal year 2011 the amounts specified in division A of Public Law 111–88 shall be modified by substituting—

''(1) '$200,110,000' for '$175,217,000';

''(2) '$102,231,000' for '$89,374,000';

''(3) '$154,890,000' for '$156,730,000' each place it appears; and

''(4) 'fiscal year 2011' shall be substituted for 'fiscal year 2010' each place it appears.

''SEC. 160. The Secretary of the Interior, in order to implement a reorganization of the Bureau of Ocean Energy Management, Regulation, and Enforcement, may establish accounts, transfer funds among and between the offices and bureaus affected by the reorganization, and take any other administrative actions necessary in conformance with the Appropriations Committee reprogramming procedures described in the joint explanatory statement of the managers accompanying Public Law 111–88 (House of Representatives Report 111–316).

''SEC. 161. Notwithstanding section 101, section 423 of Public Law 111–88 (123 Stat. 2961), concerning the distribution of geothermal energy receipts, shall have no force or effect and the provisions of section 3003(a) of Public Law 111–212 (124 Stat. 2338) shall apply for fiscal year 2011.

''SEC. 162. Notwithstanding section 109, of the funds made available by section 101 for payments under subsections (b) and (d) of section 2602 of the Low Income Home Energy Assistance Act of 1981, the Department of Health and Human Services shall obligate the same amount during the period covered by this continuing resolution as was obligated for such purpose during the comparable period during fiscal year 2010.

''SEC. 163. (a) A 'highly qualified teacher' includes a teacher who meets the requirements in 34 C.F.R. 200.56(a)(2)(ii), as published in the Federal Register on December 2, 2002.

''(b) This provision is effective on the date of enactment of this provision through the end of the 2012–2013 academic year.

''SEC. 164. (a) Notwithstanding section 101, the level for 'Department of Education, Student Financial Assistance' to carry out subpart 1 of part A of title IV of the Higher Education Act of 1965 shall be $23,162,000,000.

''(b) The maximum Pell Grant for which a student shall be eligible during award year 2011–2012 shall be $4,860.

''SEC. 165. (a) Notwithstanding section 1018(d) of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907(d)), the use of any funds appropriated to the United States Capitol Police during fiscal year 2003 for transfer relating to the Truck Interdiction Monitoring Program to the working capital fund established under section 328 of title 49, United States Code, is ratified.

''(b) Nothing in subsection (a) may be construed to waive sections 1341, 1342, 1349, 1350, or 1351 of title 31, United States Code, or subchapter II of chapter 15 of such title (commonly known as the 'Anti-Deficiency Act').

''(c) Notwithstanding section 106 of this Act, the use of the funds described under subsection (a) of this section shall apply without fiscal year limitation.

''SEC. 166. Notwithstanding section 101, amounts are provided for 'Department of Veterans Affairs, Departmental Administration, General Operating Expenses' at a rate for operations of $2,546,276,000, of which not less than $2,148,776,000 shall be for the Veterans Benefits Administration.''.

(b) This section may be cited as the ''Continuing Appropriations Amendments, 2011''.

TITLE II—EXTENSION OF CURRENT SURFACE TRANSPORTATION PROGRAMS

SEC. 2001. SHORT TITLE; RECONCILIATION OF FUNDS.

(a) This title may be cited as the ''Surface Transportation Extension Act of 2010, Part II''.

(b) RECONCILIATION OF FUNDS.—The Secretary of Transportation shall reduce the amount apportioned or allocated for a program, project, or activity under this title in fiscal year 2011 by amounts apportioned or allocated pursuant to the Surface Transportation Extension Act of 2010 for the period beginning on October 1, 2010, and ending on December 31, 2010.

Subtitle A—Federal-Aid Highways

SEC. 2101. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS.

(a) IN GENERAL.—Section 411 of the Surface Transportation Extension Act of 2010 (Public Law 111–147; 124 Stat. 78) is amended—

(1) by striking ''the period beginning on October 1, 2010, and ending on December 31, 2010'' each place it appears (except in subsection (c)(2)) and inserting ''the period beginning on October 1, 2010, and ending on March 4, 2011'';

(2) in subsection (a) by striking ''December 31, 2010'' and inserting ''March 4, 2011'';

(3) in subsection (b)(2) by striking ''¼'' and inserting ''155/365'';

(4) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''¼'' and inserting ''155/365''; and

(ii) by striking ''the period beginning on October 1, 2010, and ending on December 31, 2010,'' and inserting ''the period beginning on October 1, 2010, and ending on March 4, 2011'';

(B) in paragraph (4)—

(i) in subparagraph (A)(ii) by striking ''¼'' and inserting ''155/365''; and

(ii) in subparagraph (B)(ii)(II) by striking ''$159,750,000'' and inserting ''$271,356,164''; and

(C) in paragraph (5) by striking ''¼'' and inserting ''155/365'';

(5) in subsection (d)—

(A) by striking ''¼'' each place it appears and inserting ''155/365''; and

(B) in paragraph (2)(A)—

(i) in the matter preceding clause (i) by striking ''apportioned under sections 104(b) and 144 of title 23, United States Code,'' and inserting ''specified in section 105(a)(2) of title 23, United States Code (except the high priority projects program),''; and

(ii) in clause (ii) by striking ''apportioned under such sections of such Code'' and inserting ''specified in such section 105(a)(2) (except the high priority projects program)''; and

(6) in subsection (e)(1)(B) by striking ''¼'' and inserting ''155/365''.

(b) ADMINISTRATIVE EXPENSES.—Section 412(a)(2) of the Surface Transportation Extension Act of 2010 (Public Law 111–147; 124 Stat. 83) is amended—

(1) by striking ''$105,606,250'' and inserting ''$179,385,959''; and

(2) by striking ''the period beginning on October 1, 2010, and ending on December 31, 2010'' and inserting ''the period beginning on October 1, 2010, and ending on March 4, 2011''.

Subtitle B—Extension of National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, and Additional Programs

SEC. 2201. EXTENSION OF NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION HIGHWAY SAFETY PROGRAMS.

(a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Section 2001(a)(1) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $58,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $99,795,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(b) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—Section 2001(a)(2) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $27,061,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $45,967,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(c) OCCUPANT PROTECTION INCENTIVE GRANTS.—Section 2001(a)(3) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $6,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $10,616,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(d) SAFETY BELT PERFORMANCE GRANTS.—Section 2001(a)(4) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $31,125,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $52,870,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(e) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—Section 2001(a)(5) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $8,625,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $14,651,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(f) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—Section 2001(a)(6) of SAFETEA–LU (119 Stat. 1519) is amended by striking ''and $34,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $59,027,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(g) NATIONAL DRIVER REGISTER.—Section 2001(a)(7) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $1,029,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $1,748,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—Section 2001(a)(8) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $7,250,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $12,315,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(i) MOTORCYCLIST SAFETY.—Section 2001(a)(9) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $2,973,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—Section 2001(a)(10) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $1,750,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $2,973,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

(k) ADMINISTRATIVE EXPENSES.—Section 2001(a)(11) of SAFETEA–LU (119 Stat. 1520) is amended by striking ''and $6,332,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $10,756,000 for the period beginning on October 1, 2010, and ending on March 4, 2011.''.

SEC. 2202. EXTENSION OF FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION PROGRAMS.

(a) MOTOR CARRIER SAFETY GRANTS.—Section 31104(a)(7) of title 49, United States Code, is amended by striking ''$52,679,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''$88,753,000 for the period beginning October 1, 2010, and ending on March 4, 2011.''.

(b) ADMINISTRATIVE EXPENSES.—Section 31104(i)(1)(G) of title 49, United States Code, is amended by striking ''$61,036,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''$103,678,000 for the period beginning October 1, 2010, and ending on March 4, 2011.''.

(c) GRANT PROGRAMS.—Section 4101(c) of SAFETEA–LU (119 Stat. 1715) is amended—

(1) in paragraph (1)—

(A) by striking ''and'' after ''2009,''; and

(B) by striking ''and $6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $10,616,000 for the period beginning October 1, 2010, and ending on March 4, 2011.'';

(2) in paragraph (2) by striking ''and $8,066,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $13,589,000 for the period beginning October 1, 2010, and ending on March 4, 2011.'';

(3) in paragraph (3) by striking ''and $1,260,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $2,123,000 for the period beginning October 1, 2010, and ending on March 4, 2011.'';

(4) in paragraph (4) by striking ''and $6,301,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $10,616,000 for the period beginning October 1, 2010, and ending on March 4, 2011.''; and

(5) in paragraph (5) by striking ''and $756,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $1,274,000 for the period beginning October 1, 2010, and ending on March 4, 2011.''.

(d) HIGH-PRIORITY ACTIVITIES.—Section 31104(k)(2) of title 49, United States Code, is amended by striking ''2009, $15,000,000 for fiscal year 2010, and $3,781,000 for the period beginning on October 1, 2010, and ending on December 31, 2010'' and inserting ''2010 and $6,370,000 for the period beginning October 1, 2010, and ending on March 4, 2011''.

(e) NEW ENTRANT AUDITS.—Section 31144(g)(5)(B) of title 49, United States Code, is amended by striking ''(and up to $7,310,000 for the period beginning on October 1, 2010, and ending on December 31, 2010)'' and inserting ''(and up to $12,315,000 for the period

beginning October 1, 2010, and ending on March 4, 2011)''.

(f) COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM MODERNIZATION.—Section 4123(d)(6) of SAFETEA–LU (119 Stat. 1736) is amended by striking ''$2,016,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.'' and inserting ''and $3,397,260 for the period beginning October 1, 2010, and ending on March 4, 2011.''.

(g) OUTREACH AND EDUCATION.—Section 4127(e) of SAFETEA–LU (119 Stat. 1741) is amended by striking ''and 2010'' and all that follows before ''to carry out'' and inserting ''2010, and $425,545 to the Federal Motor Carrier Safety Administration, and $1,274,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2010, and ending on March 4, 2011,''.

(h) GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.—Section 4134(c) of SAFETEA–LU (119 Stat. 1744) is amended by striking ''$252,000 for the period beginning on October 1, 2010, and ending on December 31, 2010,'' and inserting ''$425,545 for the period beginning on October 1, 2010, and ending on March 4, 2011,''.

(i) MOTOR CARRIER SAFETY ADVISORY COMMITTEE.—Section 4144(d) of SAFETEA–LU (119 Stat. 1748) is amended by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(j) WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.—Section 4213(d) of SAFETEA–LU (49 U.S.C. 14710 note; 119 Stat. 1759) is amended by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

SEC. 2203. ADDITIONAL PROGRAMS.

(a) HAZARDOUS MATERIALS RESEARCH PROJECTS.—Section 7131(c) of SAFETEA–LU (119 Stat. 1910) is amended by striking ''through 2010'' and all that follows before ''shall be available'' and inserting ''through 2010 and $531,000 for the period beginning on October 1, 2010, and ending on March 4, 2011''.

(b) DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—Section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c) is amended—

(1) in subsection (a) by striking ''For each of fiscal years 2006'' and all that follows before paragraph (1) and inserting the following: ''For each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011 the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:''; and

(2) in subsection (b)(1)(A) by striking the first sentence and inserting the following: ''From the annual appropriation made in accordance with section 3, for each of fiscal years 2006 through 2010, and for the period beginning on October 1, 2010, and ending on March 4, 2011, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section and section 9.''.

(c) SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM.—Section 327(i)(1) of title 23, United States Code, is amended by striking ''6 years after'' and inserting ''7 years after''.

(d) IMPLEMENTATION OF FUTURE STRATEGIC HIGHWAY RESEARCH PROGRAM.—Section 510 of title 23, United States Code, is amended by adding at the end the following:

''(h) IMPLEMENTATION.—Notwithstanding any other provision of this section, the Secretary may use funds made available to carry out this section for implementation of research products related to the future strategic highway research program, including development, demonstration, evaluation, and technology transfer activities.''.

Subtitle C—Public Transportation Programs

SEC. 2301. ALLOCATION OF FUNDS FOR PLANNING PROGRAMS.

Section 5305(g) of title 49, United States Code, is amended by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

SEC. 2302. SPECIAL RULE FOR URBANIZED FORMULA GRANTS.

Section 5307(b)(2) of title 49, United States Code, is amended—

(1) in the paragraph heading, by striking ''DECEMBER 31, 2010'' and inserting ''MARCH 4, 2011'';

(2) in subparagraph (A) by striking ''December 31, 2010'' and inserting ''March 4, 2011''; and

(3) in subparagraph (E)—

(A) in the paragraph heading, by striking ''DECEMBER 31, 2010'' and inserting ''MARCH 4, 2011''; and

(B) in the matter preceding clause (i) by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

SEC. 2303. ALLOCATING AMOUNTS FOR CAPITAL INVESTMENT GRANTS.

Section 5309(m) of such title is amended—

(1) In paragraph (2)—

(A) in the paragraph heading by striking ''DECEMBER 31, 2010'' and inserting ''MARCH 4, 2011'';

(B) in the matter preceding paragraph (A) by striking ''December 31, 2010'' and inserting ''March 4, 2011''; and

(C) in subparagraph (A)(i), by striking ''$50,000,000 for the period beginning October 1, 2010, and ending December 31, 2010'' and inserting ''$84,931,000 for the period beginning October 1, 2010 and ending March 4, 2011''.

(2) in paragraph (6)—

(A) in subparagraph (B) by striking ''$3,750,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$6,369,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011'';

(B) in subparagraph (C) by striking ''$1,250,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$2,123,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011''.

(3) in paragraph (7)—

(A) in clause (ii) of subparagraph (A)—

(i) in the clause heading, by striking ''DECEMBER 31, 2010'' and inserting ''MARCH 4, 2011'';

(ii) by striking ''$2,500,000 shall be available for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$4,246,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011'';

(iii) by striking ''25 percent'' and inserting ''155/365ths''.

(4) in subparagraph (B), by amending clause (vi) to read, ''$5,732,000 for the period beginning October 1, 2010 and ending March 4, 2011''.

(5) in subparagraph (C) by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(6) in subparagraph (D) by striking ''$8,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010'' and inserting ''$14,863,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011'';

(7) in subparagraph (E) by striking ''$750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010'' and inserting ''$1,273,000 shall be available for the period beginning October 1, 2010 and ending March 4, 2011''.

SEC. 2304. APPORTIONMENT OF FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.

Section 5311(c)(1)(F) of title 49, United States Code, is amended to read as follows:

''(F) $6,369,000 for the period beginning October 1, 2010 and ending March 4, 2011.''.

SEC. 2305. APPORTIONMENT BASED ON FIXED GUIDEWAY FACTORS.

Section 5337(g) of title 49, United States Code, is amended to read as follows:

''(g) SPECIAL RULE FOR OCTOBER 1, 2010, THROUGH MARCH 4, 2011.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning October 1, 2010, and ending March 4, 2011, in accordance with subsection (a), except that the Secretary shall apportion 155/365ths of each dollar amount specified in subsection (a).''.

SEC. 2306. AUTHORIZATIONS FOR PUBLIC TRANSPORTATION.

(a) FORMULA AND BUS GRANTS.—Section 5338(b) of title 49, United States Code, is amended—

(1) By amending paragraph (1)(F) as follows:

''(F) $3,550,376,000 for the period beginning October 1, 2010, and ending March 4, 2011.''.

(2) in paragraph (2)—

(A) in subparagraph (A) by striking ''$28,375,000 for the period beginning October 1, 2010, and ending December 31, 2010'' and by inserting ''$48,198,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(B) in subparagraph (B) by striking ''$1,040,091,250 for the period beginning October 1, 2010, and ending December 31, 2010'' and inserting ''$1,766,730,000 for the period beginning October 1, 2010, and ending March 4, 2011'';

(C) in subparagraph (C) by striking ''$12,875,000 for the period beginning October 1, 2010, and ending December 31, 2010'' and by inserting ''$21,869,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(D) in subparagraph (D) by striking ''$416,625,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and by inserting ''$707,691,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(E) in subparagraph (E) by striking ''$246,000,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$417,863,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(F) in subparagraph (F) by striking ''$33,375,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$56,691,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(G) in subparagraph (G) by striking ''$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$197,465,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(H) in subparagraph (H) by striking ''$41,125,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$69,856,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(I) in subparagraph (I) by striking ''$23,125,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and inserting ''$39,280,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(J) in subparagraph (J) by striking ''$6,725,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and by inserting ''$11,423,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(K) in subparagraph (K) by striking ''$875,000 for the period beginning October 1,

2010 and ending December 31, 2010'' and by inserting ''$1,486,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(L) in subparagraph (L) by striking ''$6,250,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and by inserting ''$10,616,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(M) in subparagraph (M) by striking ''$116,250,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and by inserting ''$197,465,000 for the period beginning October 1, 2010 and ending March 4, 2011''; and

(N) in subparagraph (N) by striking ''$2,200,000 for the period beginning October 1, 2010 and ending December 31, 2010'' and by inserting ''$3,736,000 for the period beginning October 1, 2010 and ending March 4, 2011''.

(b) CAPITAL INVESTMENT GRANTS.—Section 5338(c)(6) of title 49 United States Code, is amended to read as follows:

''(6) $849,315,000 for the period of October 1, 2010 through March 4, 2011.''.

(c) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—Section 5338(d) of title 49, United States Code, is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking ''$17,437,500 for the period beginning October 1, 2010, and ending December 31, 2010'' and inserting ''$29,619,000 for the period beginning October 1, 2010 and ending March 4, 2011'';

(2) paragraph (3)(A)(ii) is amended to read as follows:

''(ii) OCTOBER 1, 2010 THROUGH MARCH 4, 2011.—Of amounts authorized to be appropriated for the period beginning October 1, 2010, through March 4, 2011, under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 155/365ths of the amount allocated for fiscal year 2009 under each such subparagraph.''.

(3) Paragraph (3)(B)(ii) is amended to read as follows:

''(ii) OCTOBER 1, 2010 THROUGH MARCH 4, 2011.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for the period beginning October 1, 2010, and ending March 4, 2011, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to 155/365ths of the amount allocated for fiscal year 2009 under each such clause.''.

(4) In clause (3)(B)(iii)—

(A) by striking ''2010'' and inserting ''2011''; and

(B) by striking ''2009'' and inserting ''2010''.

(d) ADMINISTRATION.—Section 5338(e)(6) of title 49, United States Code, is amended to read as follows—

''(6) $42,003,000 for the period of October 1, 2010 through March 4, 2011.''.

SEC. 2307. AMENDMENTS TO SAFETEA–LU.

(a) CONTRACTED PARATRANSIT PILOT.—Section 3009(i)(1) of SAFETEA–LU (Public Law 109–59; 119 Stat. 1572) is amended by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(b) PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.—Section 3011 of the SAFETEA–LU (49 U.S.C. 5309 note) is amended—

(1) in subsection (c)(5), by striking ''December 31, 2010'' and inserting ''March 4, 2011''; and

(2) in subsection (d), by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(c) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.—Section 3012(b)(8) of the SAFETEA–LU (49 U.S.C. 5310 note) is amended by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(d) OBLIGATION CEILING.—Section 3040(7) of the SAFETEA–LU (Public Law 109–59; 119 Stat. 1639, is amended to read as follows—

''(7) $4,462,196,000 for the period beginning October 1, 2010, and ending March 4, 2011, of which not more than $3,550,376,000 shall be from the Mass Transit Account.''.

(e) PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.—Section 3043 of SAFETEA–LU (Public Law 109–59; 119 Stat. 1640) is amended in subsections (b) and (c) by striking ''December 31, 2010'' and inserting ''March 4, 2011''.

(f) ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.—Section 3046 of SAFETEA–LU (49 U.S.C. 5338; 119 Stat. 1706) is amended—

(1) in subsection (c)(2), by striking ''December 31, 2010'' and inserting ''March 4, 2011'', and by striking ''25 percent'' and inserting ''155/365ths''.

(2) In subsection (d)—

(A) by striking ''2010'' and inserting ''2011''; and

(B) by striking ''2009'' and inserting ''2010''.

SEC. 2308. LEVEL OF OBLIGATION LIMITATIONS.

(a) HIGHWAY CATEGORY.—Section 8003(a) of SAFETEA–LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (6) by striking ''for the period beginning on October 1, 2009, and ending on September 30, 2010,'' and inserting ''for fiscal year 2010,''; and

(2) by striking paragraph (7) and inserting the following:

''(7) for the period beginning October 1, 2010, and ending on March 4, 2011, $18,035,192,815.''.

(b) MASS TRANSIT CATEGORY.—Section 8003(b) of SAFETEA–LU (2 U.S.C. 901 note; 119 Stat. 1917) is amended—

(1) in paragraph (6) by striking ''for the period beginning on October 1, 2009, and ending on December 31, 2010,'' and inserting ''for fiscal year 2010,''; and

(2) by striking paragraph (7) and inserting the following:

''(7) for the period beginning October 1, 2010, and ending on March 4, 2011, $4,390,137,192.''.

Subtitle D—Extension of Expenditure Authority

SEC. 2401. EXTENSION OF EXPENDITURE AUTHORITY.

(a) HIGHWAY TRUST FUND.—Section 9503 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''December 31, 2010 (January 1, 2011, in the case of expenditures for administrative expenses)'' in subsections (b)(6)(B) and (c)(1) and inserting ''March 5, 2011'';

(2) by striking ''the Surface Transportation Extension Act of 2010'' in subsections (c)(1) and (e)(3) and inserting ''the Surface Transportation Extension Act of 2010, Part II''; and

(3) by striking ''January 1, 2011'' in subsection (e)(3) and inserting ''March 5, 2011''.

(b) SPORT FISH RESTORATION AND BOATING TRUST FUND.—Section 9504 of the Internal Revenue Code of 1986 is amended—

(1) by striking ''Surface Transportation Extension Act of 2010'' each place it appears in subsection (b)(2) and inserting ''Surface Transportation Extension Act of 2010, Part II''; and

(2) by striking ''January 1, 2011'' in subsection (d)(2) and inserting ''March 5, 2011''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 2010.

This Act may be cited as the ''Continuing Appropriations and Surface Transportation Extensions Act, 2011''.

SA 4886. Mr. REID proposed an amendment to amendment SA 4885 proposed by Mr. REID to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

At the end, insert the following:

''the provisions of this Act shall become effective within 5 days of enactment.

SA 4887. Mr. REID proposed an amendment to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

At the end, insert the following:

The Senate Appropriations Committee is required to study the impact on any delay in extending government funding for all federal agencies, and that the study should be concluded within 10 days of enactment.

SA 4888. Mr. REID proposed an amendment to amendment SA 4887 proposed by Mr. REID to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

In the amendment, strike ''10'' and insert ''6''.

SA 4889. Mr. REID proposed an amendment to amendment SA 4888 proposed by Mr. REID to the amendment SA 4887 proposed by Mr. REID to the bill H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes; as follows:

In the amendment, strike ''6'' and insert ''4''.

SA 4890. Mr. HARKIN (for Mr. REID) proposed an amendment to the bill H.R. 2751, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; as follows:

Strike all after the enacting clause and insert the following:

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

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

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

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

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

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

Sec. 101. Inspections of records.
Sec. 102. Registration of food facilities.
Sec. 103. Hazard analysis and risk-based preventive controls.
Sec. 104. Performance standards.
Sec. 105. Standards for produce safety.

Sec. 106. Protection against intentional adulteration.
Sec. 107. Authority to collect fees.
Sec. 108. National agriculture and food defense strategy.
Sec. 109. Food and Agriculture Coordinating Councils.
Sec. 110. Building domestic capacity.
Sec. 111. Sanitary transportation of food.
Sec. 112. Food allergy and anaphylaxis management.
Sec. 113. New dietary ingredients.
Sec. 114. Requirement for guidance relating to post harvest processing of raw oysters.
Sec. 115. Port shopping.
Sec. 116. Alcohol-related facilities.

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

Sec. 201. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.
Sec. 202. Laboratory accreditation for analyses of foods.
Sec. 203. Integrated consortium of laboratory networks.
Sec. 204. Enhancing tracking and tracing of food and recordkeeping.
Sec. 205. Surveillance.
Sec. 206. Mandatory recall authority.
Sec. 207. Administrative detention of food.
Sec. 208. Decontamination and disposal standards and plans.
Sec. 209. Improving the training of State, local, territorial, and tribal food safety officials.
Sec. 210. Enhancing food safety.
Sec. 211. Improving the reportable food registry.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

Sec. 301. Foreign supplier verification program.
Sec. 302. Voluntary qualified importer program.
Sec. 303. Authority to require import certifications for food.
Sec. 304. Prior notice of imported food shipments.
Sec. 305. Building capacity of foreign governments with respect to food safety.
Sec. 306. Inspection of foreign food facilities.
Sec. 307. Accreditation of third-party auditors.
Sec. 308. Foreign offices of the Food and Drug Administration.
Sec. 309. Smuggled food.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Funding for food safety.
Sec. 402. Employee protections.
Sec. 403. Jurisdiction; authorities.
Sec. 404. Compliance with international agreements.
Sec. 405. Determination of budgetary effects.

TITLE I—IMPROVING CAPACITY TO PREVENT FOOD SAFETY PROBLEMS

SEC. 101. INSPECTIONS OF RECORDS.

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

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

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

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

(3) by striking the last sentence; and

(4) by inserting at the end the following:

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

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

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

SEC. 102. REGISTRATION OF FOOD FACILITIES.

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

(1) in paragraph (2), by—

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

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

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

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

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

(b) SUSPENSION OF REGISTRATION.—

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

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

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

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

''(b) SUSPENSION OF REGISTRATION.—

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

''(A) that created, caused, or was otherwise responsible for such reasonable probability; or

''(B)(i) that knew of, or had reason to know of, such reasonable probability; and

''(ii) packed, received, or held such food.

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

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

''(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan not later than 14 days after the submission of the corrective action plan or such other time period as determined by the Secretary.

''(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Secretary shall promptly vacate the order and reinstate the registration of the facility subject to the order or modify the order, as appropriate.

''(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, no person shall import or export food into the United States from such facility, offer to import or export food into the United States from such facility, or otherwise introduce food from such facility into interstate or intrastate commerce in the United States.

''(5) REGULATIONS.—

''(A) IN GENERAL.—The Secretary shall promulgate regulations to implement this subsection. The Secretary may promulgate such regulations on an interim final basis.

''(B) REGISTRATION REQUIREMENT.—The Secretary may require that registration under this section be submitted in an electronic format. Such requirement may not take effect before the date that is 5 years after the date of enactment of the FDA Food Safety Modernization Act.

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

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

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

''(7) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of

suspension shall not be delegated to any officer or employee other than the Commissioner.''.

(2) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of the regulations promulgated under section 415(b)(5) of the Federal Food, Drug, and Cosmetic Act (as added by this section), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such regulations to assist small entities in complying with registration requirements and other activities required under such section.

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

(c) CLARIFICATION OF INTENT.—

(1) RETAIL FOOD ESTABLISHMENT.—The Secretary shall amend the definition of the term ''retail food establishment'' in section 1.227(b)(11) of title 21, Code of Federal Regulations to clarify that, in determining the primary function of an establishment or a retail food establishment under such section, the sale of food products directly to consumers by such establishment and the sale of food directly to consumers by such retail food establishment include—

(A) the sale of such food products or food directly to consumers by such establishment at a roadside stand or farmers' market where such stand or market is located other than where the food was manufactured or processed;

(B) the sale and distribution of such food through a community supported agriculture program; and

(C) the sale and distribution of such food at any other such direct sales platform as determined by the Secretary.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) the term ''community supported agriculture program'' has the same meaning given the term ''community supported agriculture (CSA) program'' in section 249.2 of title 7, Code of Federal Regulations (or any successor regulation); and

(B) the term ''consumer'' does not include a business.

(d) CONFORMING AMENDMENTS.—

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

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

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

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

''SEC. 418. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

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

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

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

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

''(B) hazards that occur naturally, or may be unintentionally introduced; and

''(2) identify and evaluate hazards that may be intentionally introduced, including by acts of terrorism; and

''(3) develop a written analysis of the hazards.

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

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

''(2) any hazards identified in the hazard analysis conducted under subsection (b)(2) will be significantly minimized or prevented and addressed, consistent with section 420, as applicable; and

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

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

''(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures to ensure that, if the preventive controls implemented under subsection (c) are not properly implemented or are found to be ineffective—

''(1) appropriate action is taken to reduce the likelihood of recurrence of the implementation failure;

''(2) all affected food is evaluated for safety; and

''(3) all affected food is prevented from entering into commerce if the owner, operator or agent in charge of such facility cannot ensure that the affected food is not adulterated under section 402 or misbranded under section 403(w).

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

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

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

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

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

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

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

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

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

''(j) EXEMPTION FOR SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES SUBJECT TO HACCP.—

''(1) IN GENERAL.—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

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

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

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

''(2) APPLICABILITY.—The exemption under paragraph (1)(C) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

''(k) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 419.—This section shall not apply to activities of a facility that are subject to section 419.

''(l) MODIFIED REQUIREMENTS FOR QUALIFIED FACILITIES.—

''(1) QUALIFIED FACILITIES.—

''(A) IN GENERAL.—A facility is a qualified facility for purposes of this subsection if the facility meets the conditions under subparagraph (B) or (C).

''(B) VERY SMALL BUSINESS.—A facility is a qualified facility under this subparagraph—

''(i) if the facility, including any subsidiary or affiliate of the facility, is, collectively, a very small business (as defined in the regulations promulgated under subsection (n)); and

''(ii) in the case where the facility is a subsidiary or affiliate of an entity, if such subsidiaries or affiliates, are, collectively, a very small business (as so defined).

''(C) LIMITED ANNUAL MONETARY VALUE OF SALES.—

''(i) IN GENERAL.—A facility is a qualified facility under this subparagraph if clause (ii) applies—

''(I) to the facility, including any subsidiary or affiliate of the facility, collectively; and

''(II) to the subsidiaries or affiliates, collectively, of any entity of which the facility is a subsidiary or affiliate.

''(ii) AVERAGE ANNUAL MONETARY VALUE.—This clause applies if—

''(I) during the 3-year period preceding the applicable calendar year, the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as described in clause (i)) that is sold directly to qualified end-users during such period exceeded the average annual monetary value of the food manufactured, processed, packed, or held at such facility (or the collective average annual monetary value of such food at any subsidiary or affiliate, as so described) sold by such facility (or collectively by any such subsidiary or affiliate) to all other purchasers during such period; and

''(II) the average annual monetary value of all food sold by such facility (or the collective average annual monetary value of such food sold by any subsidiary or affiliate, as described in clause (i)) during such period was less than $500,000, adjusted for inflation.

''(2) EXEMPTION.—A qualified facility—

''(A) shall not be subject to the requirements under subsections (a) through (i) and subsection (n) in an applicable calendar year; and

''(B) shall submit to the Secretary—

''(i)(I) documentation that demonstrates that the owner, operator, or agent in charge of the facility has identified potential hazards associated with the food being produced, is implementing preventive controls to address the hazards, and is monitoring the preventive controls to ensure that such controls are effective; or

''(II) documentation (which may include licenses, inspection reports, certificates, permits, credentials, certification by an appropriate agency (such as a State department of agriculture), or other evidence of oversight), as specified by the Secretary, that the facility is in compliance with State, local, county, or other applicable non-Federal food safety law; and

''(ii) documentation, as specified by the Secretary in a guidance document issued not later than 1 year after the date of enactment of this section, that the facility is a qualified facility under paragraph (1)(B) or (1)(C).

''(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a qualified facility subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a qualified facility that are material to the safety of the food manufactured, processed, packed, or held at such facility, the Secretary may withdraw the exemption provided to such facility under this subsection.

''(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

''(4) DEFINITIONS.—In this subsection:

''(A) AFFILIATE.—The term 'affiliate' means any facility that controls, is controlled by, or is under common control with another facility.

''(B) QUALIFIED END-USER.—The term 'qualified end-user', with respect to a food, means—

''(i) the consumer of the food; or

''(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that—

''(I) is located—

''(aa) in the same State as the qualified facility that sold the food to such restaurant or establishment; or

''(bb) not more than 275 miles from such facility; and

''(II) is purchasing the food for sale directly to consumers at such restaurant or retail food establishment.

''(C) CONSUMER.—For purposes of subparagraph (B), the term 'consumer' does not include a business.

''(D) SUBSIDIARY.—The term 'subsidiary' means any company which is owned or controlled directly or indirectly by another company.

''(5) STUDY.—

''(A) IN GENERAL.—The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study of the food processing sector regulated by the Secretary to determine—

''(i) the distribution of food production by type and size of operation, including monetary value of food sold;

''(ii) the proportion of food produced by each type and size of operation;

''(iii) the number and types of food facilities co-located on farms, including the number and proportion by commodity and by manufacturing or processing activity;

''(iv) the incidence of foodborne illness originating from each size and type of operation and the type of food facilities for which no reported or known hazard exists; and

''(v) the effect on foodborne illness risk associated with commingling, processing, transporting, and storing food and raw agricultural commodities, including differences in risk based on the scale and duration of such activities.

''(B) SIZE.—The results of the study conducted under subparagraph (A) shall include the information necessary to enable the Secretary to define the terms 'small business' and 'very small business', for purposes of promulgating the regulation under subsection (n). In defining such terms, the Secretary shall include consideration of harvestable acres, income, the number of employees, and the volume of food harvested.

''(C) SUBMISSION OF REPORT.—Not later than 18 months after the date of enactment the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that describes the results of the study conducted under subparagraph (A).

''(6) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production of food. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

''(7) NOTIFICATION TO CONSUMERS.—

''(A) IN GENERAL.—A qualified facility that is exempt from the requirements under subsections (a) through (i) and subsection (n) and does not prepare documentation under paragraph (2)(B)(i)(I) shall—

''(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the facility where the food was manufactured or processed; or

''(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provisions of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the facility where the food was manufactured or processed, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

''(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this Act.

''(m) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the production of food for animals other than man, the storage of raw agricultural commodities (other than fruits and vegetables) intended for further distribution or processing, or the storage of packaged foods that are not exposed to the environment.

''(n) REGULATIONS.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations—

''(A) to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under this section; and

''(B) to define, for purposes of this section, the terms 'small business' and 'very small business', taking into consideration the study described in subsection (l)(5).

''(2) COORDINATION.—In promulgating the regulations under paragraph (1)(A), with regard to hazards that may be intentionally introduced, including by acts of terrorism, the Secretary shall coordinate with the Secretary of Homeland Security, as appropriate.

''(3) CONTENT.—The regulations promulgated under paragraph (1)(A) shall—

''(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm;

''(B) comply with chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act'), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the facility, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

''(C) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

''(D) not require a facility to hire a consultant or other third party to identify, implement, certify, or audit preventative controls, except in the case of negotiated enforcement resolutions that may require such a consultant or third party.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to prescribe specific technologies, practices, or critical controls for an individual facility.

''(5) REVIEW.—In promulgating the regulations under paragraph (1)(A), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of the FDA Food Safety Modernization Act, including the Grade 'A' Pasteurized Milk Ordinance to ensure that such regulations are consistent, to the extent practicable, with applicable domestic and internationally-recognized standards in existence on such date.

''(o) DEFINITIONS.—For purposes of this section:

''(1) CRITICAL CONTROL POINT.—The term 'critical control point' means a point, step,

or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce such hazard to an acceptable level.

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

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

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

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

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

''(D) A food allergen control program.

''(E) A recall plan.

''(F) Current Good Manufacturing Practices (cGMPs) under part 110 of title 21, Code of Federal Regulations (or any successor regulations).

''(G) Supplier verification activities that relate to the safety of food.''.

(b) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to the regulations promulgated under subsection (b)(1) with respect to the hazard analysis and preventive controls under section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(c) RULEMAKING.—

(1) PROPOSED RULEMAKING.—

(A) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall publish a notice of proposed rulemaking in the Federal Register to promulgate regulations with respect to—

(i) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act; and

(ii) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415.

(B) CLARIFICATION.—The rulemaking described under subparagraph (A) shall enhance the implementation of such section 415 and clarify the activities that are included as part of the definition of the term ''facility'' under such section 415. Nothing in this Act authorizes the Secretary to modify the definition of the term ''facility'' under such section.

(C) SCIENCE-BASED RISK ANALYSIS.—In promulgating regulations under subparagraph (A), the Secretary shall conduct a science-based risk analysis of—

(i) specific types of on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership, as such packing and holding relates to specific foods; and

(ii) specific on-farm manufacturing and processing activities as such activities relate to specific foods that are not consumed on that farm or on another farm under common ownership.

(D) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—

(i) IN GENERAL.—In promulgating the regulations under subparagraph (A), the Secretary shall consider the results of the science-based risk analysis conducted under subparagraph (C), and shall exempt certain facilities from the requirements in section 418 of the Federal Food, Drug, and Cosmetic Act (as added by this section), including hazard analysis and preventive controls, and the mandatory inspection frequency in section 421 of such Act (as added by section 201), or modify the requirements in such sections 418 or 421, as the Secretary determines appropriate, if such facilities are engaged only in specific types of on-farm manufacturing, processing, packing, or holding activities that the Secretary determines to be low risk involving specific foods the Secretary determines to be low risk.

(ii) LIMITATION.—The exemptions or modifications under clause (i) shall not include an exemption from the requirement to register under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act, if applicable, and shall apply only to small businesses and very small businesses, as defined in the regulation promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added under subsection (a)).

(2) FINAL REGULATIONS.—Not later than 9 months after the close of the comment period for the proposed rulemaking under paragraph (1), the Secretary shall adopt final rules with respect to—

(A) activities that constitute on-farm packing or holding of food that is not grown, raised, or consumed on such farm or another farm under the same ownership for purposes of section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), as amended by this Act;

(B) activities that constitute on-farm manufacturing or processing of food that is not consumed on that farm or on another farm under common ownership for purposes of such section 415; and

(C) the requirements under sections 418 and 421 of the Federal Food, Drug, and Cosmetic Act, as added by this Act, from which the Secretary may issue exemptions or modifications of the requirements for certain types of facilities.

(d) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of the regulations promulgated under subsection (n) of section 418 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 418 and this section to assist small entities in complying with the hazard analysis and other activities required under such section 418 and this section.

(e) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

''(uu) The operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 418.''.

(f) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce Hazard Analysis Critical Control programs and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(g) DIETARY SUPPLEMENTS.—Nothing in the amendments made by this section shall apply to any facility with regard to the manufacturing, processing, packing, or holding of a dietary supplement that is in compliance with the requirements of sections 402(g)(2) and 761 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(g)(2), 379aa–1).

(h) UPDATING GUIDANCE RELATING TO FISH AND FISHERIES PRODUCTS HAZARDS AND CONTROLS.—The Secretary shall, not later than 180 days after the date of enactment of this Act, update the Fish and Fisheries Products Hazards and Control Guidance to take into account advances in technology that have occurred since the previous publication of such Guidance by the Secretary.

(i) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

(2) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined in the regulations promulgated under section 418(n) of the Federal Food, Drug, and Cosmetic Act (as added by this section)) beginning on the date that is 6 months after the effective date of such regulations; and

(B) the amendments made by this section shall apply to a very small business (as defined in such regulations) beginning on the date that is 18 months after the effective date of such regulations.

SEC. 104. PERFORMANCE STANDARDS.

(a) IN GENERAL.—The Secretary shall, in coordination with the Secretary of Agriculture, not less frequently than every 2 years, review and evaluate relevant health data and other relevant information, including from toxicological and epidemiological studies and analyses, current Good Manufacturing Practices issued by the Secretary relating to food, and relevant recommendations of relevant advisory committees, including the Food Advisory Committee, to determine the most significant foodborne contaminants.

(b) GUIDANCE DOCUMENTS AND REGULATIONS.—Based on the review and evaluation conducted under subsection (a), and when appropriate to reduce the risk of serious illness or death to humans or animals or to prevent adulteration of the food under section 402 of the Federal Food, Drug, or Cosmetic Act (21 U.S.C. 342) or to prevent the spread by food of communicable disease under section 361 of the Public Health Service Act (42 U.S.C. 264), the Secretary shall issue contaminant-specific and science-based guidance documents, including guidance documents regarding action levels, or regulations. Such guidance, including guidance regarding action levels, or regulations—

(1) shall apply to products or product classes;

(2) shall, where appropriate, differentiate between food for human consumption and food intended for consumption by animals other than humans; and

(3) shall not be written to be facility-specific.

(c) NO DUPLICATION OF EFFORTS.—The Secretary shall coordinate with the Secretary of Agriculture to avoid issuing duplicative guidance on the same contaminants.

(d) REVIEW.—The Secretary shall periodically review and revise, as appropriate, the guidance documents, including guidance documents regarding action levels, or regulations promulgated under this section.

SEC. 105. STANDARDS FOR PRODUCE SAFETY.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

''SEC. 419. STANDARDS FOR PRODUCE SAFETY.

''(a) PROPOSED RULEMAKING.—

''(1) IN GENERAL.—

''(A) RULEMAKING.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Agriculture and representatives of State departments of agriculture (including with regard to the national organic program established under the Organic Foods Production Act of 1990), and in consultation with the Secretary of Homeland Security, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

''(B) DETERMINATION BY SECRETARY.—With respect to small businesses and very small businesses (as such terms are defined in the regulation promulgated under subparagraph (A)) that produce and harvest those types of fruits and vegetables that are raw agricultural commodities that the Secretary has determined are low risk and do not present a risk of serious adverse health consequences or death, the Secretary may determine not to include production and harvesting of such fruits and vegetables in such rulemaking, or may modify the applicable requirements of regulations promulgated pursuant to this section.

''(2) PUBLIC INPUT.—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

''(3) CONTENT.—The proposed rulemaking under paragraph (1) shall—

''(A) provide sufficient flexibility to be applicable to various types of entities engaged in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including small businesses and entities that sell directly to consumers, and be appropriate to the scale and diversity of the production and harvesting of such commodities;

''(B) include, with respect to growing, harvesting, sorting, packing, and storage operations, science-based minimum standards related to soil amendments, hygiene, packaging, temperature controls, animals in the growing area, and water;

''(C) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism;

''(D) take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by Federal natural resource conservation, wildlife conservation, and environmental agencies;

''(E) in the case of production that is certified organic, not include any requirements that conflict with or duplicate the requirements of the national organic program established under the Organic Foods Production Act of 1990, while providing the same level of public health protection as the requirements under guidance documents, including guidance documents regarding action levels, and regulations under the FDA Food Safety Modernization Act; and

''(F) define, for purposes of this section, the terms 'small business' and 'very small business'

''(4) PRIORITIZATION.—The Secretary shall prioritize the implementation of the regulations under this section for specific fruits and vegetables that are raw agricultural commodities based on known risks which may include a history and severity of foodborne illness outbreaks.

''(b) FINAL REGULATION.—

''(1) IN GENERAL.—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum science-based standards for those types of fruits and vegetables, including specific mixes or categories of fruits or vegetables, that are raw agricultural commodities, based on known safety risks, which may include a history of foodborne illness outbreaks.

''(2) FINAL REGULATION.—The final regulation shall—

''(A) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States or the appropriate elected State official as recognized by State statute; and

''(B) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

''(3) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding paragraph (1)—

''(A) the regulations promulgated under this section shall apply to a small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 1 year after the effective date of the final regulation under paragraph (1); and

''(B) the regulations promulgated under this section shall apply to a very small business (as defined in the regulation promulgated under subsection (a)(1)) after the date that is 2 years after the effective date of the final regulation under paragraph (1).

''(c) CRITERIA.—

''(1) IN GENERAL.—The regulations adopted under subsection (b) shall—

''(A) set forth those procedures, processes, and practices that the Secretary determines to minimize the risk of serious adverse health consequences or death, including procedures, processes, and practices that the Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables, including specific mixes or categories of fruits and vegetables, that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402;

''(B) provide sufficient flexibility to be practicable for all sizes and types of businesses, including small businesses such as a small food processing facility co-located on a farm;

''(C) comply with chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act'), with special attention to minimizing the burden (as defined in section 3502(2) of such Act) on the business, and collection of information (as defined in section 3502(3) of such Act), associated with such regulations;

''(D) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods; and

''(E) not require a business to hire a consultant or other third party to identify, implement, certify, compliance with these procedures, processes, and practices, except in the case of negotiated enforcement resolutions that may require such a consultant or third party; and

''(F) permit States and foreign countries from which food is imported into the United States to request from the Secretary variances from the requirements of the regulations, subject to paragraph (2), where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 and to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

''(2) VARIANCES.—

''(A) REQUESTS FOR VARIANCES.—A State or foreign country from which food is imported into the United States may in writing request a variance from the Secretary. Such request shall describe the variance requested and present information demonstrating that the variance does not increase the likelihood that the food for which the variance is requested will be adulterated under section 402, and that the variance provides the same level of public health protection as the requirements of the regulations adopted under subsection (b). The Secretary shall review such requests in a reasonable timeframe.

''(B) APPROVAL OF VARIANCES.—The Secretary may approve a variance in whole or in part, as appropriate, and may specify the scope of applicability of a variance to other similarly situated persons.

''(C) DENIAL OF VARIANCES.—The Secretary may deny a variance request if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably likely to provide the same level of public health protection as the requirements of the regulation adopted under subsection (b). The Secretary shall notify the person requesting such variance of the reasons for the denial.

''(D) MODIFICATION OR REVOCATION OF A VARIANCE.—The Secretary, after notice and an opportunity for a hearing, may modify or revoke a variance if the Secretary determines that such variance is not reasonably likely to ensure that the food is not adulterated under section 402 and is not reasonably likely to provide the same level of public health protection as the requirements of the regulations adopted under subsection (b).

''(d) ENFORCEMENT.—The Secretary may coordinate with the Secretary of Agriculture and, as appropriate, shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

''(e) GUIDANCE.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture, representatives of State departments of agriculture, farmer representatives, and various types of entities engaged in the production and harvesting or importing of fruits and vegetables that are raw agricultural commodities, including small businesses, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce under this section.

''(2) PUBLIC MEETINGS.—The Secretary shall conduct not fewer than 3 public meetings in diverse geographical areas of the United States as part of an effort to conduct education and outreach regarding the guidance described in paragraph (1) for persons in different regions who are involved in the production and harvesting of fruits and vegetables that are raw agricultural commodities, including persons that sell directly to consumers and farmer representatives, and for importers of fruits and vegetables that are raw agricultural commodities.

''(3) PAPERWORK REDUCTION.—The Secretary shall ensure that any updated guidance under this section will—

''(A) provide sufficient flexibility to be practicable for all sizes and types of facilities, including small businesses such as a small food processing facility co-located on a farm; and

''(B) acknowledge differences in risk and minimize, as appropriate, the number of separate standards that apply to separate foods.

''(f) EXEMPTION FOR DIRECT FARM MARKETING.—

''(1) IN GENERAL.—A farm shall be exempt from the requirements under this section in a calendar year if—

''(A) during the previous 3-year period, the average annual monetary value of the food sold by such farm directly to qualified end-users during such period exceeded the average annual monetary value of the food sold by such farm to all other buyers during such period; and

''(B) the average annual monetary value of all food sold during such period was less than $500,000, adjusted for inflation.

''(2) NOTIFICATION TO CONSUMERS.—

''(A) IN GENERAL.—A farm that is exempt from the requirements under this section shall—

''(i) with respect to a food for which a food packaging label is required by the Secretary under any other provision of this Act, include prominently and conspicuously on such label the name and business address of the farm where the produce was grown; or

''(ii) with respect to a food for which a food packaging label is not required by the Secretary under any other provision of this Act, prominently and conspicuously display, at the point of purchase, the name and business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents delivered contemporaneously with the food in the normal course of business, or, in the case of Internet sales, in an electronic notice.

''(B) NO ADDITIONAL LABEL.—Subparagraph (A) does not provide authority to the Secretary to require a label that is in addition to any label required under any other provision of this Act.

''(3) WITHDRAWAL; RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—In the event of an active investigation of a foodborne illness outbreak that is directly linked to a farm subject to an exemption under this subsection, or if the Secretary determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with a farm that are material to the safety of the food produced or harvested at such farm, the Secretary may withdraw the exemption provided to such farm under this subsection.

''(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to expand or limit the inspection authority of the Secretary.

''(4) DEFINITIONS.—

''(A) QUALIFIED END-USER.—In this subsection, the term 'qualified end-user', with respect to a food means—

''(i) the consumer of the food; or

''(ii) a restaurant or retail food establishment (as those terms are defined by the Secretary for purposes of section 415) that is located—

''(I) in the same State as the farm that produced the food; or

''(II) not more than 275 miles from such farm.

''(B) CONSUMER.—For purposes of subparagraph (A), the term 'consumer' does not include a business.

''(5) NO PREEMPTION.—Nothing in this subsection preempts State, local, county, or other non-Federal law regarding the safe production, harvesting, holding, transportation, and sale of fresh fruits and vegetables. Compliance with this subsection shall not relieve any person from liability at common law or under State statutory law.

''(6) LIMITATION OF EFFECT.—Nothing in this subsection shall prevent the Secretary from exercising any authority granted in the other sections of this Act.

''(g) CLARIFICATION.—This section shall not apply to produce that is produced by an individual for personal consumption.

''(h) EXCEPTION FOR ACTIVITIES OF FACILITIES SUBJECT TO SECTION 418.—This section shall not apply to activities of a facility that are subject to section 418.''.

(b) SMALL ENTITY COMPLIANCE POLICY GUIDE.—Not later than 180 days after the issuance of regulations under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary of Health and Human Services shall issue a small entity compliance policy guide setting forth in plain language the requirements of such section 419 and to assist small entities in complying with standards for safe production and harvesting and other activities required under such section.

(c) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following:

''(vv) The failure to comply with the requirements under section 419.''.

(d) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

SEC. 106. PROTECTION AGAINST INTENTIONAL ADULTERATION.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 105, is amended by adding at the end the following:

''SEC. 420. PROTECTION AGAINST INTENTIONAL ADULTERATION.

''(a) DETERMINATIONS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) conduct a vulnerability assessment of the food system, including by consideration of the Department of Homeland Security biological, chemical, radiological, or other terrorism risk assessments;

''(B) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration of food at vulnerable points; and

''(C) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

''(2) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which determinations made under paragraph (1) are made publicly available.

''(b) REGULATIONS.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in coordination with the Secretary of Homeland Security and in consultation with the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act. Such regulations shall—

''(1) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food; and

''(2) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate.

''(c) APPLICABILITY.—Regulations promulgated under subsection (b) shall apply only to food for which there is a high risk of intentional contamination, as determined by the Secretary, in consultation with the Secretary of Homeland Security, under subsection (a), that could cause serious adverse health consequences or death to humans or animals and shall include those foods—

''(1) for which the Secretary has identified clear vulnerabilities (including short shelf-life or susceptibility to intentional contamination at critical control points); and

''(2) in bulk or batch form, prior to being packaged for the final consumer.

''(d) EXCEPTION.—This section shall not apply to farms, except for those that produce milk.

''(e) DEFINITION.—For purposes of this section, the term 'farm' has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).''.

(b) GUIDANCE DOCUMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) CONTENT.—The guidance documents issued under paragraph (1) shall—

(A) include a model assessment for a person to use under subsection (b)(1) of section 420 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a);

(B) include examples of mitigation strategies or measures described in subsection (b)(2) of such section; and

(C) specify situations in which the examples of mitigation strategies or measures described in subsection (b)(2) of such section are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, may determine the time, manner, and form in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

(c) PERIODIC REVIEW.—The Secretary of Health and Human Services shall periodically review and, as appropriate, update the regulations under section 420(b) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 105, is amended by adding at the end the following:

''(ww) The failure to comply with section 420.''.

SEC. 107. AUTHORITY TO COLLECT FEES.

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by adding at the end the following:

''PART 6—FEES RELATED TO FOOD

''SEC. 743. AUTHORITY TO COLLECT AND USE FEES.

''(a) IN GENERAL.—

''(1) PURPOSE AND AUTHORITY.—For fiscal year 2010 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

''(A) the responsible party for each domestic facility (as defined in section 415(b)) and the United States agent for each foreign facility subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year;

''(B) the responsible party for a domestic facility (as defined in section 415(b)) and an importer who does not comply with a recall order under section 423 or under section 412(f) in such fiscal year, to cover food recall activities associated with such order performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for such year;

''(C) each importer participating in the voluntary qualified importer program under section 806 in such year, to cover the administrative costs of such program for such year; and

''(D) each importer subject to a reinspection in such fiscal year, to cover reinspection-related costs for such year.

''(2) DEFINITIONS.—For purposes of this section—

''(A) the term 'reinspection' means—

''(i) with respect to domestic facilities (as defined in section 415(b)), 1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction; and

''(ii) with respect to importers, 1 or more examinations conducted under section 801 subsequent to an examination conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction;

''(B) the term 'reinspection-related costs' means all expenses, including administrative expenses, incurred in connection with—

''(i) arranging, conducting, and evaluating the results of reinspections; and

''(ii) assessing and collecting reinspection fees under this section; and

''(C) the term 'responsible party' has the meaning given such term in section 417(a)(1).

''(b) ESTABLISHMENT OF FEES.—

''(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

''(2) FEE METHODOLOGY.—

''(A) FEES.—Fees amounts established for collection—

''(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

''(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

''(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

''(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

''(B) OTHER CONSIDERATIONS.—

''(i) VOLUNTARY QUALIFIED IMPORTER PROGRAM.—In establishing the fee amounts under subparagraph (A)(iii) for a fiscal year, the Secretary shall provide for the number of importers who have submitted to the Secretary a notice under section 806(c) informing the Secretary of the intent of such importer to participate in the program under section 806 in such fiscal year.

''(II) RECOUPMENT.—In establishing the fee amounts under subparagraph (A)(iii) for the first 5 fiscal years after the date of enactment of this section, the Secretary shall include in such fee a reasonable surcharge that provides a recoupment of the costs expended by the Secretary to establish and implement the first year of the program under section 806.

''(ii) CREDITING OF FEES.—In establishing the fee amounts under subparagraph (A) for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

''(iii) PUBLISHED GUIDELINES.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish in the Federal Register a proposed set of guidelines in consideration of the burden of fee amounts on small business. Such consideration may include reduced fee amounts for small businesses. The Secretary shall provide for a period of public comment on such guidelines. The Secretary shall adjust the fee schedule for small businesses subject to such fees only through notice and comment rulemaking.

''(3) USE OF FEES.—The Secretary shall make all of the fees collected pursuant to clause (i), (ii), (iii), and (iv) of paragraph (2)(A) available solely to pay for the costs referred to in such clause (i), (ii), (iii), and (iv) of paragraph (2)(A), respectively.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2010 unless the amount of the total appropriations for food safety activities at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) is equal to or greater than the amount of appropriations for food safety activities at the Food and Drug Administration for fiscal year 2009 (excluding the amount of fees appropriated for such fiscal year), multiplied by the adjustment factor under paragraph (3).

''(2) AUTHORITY.—If—

''(A) the Secretary does not assess fees under subsection (a) for a portion of a fiscal year because paragraph (1) applies; and

''(B) at a later date in such fiscal year, such paragraph (1) ceases to apply,

the Secretary may assess and collect such fees under subsection (a), without any modification to the rate of such fees, notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''(3) ADJUSTMENT FACTOR.—

''(A) IN GENERAL.—The adjustment factor described in paragraph (1) shall be the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year, but in no case shall such adjustment factor be negative.

''(B) COMPOUNDED BASIS.—The adjustment under subparagraph (A) made each fiscal year shall be added on a compounded basis to the sum of all adjustments made each fiscal year after fiscal year 2009.

''(4) LIMITATION ON AMOUNT OF CERTAIN FEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of this section and subject to subparagraph (B), the Secretary may not collect fees in a fiscal year such that the amount collected—

''(i) under subparagraph (B) of subsection (a)(1) exceeds $20,000,000; and

''(ii) under subparagraphs (A) and (D) of subsection (a)(1) exceeds $25,000,000 combined.

''(B) EXCEPTION.—If a domestic facility (as defined in section 415(b)) or an importer becomes subject to a fee described in subparagraph (A), (B), or (D) of subsection (a)(1) after the maximum amount of fees has been collected by the Secretary under subparagraph (A), the Secretary may collect a fee from such facility or importer.

''(d) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

''(e) COLLECTION OF FEES.—

''(1) IN GENERAL.—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time and manner in which fees assessed under this section shall be collected.

''(2) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

''(f) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2010 and each fiscal year thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or otherwise affected under the other provisions of this section.''.

(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—

(1) AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking ''a drug'' and inserting ''a food, drug'';

(B) in clause (i) by striking ''exported drug'' and inserting ''exported food, drug''; and

(C) in clause (ii) by striking ''the drug'' each place it appears and inserting ''the food, drug''.

(2) CLARIFICATION OF CERTIFICATION.—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

''(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.''.

(3) LIMITATIONS ON THE USE AND AMOUNT OF FEES.—Paragraph (4) of section 801(e) (21 U.S.C. 381(e)) is amended by adding at the end the following:

'' '(D) With regard to fees pursuant to subparagraph (B) in connection with written export certifications for food:

'' '(i) Such fees shall be collected and available solely for the costs of the Food and Drug Administration associated with issuing such certifications.

'' '(ii) Such fees may not be retained in an amount that exceeds such costs [for the respective fiscal year].'

SEC. 108. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.

(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and transmit to the relevant committees of Congress, and make publicly available on the Internet Web sites of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) IMPLEMENTATION PLAN.—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) RESEARCH.—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) REVISIONS.—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) CONSISTENCY WITH EXISTING PLANS.—The strategy described in paragraph (1) shall be consistent with—

(A) the National Incident Management System;

(B) the National Response Framework;

(C) the National Infrastructure Protection Plan;

(D) the National Preparedness Goals; and

(E) other relevant national strategies.

(b) COMPONENTS.—

(1) IN GENERAL.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) GOALS.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) PREPAREDNESS GOAL.—Enhance the preparedness of the agriculture and food system by—

(i) conducting vulnerability assessments of the agriculture and food system;

(ii) mitigating vulnerabilities of the system;

(iii) improving communication and training relating to the system;

(iv) developing and conducting exercises to test decontamination and disposal plans;

(v) developing modeling tools to improve event consequence assessment and decision support; and

(vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) DETECTION GOAL.—Improve agriculture and food system detection capabilities by—

(i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) EMERGENCY RESPONSE GOAL.—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) RECOVERY GOAL.—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture, food production, and international trade;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

(3) EVALUATION.—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall—

(A) develop metrics to measure progress for the evaluation process described in paragraph (1)(B); and

(B) report on the progress measured in subparagraph (A) as part of the National Agriculture and Food Defense strategy described in subsection (a)(1).

(c) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, may determine the manner and format in which the National Agriculture and Food Defense strategy established under this section is made publicly available on the Internet Web sites of the Department of Health and Human Services, the Department of Homeland Security, and the Department of Agriculture, as described in subsection (a)(1).

SEC. 109. FOOD AND AGRICULTURE COORDINATING COUNCILS.

The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help coordinate and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

SEC. 110. BUILDING DOMESTIC CAPACITY.

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary, in coordination with the Secretary of Agriculture and the Secretary of Homeland Security, shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and supply chain security of food and to prevent outbreaks of foodborne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for further regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture Coordinating Councils referred to in section 109, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to foodborne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States and local governments to build State and local food safety and food defense capabilities, including progress implementing strategies developed under sections 108 and 205.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(H) The impact of requirements under this Act (including amendments made by this Act) on certified organic farms and facilities (as defined in section 415 (21 U.S.C. 350d).

(I) Specific efforts taken pursuant to the agreements authorized under section 421(c) of the Federal Food, Drug, and Cosmetic Act (as added by section 201), together with, as necessary, a description of any additional authorities necessary to improve seafood safety.

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (H) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including commercially-available techniques that can be employed at ports of entry and by Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities and progress toward laboratory accreditation under section 422 of the Federal Food, Drug, and Cosmetic Act (as added by section 202).

(d) INFORMATION TECHNOLOGY.—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) AUTOMATED RISK ASSESSMENT.—The report developed under subsection (a)(1) shall include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) TRACEBACK AND SURVEILLANCE REPORT.—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in foodborne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public, industry, and State and local governments, as such communication and coordination relates to outbreak identification and traceback.

(g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.—The Secretary, the Secretary of Agriculture, and the Secretary of Homeland Security shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of foodborne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the subsequent 2-year period.

(h) EFFECTIVENESS OF PROGRAMS ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(1) IN GENERAL.—To determine whether existing Federal programs administered by the Department of Health and Human Services are effective in achieving the stated goals of such programs, the Secretary shall, beginning not later than 1 year after the date of enactment of this Act—

(A) conduct an annual evaluation of each program of such Department to determine the effectiveness of each such program in achieving legislated intent, purposes, and objectives; and

(B) submit to Congress a report concerning such evaluation.

(2) CONTENT.—The report described under paragraph (1)(B) shall—

(A) include conclusions concerning the reasons that such existing programs have proven successful or not successful and what factors contributed to such conclusions;

(B) include recommendations for consolidation and elimination to reduce duplication and inefficiencies in such programs at such Department as identified during the evaluation conduct under this subsection; and

(C) be made publicly available in a publication entitled ''Guide to the U.S. Department of Health and Human Services Programs''.

(i) UNIQUE IDENTIFICATION NUMBERS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study regarding the need for, and challenges associated with, development and implementation of a program that requires a unique identification number for each food facility registered with the Secretary and, as appropriate, each broker that imports food into the United States. Such study shall include an evaluation of the costs associated with development and implementation of such a system, and make recommendations about what new authorities, if any, would be necessary to develop and implement such a system.

(2) REPORT.—Not later than 15 months after the date of enactment of this Act, the Secretary shall submit to Congress a report that describes the findings of the study conducted under paragraph (1) and that includes any recommendations determined appropriate by the Secretary.

SEC. 111. SANITARY TRANSPORTATION OF FOOD.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

(b) FOOD TRANSPORTATION STUDY.—The Secretary, acting through the Commissioner of Food and Drugs, shall conduct a study of the transportation of food for consumption in the United States, including transportation by air, that includes an examination of the unique needs of rural and frontier areas with regard to the delivery of safe food.

SEC. 112. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.

(a) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term ''early childhood education program'' means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA DEFINITIONS.—The terms ''local educational agency'', ''secondary school'', ''elementary school'', and ''parent'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SCHOOL.—The term ''school'' includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) APPLICABILITY OF FERPA.—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of section 444 of the General Education Provisions Act (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974'') (20 U.S.C. 1232g).

(2) CONTENTS.—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following and may be updated as the Secretary determines necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child's physician or nurse—

(I) supporting a diagnosis of food allergy, and any risk of anaphylaxis, if applicable;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child's readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented

risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as non-academic outings and field trips, before- and after-school programs or before- and after-early child education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary determines necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) RELATION TO STATE LAW.—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.—

(1) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

(IV) any other activities that the Secretary determines appropriate;

(iii) an itemization of how grant funds received under this subsection will be expended;

(iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

(v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) USE OF FUNDS.—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) DURATION OF AWARDS.—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A grant awarded under this subsection may not be made in an amount that is more than $50,000 annually.

(7) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) MATCHING FUNDS.—

(A) IN GENERAL.—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $30,000,000 for fiscal year 2011 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

SEC. 113. NEW DIETARY INGREDIENTS.

(a) IN GENERAL.—Section 413 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350b) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) NOTIFICATION.—

''(1) IN GENERAL.—If the Secretary determines that the information in a new dietary ingredient notification submitted under this section for an article purported to be a new dietary ingredient is inadequate to establish that a dietary supplement containing such article will reasonably be expected to be safe because the article may be, or may contain, an anabolic steroid or an analogue of an anabolic steroid, the Secretary shall notify the Drug Enforcement Administration of such determination. Such notification by the Secretary shall include, at a minimum, the name of the dietary supplement or article, the name of the person or persons who marketed the product or made the submission of information regarding the article to the Secretary under this section, and any contact information for such person or persons that the Secretary has.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'anabolic steroid' has the meaning given such term in section 102(41) of the Controlled Substances Act; and

''(B) the term 'analogue of an anabolic steroid' means a substance whose chemical structure is substantially similar to the chemical structure of an anabolic steroid.''.

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish guidance that clarifies when a dietary supplement ingredient is a new dietary ingredient, when the manufacturer or distributor of a dietary ingredient or dietary supplement should provide the Secretary with information as described in section 413(a)(2) of the Federal Food, Drug, and Cosmetic Act, the evidence needed to

document the safety of new dietary ingredients, and appropriate methods for establishing the identify of a new dietary ingredient.

SEC. 114. REQUIREMENT FOR GUIDANCE RELATING TO POST HARVEST PROCESSING OF RAW OYSTERS.

(a) IN GENERAL.—Not later than 90 days prior to the issuance of any guidance, regulation, or suggested amendment by the Food and Drug Administration to the National Shellfish Sanitation Program's Model Ordinance, or the issuance of any guidance or regulation by the Food and Drug Administration relating to the Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration (parts 123 and 1240 of title 21, Code of Federal Regulations (or any successor regulations), where such guidance, regulation or suggested amendment relates to post harvest processing for raw oysters, the Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report which shall include—

(1) an assessment of how post harvest processing or other equivalent controls feasibly may be implemented in the fastest, safest, and most economical manner;

(2) the projected public health benefits of any proposed post harvest processing;

(3) the projected costs of compliance with such post harvest processing measures;

(4) the impact post harvest processing is expected to have on the sales, cost, and availability of raw oysters;

(5) criteria for ensuring post harvest processing standards will be applied equally to shellfish imported from all nations of origin;

(6) an evaluation of alternative measures to prevent, eliminate, or reduce to an acceptable level the occurrence of foodborne illness; and

(7) the extent to which the Food and Drug Administration has consulted with the States and other regulatory agencies, as appropriate, with regard to post harvest processing measures.

(b) LIMITATION.—Subsection (a) shall not apply to the guidance described in section 103(h).

(c) REVIEW AND EVALUATION.—Not later than 30 days after the Secretary issues a proposed regulation or guidance described in subsection (a), the Comptroller General of the United States shall—

(1) review and evaluate the report described in (a) and report to Congress on the findings of the estimates and analysis in the report;

(2) compare such proposed regulation or guidance to similar regulations or guidance with respect to other regulated foods, including a comparison of risks the Secretary may find associated with seafood and the instances of those risks in such other regulated foods; and

(3) evaluate the impact of post harvest processing on the competitiveness of the domestic oyster industry in the United States and in international markets.

(d) WAIVER.—The requirement of preparing a report under subsection (a) shall be waived if the Secretary issues a guidance that is adopted as a consensus agreement between Federal and State regulators and the oyster industry, acting through the Interstate Shellfish Sanitation Conference.

(e) PUBLIC ACCESS.—Any report prepared under this section shall be made available to the public.

SEC. 115. PORT SHOPPING.

Until the date on which the Secretary promulgates a final rule that implements the amendments made by section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (Public Law 107–188), the Secretary shall notify the Secretary of Homeland Security of all instances in which the Secretary refuses to admit a food into the United States under section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) so that the Secretary of Homeland Security, acting through the Commissioner of Customs and Border Protection, may prevent food refused admittance into the United States by a United States port of entry from being admitted by another United States port of entry, through the notification of other such United States ports of entry.

SEC. 116. ALCOHOL-RELATED FACILITIES.

(a) IN GENERAL.—Except as provided by sections 102, 206, 207, 302, 304, 402, 403, and 404 of this Act, and the amendments made by such sections, nothing in this Act, or the amendments made by this Act, shall be construed to apply to a facility that—

(1) under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) or chapter 51 of subtitle E of the Internal Revenue Code of 1986 (26 U.S.C. 5001 et seq.) is required to obtain a permit or to register with the Secretary of the Treasury as a condition of doing business in the United States; and

(2) under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) is required to register as a facility because such facility is engaged in manufacturing, processing, packing, or holding 1 or more alcoholic beverages, with respect to the activities of such facility that relate to the manufacturing, processing, packing, or holding of alcoholic beverages.

(b) LIMITED RECEIPT AND DISTRIBUTION OF NON-ALCOHOL FOOD.—Subsection (a) shall not apply to a facility engaged in the receipt and distribution of any non-alcohol food, except that such paragraph shall apply to a facility described in such paragraph that receives and distributes non-alcohol food, provided such food is received and distributed—

(1) in a prepackaged form that prevents any direct human contact with such food; and

(2) in amounts that constitute not more than 5 percent of the overall sales of such facility, as determined by the Secretary of the Treasury.

(c) RULE OF CONSTRUCTION.—Except as provided in subsections (a) and (b), this section shall not be construed to exempt any food, other than alcoholic beverages, as defined in section 214 of the Federal Alcohol Administration Act (27 U.S.C. 214), from the requirements of this Act (including the amendments made by this Act).

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

SEC. 201. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

(a) TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

"SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

"(a) IDENTIFICATION AND INSPECTION OF FACILITIES.—

"(1) IDENTIFICATION.—The Secretary shall identify high-risk facilities and shall allocate resources to inspect facilities according to the known safety risks of the facilities, which shall be based on the following factors:

"(A) The known safety risks of the food manufactured, processed, packed, or held at the facility.

"(B) The compliance history of a facility, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

"(C) The rigor and effectiveness of the facility's hazard analysis and risk-based preventive controls.

"(D) Whether the food manufactured, processed, packed, or held at the facility meets the criteria for priority under section 801(h)(1).

"(E) Whether the food or the facility that manufactured, processed, packed, or held such food has received a certification as described in section 801(q) or 806, as appropriate.

"(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

"(2) INSPECTIONS.—

"(A) IN GENERAL.—Beginning on the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall increase the frequency of inspection of all facilities.

"(B) DOMESTIC HIGH-RISK FACILITIES.—The Secretary shall increase the frequency of inspection of domestic facilities identified under paragraph (1) as high-risk facilities such that each such facility is inspected—

"(i) not less often than once in the 5-year period following the date of enactment of the FDA Food Safety Modernization Act; and

"(ii) not less often than once every 3 years thereafter.

"(C) DOMESTIC NON-HIGH-RISK FACILITIES.—The Secretary shall ensure that each domestic facility that is not identified under paragraph (1) as a high-risk facility is inspected—

"(i) not less often than once in the 7-year period following the date of enactment of the FDA Food Safety Modernization Act; and

"(ii) not less often than once every 5 years thereafter.

"(D) FOREIGN FACILITIES.—

"(i) YEAR 1.—In the 1-year period following the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall inspect not fewer than 600 foreign facilities.

"(ii) SUBSEQUENT YEARS.—In each of the 5 years following the 1-year period described in clause (i), the Secretary shall inspect not fewer than twice the number of foreign facilities inspected by the Secretary during the previous year.

"(E) RELIANCE ON FEDERAL, STATE, OR LOCAL INSPECTIONS.—In meeting the inspection requirements under this subsection for domestic facilities, the Secretary may rely on inspections conducted by other Federal, State, or local agencies under interagency agreement, contract, memoranda of understanding, or other obligation.

"(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect any article of food imported into the United States according to the known safety risks of the article of food, which shall be based on the following factors:

"(1) The known safety risks of the food imported.

"(2) The known safety risks of the countries or regions of origin and countries through which such article of food is transported.

"(3) The compliance history of the importer, including with regard to food recalls, outbreaks of foodborne illness, and violations of food safety standards.

"(4) The rigor and effectiveness of the activities conducted by the importer of such article of food to satisfy the requirements of the foreign supplier verification program under section 805.

''(5) Whether the food importer participates in the voluntary qualified importer program under section 806.

''(6) Whether the food meets the criteria for priority under section 801(h)(1).

''(7) Whether the food or the facility that manufactured, processed, packed, or held such food received a certification as described in section 801(q) or 806.

''(8) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

''(c) INTERAGENCY AGREEMENTS WITH RESPECT TO SEAFOOD.—

''(1) IN GENERAL.—The Secretary of Health and Human Services, the Secretary of Commerce, the Secretary of Homeland Security, the Chairman of the Federal Trade Commission, and the heads of other appropriate agencies may enter into such agreements as may be necessary or appropriate to improve seafood safety.

''(2) SCOPE OF AGREEMENTS.—The agreements under paragraph (1) may include—

''(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

''(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

''(C) standardization of data on seafood names, inspection records, and laboratory testing to improve interagency coordination;

''(D) coordination to detect and investigate violations under applicable Federal law;

''(E) a process, including the use or modification of existing processes, by which officers and employees of the National Oceanic and Atmospheric Administration may be duly designated by the Secretary to carry out seafood examinations and investigations under section 801 of this Act or section 203 of the Food Allergen Labeling and Consumer Protection Act of 2004;

''(F) the sharing of information concerning observed non-compliance with United States food requirements domestically and in foreign nations and new regulatory decisions and policies that may affect the safety of food imported into the United States;

''(G) conducting joint training on subjects that affect and strengthen seafood inspection effectiveness by Federal authorities; and

''(H) outreach on Federal efforts to enhance seafood safety and compliance with Federal food safety requirements.

''(d) COORDINATION.—The Secretary shall improve coordination and cooperation with the Secretary of Agriculture and the Secretary of Homeland Security to target food inspection resources.

''(e) FACILITY.—For purposes of this section, the term 'facility' means a domestic facility or a foreign facility that is required to register under section 415.''.

(b) ANNUAL REPORT.—Section 1003 (21 U.S.C. 393) is amended by adding at the end the following:

''(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report, including efforts to coordinate and cooperate with other Federal agencies with responsibilities for food inspections, regarding—

''(1) information about food facilities including—

''(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

''(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

''(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

''(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year;

''(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

''(F) the number of high-risk facilities identified pursuant to section 421 that were scheduled for inspection in the previous fiscal year and which the Secretary did not inspect in such year.

''(2) information about food imports including—

''(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

''(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

''(C) the average cost of physically inspecting or sampling a line of food subject to this Act that is imported or offered for import into the United States; and

''(3) information on the foreign offices of the Food and Drug Administration including—

''(A) the number of foreign offices established; and

''(B) the number of personnel permanently stationed in each foreign office.

''(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.''.

(c) ADVISORY COMMITTEE CONSULTATION.—In allocating inspection resources as described in section 421 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)), the Secretary may, as appropriate, consult with any relevant advisory committee within the Department of Health and Human Services.

SEC. 202. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 201, is amended by adding at the end the following:

''SEC. 422. LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

''(a) RECOGNITION OF LABORATORY ACCREDITATION.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(A) establish a program for the testing of food by accredited laboratories;

''(B) establish a publicly available registry of accreditation bodies recognized by the Secretary and laboratories accredited by a recognized accreditation body, including the name of, contact information for, and other information deemed appropriate by the Secretary about such bodies and laboratories; and

''(C) require, as a condition of recognition or accreditation, as appropriate, that recognized accreditation bodies and accredited laboratories report to the Secretary any changes that would affect the recognition of such accreditation body or the accreditation of such laboratory.

''(2) PROGRAM REQUIREMENTS.—The program established under paragraph (1)(A) shall provide for the recognition of laboratory accreditation bodies that meet criteria established by the Secretary for accreditation of laboratories, including independent private laboratories and laboratories run and operated by a Federal agency (including the Department of Commerce), State, or locality with a demonstrated capability to conduct 1 or more sampling and analytical testing methodologies for food.

''(3) INCREASING THE NUMBER OF QUALIFIED LABORATORIES.—The Secretary shall work with the laboratory accreditation bodies recognized under paragraph (1), as appropriate, to increase the number of qualified laboratories that are eligible to perform testing under subparagraph (b) beyond the number so qualified on the date of enactment of the FDA Food Safety Modernization Act.

''(4) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in coordination with the Secretary of Homeland Security, may determine the time, manner, and form in which the registry established under paragraph (1)(B) is made publicly available.

''(5) FOREIGN LABORATORIES.—Accreditation bodies recognized by the Secretary under paragraph (1) may accredit laboratories that operate outside the United States, so long as such laboratories meet the accreditation standards applicable to domestic laboratories accredited under this section.

''(6) MODEL LABORATORY STANDARDS.—The Secretary shall develop model standards that a laboratory shall meet to be accredited by a recognized accreditation body for a specified sampling or analytical testing methodology and included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall consult existing standards for guidance. The model standards shall include—

''(A) methods to ensure that—

''(i) appropriate sampling, analytical procedures (including rapid analytical procedures), and commercially available techniques are followed and reports of analyses are certified as true and accurate;

''(ii) internal quality systems are established and maintained;

''(iii) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is accredited; and

''(iv) individuals who conduct the sampling and analyses are qualified by training and experience to do so; and

''(B) any other criteria determined appropriate by the Secretary.

''(7) REVIEW OF RECOGNITION.—To ensure compliance with the requirements of this section, the Secretary—

''(A) shall periodically, and in no case less than once every 5 years, reevaluate accreditation bodies recognized under paragraph (1) and may accompany auditors from an accreditation body to assess whether the accreditation body meets the criteria for recognition; and

''(B) shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section, specifying, as appropriate, any terms and conditions necessary for laboratories accredited by such body to continue to perform testing as described in this section.

''(b) TESTING PROCEDURES.—

''(1) IN GENERAL.—Not later than 30 months after the date of enactment of the FDA Food Safety Modernization Act, food testing shall be conducted by Federal laboratories or non-Federal laboratories that have been accredited for the appropriate sampling or analytical testing methodology or methodologies by a recognized accreditation body on the registry established by the Secretary under subsection (a)(1)(B) whenever such testing is conducted—

''(A) by or on behalf of an owner or consignee—

''(i) in response to a specific testing requirement under this Act or implementing regulations, when applied to address an identified or suspected food safety problem; and

''(ii) as required by the Secretary, as the Secretary deems appropriate, to address an identified or suspected food safety problem; or

''(B) on behalf of an owner or consignee—

''(i) in support of admission of an article of food under section 801(a); and

''(ii) under an Import Alert that requires successful consecutive tests.

''(2) RESULTS OF TESTING.—The results of any such testing shall be sent directly to the Food and Drug Administration, except the Secretary may by regulation exempt test results from such submission requirement if the Secretary determines that such results do not contribute to the protection of public health. Test results required to be submitted may be submitted to the Food and Drug Administration through electronic means.

''(3) EXCEPTION.—The Secretary may waive requirements under this subsection if—

''(A) a new methodology or methodologies have been developed and validated but a laboratory has not yet been accredited to perform such methodology or methodologies; and

''(B) the use of such methodology or methodologies are necessary to prevent, control, or mitigate a food emergency or foodborne illness outbreak.

''(c) REVIEW BY SECRETARY.—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by a recognized accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing results for the purpose of determining the need for a national recall or other compliance and enforcement activities.

''(d) NO LIMIT ON SECRETARIAL AUTHORITY.—Nothing in this section shall be construed to limit the ability of the Secretary to review and act upon information from food testing, including determining the sufficiency of such information and testing.''.

(b) FOOD EMERGENCY RESPONSE NETWORK.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State, local, and tribal food laboratories, including the adoption of novel surveillance and identification technologies and the sharing of data between Federal agencies and State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

SEC. 203. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.

(a) IN GENERAL.—The Secretary of Homeland Security, in coordination with the Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to reduce the time required to detect and respond to foodborne illness outbreaks and facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify means by which laboratory network members could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) REPORTING REQUIREMENT.—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

SEC. 204. ENHANCING TRACKING AND TRACING OF FOOD AND RECORDKEEPING.

(a) PILOT PROJECTS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the ''Secretary''), taking into account recommendations from the Secretary of Agriculture and representatives of State departments of health and agriculture, shall establish pilot projects in coordination with the food industry to explore and evaluate methods to rapidly and effectively identify recipients of food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) or misbranded under section 403(w) of such Act (21 U.S.C. 343(w)).

(2) CONTENT.—The Secretary shall conduct 1 or more pilot projects under paragraph (1) in coordination with the processed food sector and 1 or more such pilot projects in coordination with processors or distributors of fruits and vegetables that are raw agricultural commodities. The Secretary shall ensure that the pilot projects under paragraph (1) reflect the diversity of the food supply and include at least 3 different types of foods that have been the subject of significant outbreaks during the 5-year period preceding the date of enactment of this Act, and are selected in order to—

(A) develop and demonstrate methods for rapid and effective tracking and tracing of foods in a manner that is practicable for facilities of varying sizes, including small businesses;

(B) develop and demonstrate appropriate technologies, including technologies existing on the date of enactment of this Act, that enhance the tracking and tracing of food; and

(C) inform the promulgation of regulations under subsection (d).

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot projects under this subsection together with recommendations for improving the tracking and tracing of food.

(b) ADDITIONAL DATA GATHERING.—

(1) IN GENERAL.—The Secretary, in coordination with the Secretary of Agriculture and multiple representatives of State departments of health and agriculture, shall assess—

(A) the costs and benefits associated with the adoption and use of several product tracing technologies, including technologies used in the pilot projects under subsection (a);

(B) the feasibility of such technologies for different sectors of the food industry, including small businesses; and

(C) whether such technologies are compatible with the requirements of this subsection.

(2) REQUIREMENTS.—To the extent practicable, in carrying out paragraph (1), the Secretary shall—

(A) evaluate domestic and international product tracing practices in commercial use;

(B) consider international efforts, including an assessment of whether product tracing requirements developed under this section are compatible with global tracing systems, as appropriate; and

(C) consult with a diverse and broad range of experts and stakeholders, including representatives of the food industry, agricultural producers, and nongovernmental organizations that represent the interests of consumers.

(c) PRODUCT TRACING SYSTEM.—The Secretary, in consultation with the Secretary of Agriculture, shall, as appropriate, establish within the Food and Drug Administration a product tracing system to receive information that improves the capacity of the Secretary to effectively and rapidly track and trace food that is in the United States or offered for import into the United States. Prior to the establishment of such product tracing system, the Secretary shall examine the results of applicable pilot projects and shall ensure that the activities of such system are adequately supported by the results of such pilot projects.

(d) ADDITIONAL RECORDKEEPING REQUIREMENTS FOR HIGH RISK FOODS.—

(1) IN GENERAL.—In order to rapidly and effectively identify recipients of a food to prevent or mitigate a foodborne illness outbreak and to address credible threats of serious adverse health consequences or death to humans or animals as a result of such food being adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act or misbranded under section 403(w) of such Act, not later than 2 years after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish recordkeeping requirements, in addition to the requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations), for facilities that manufacture, process, pack, or hold foods that the Secretary designates under paragraph (2) as high-risk foods. The Secretary shall set an appropriate effective date of such additional requirements for foods designated as high risk that takes into account the length of time necessary to comply with such requirements. Such requirements shall—

(A) relate only to information that is reasonably available and appropriate;

(B) be science-based;

(C) not prescribe specific technologies for the maintenance of records;

(D) ensure that the public health benefits of imposing additional recordkeeping requirements outweigh the cost of compliance with such requirements;

(E) be scale-appropriate and practicable for facilities of varying sizes and capabilities with respect to costs and recordkeeping burdens, and not require the creation and maintenance of duplicate records where the information is contained in other company records kept in the normal course of business;

(F) minimize the number of different recordkeeping requirements for facilities that handle more than 1 type of food;

(G) to the extent practicable, not require a facility to change business systems to comply with such requirements;

(H) allow any person subject to this subsection to maintain records required under this subsection at a central or reasonably accessible location provided that such records can be made available to the Secretary not later than 24 hours after the Secretary requests such records; and

(I) include a process by which the Secretary may issue a waiver of the requirements under this subsection if the Secretary determines that such requirements would result in an economic hardship for an individual facility or a type of facility;

(J) be commensurate with the known safety risks of the designated food;

(K) take into account international trade obligations;

(L) not require—

(i) a full pedigree, or a record of the complete previous distribution history of the food from the point of origin of such food;

(ii) records of recipients of a food beyond the immediate subsequent recipient of such food; or

(iii) product tracking to the case level by persons subject to such requirements; and

(M) include a process by which the Secretary may remove a high-risk food designation developed under paragraph (2) for a food or type of food.

(2) DESIGNATION OF HIGH-RISK FOODS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and thereafter as the Secretary determines necessary, the Secretary shall designate high-risk foods for which the additional recordkeeping requirements described in paragraph (1) are appropriate and necessary to protect the public health. Each such designation shall be based on—

(i) the known safety risks of a particular food, including the history and severity of foodborne illness outbreaks attributed to such food, taking into consideration foodborne illness data collected by the Centers for Disease Control and Prevention;

(ii) the likelihood that a particular food has a high potential risk for microbiological or chemical contamination or would support the growth of pathogenic microorganisms due to the nature of the food or the processes used to produce such food;

(iii) the point in the manufacturing process of the food where contamination is most likely to occur;

(iv) the likelihood of contamination and steps taken during the manufacturing process to reduce the possibility of contamination;

(v) the likelihood that consuming a particular food will result in a foodborne illness due to contamination of the food; and

(vi) the likely or known severity, including health and economic impacts, of a foodborne illness attributed to a particular food.

(B) LIST OF HIGH-RISK FOODS.—At the time the Secretary promulgates the final rules under paragraph (1), the Secretary shall publish the list of the foods designated under subparagraph (A) as high-risk foods on the Internet website of the Food and Drug Administration. The Secretary may update the list to designate new high-risk foods and to remove foods that are no longer deemed to be high-risk foods, provided that each such update to the list is consistent with the requirements of this subsection and notice of such update is published in the Federal Register.

(3) PROTECTION OF SENSITIVE INFORMATION.—In promulgating regulations under this subsection, the Secretary shall take appropriate measures to ensure that there are effective procedures to prevent the unauthorized disclosure of any trade secret or confidential information that is obtained by the Secretary pursuant to this section, including periodic risk assessment and planning to prevent unauthorized release and controls to—

(A) prevent unauthorized reproduction of trade secret or confidential information;

(B) prevent unauthorized access to trade secret or confidential information; and

(C) maintain records with respect to access by any person to trade secret or confidential information maintained by the agency.

(4) PUBLIC INPUT.—During the comment period in the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(5) RETENTION OF RECORDS.—Except as otherwise provided in this subsection, the Secretary may require that a facility retain records under this subsection for not more than 2 years, taking into consideration the risk of spoilage, loss of value, or loss of palatability of the applicable food when determining the appropriate timeframes.

(6) LIMITATIONS.—

(A) FARM TO SCHOOL PROGRAMS.—In establishing requirements under this subsection, the Secretary shall, in consultation with the Secretary of Agriculture, consider the impact of requirements on farm to school or farm to institution programs of the Department of Agriculture and other farm to school and farm to institution programs outside such agency, and shall modify the requirements under this subsection, as appropriate, with respect to such programs so that the requirements do not place undue burdens on farm to school or farm to institution programs.

(B) IDENTITY-PRESERVED LABELS WITH RESPECT TO FARM SALES OF FOOD THAT IS PRODUCED AND PACKAGED ON A FARM.—The requirements under this subsection shall not apply to a food that is produced and packaged on a farm if—

(i) the packaging of the food maintains the integrity of the product and prevents subsequent contamination or alteration of the product; and

(ii) the labeling of the food includes the name, complete address (street address, town, State, country, and zip or other postal code), and business phone number of the farm, unless the Secretary waives the requirement to include a business phone number of the farm, as appropriate, in order to accommodate a religious belief of the individual in charge of such farm.

(C) FISHING VESSELS.—The requirements under this subsection with respect to a food that is produced through the use of a fishing vessel (as defined in section 3(18) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(18))) shall be limited to the requirements under subparagraph (F) until such time as the food is sold by the owner, operator, or agent in charge of such fishing vessel.

(D) COMMINGLED RAW AGRICULTURAL COMMODITIES.—

(i) LIMITATION ON EXTENT OF TRACING.—Recordkeeping requirements under this subsection with regard to any commingled raw agricultural commodity shall be limited to the requirements under subparagraph (F).

(ii) DEFINITIONS.—For the purposes of this subparagraph—

(I) the term ''commingled raw agricultural commodity'' means any commodity that is combined or mixed after harvesting, but before processing;

(II) the term ''commingled raw agricultural commodity'' shall not include types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that standards promulgated under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by section 105) would minimize the risk of serious adverse health consequences or death; and

(III) the term ''processing'' means operations that alter the general state of the commodity, such as canning, cooking, freezing, dehydration, milling, grinding, pasteurization, or homogenization.

(E) EXEMPTION OF OTHER FOODS.—The Secretary may, by notice in the Federal Register, modify the requirements under this subsection with respect to, or exempt a food or a type of facility from, the requirements of this subsection (other than the requirements under subparagraph (F), if applicable) if the Secretary determines that product tracing requirements for such food (such as bulk or commingled ingredients that are intended to be processed to destroy pathogens) or type of facility is not necessary to protect the public health.

(F) RECORDKEEPING REGARDING PREVIOUS SOURCES AND SUBSEQUENT RECIPIENTS.—In the case of a person or food to which a limitation or exemption under subparagraph (C), (D), or (E) applies, if such person, or a person who manufactures, processes, packs, or holds such food, is required to register with the Secretary under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d) with respect to the manufacturing, processing, packing, or holding of the applicable food, the Secretary shall require such person to maintain records that identify the immediate previous source of such food and the immediate subsequent recipient of such food.

(G) GROCERY STORES.—With respect to a sale of a food described in subparagraph (H) to a grocery store, the Secretary shall not require such grocery store to maintain records under this subsection other than records documenting the farm that was the source of such food. The Secretary shall not require that such records be kept for more than 180 days.

(H) FARM SALES TO CONSUMERS.—The Secretary shall not require a farm to maintain any distribution records under this subsection with respect to a sale of a food described in subparagraph (I) (including a sale of a food that is produced and packaged on such farm), if such sale is made by the farm directly to a consumer.

(I) SALE OF A FOOD.—A sale of a food described in this subparagraph is a sale of a food in which—

(i) the food is produced on a farm; and

(ii) the sale is made by the owner, operator, or agent in charge of such farm directly to a consumer or grocery store.

(7) NO IMPACT ON NON-HIGH-RISK FOODS.—The recordkeeping requirements established under paragraph (1) shall have no effect on foods that are not designated by the Secretary under paragraph (2) as high-risk foods. Foods described in the preceding sentence shall be subject solely to the recordkeeping requirements under section 414 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350c) and subpart J of part 1 of title 21, Code of Federal Regulations (or any successor regulations).

(e) EVALUATION AND RECOMMENDATIONS.—

(1) REPORT.—Not later than 1 year after the effective date of the final rule promulgated under subsection (d)(1), the Comptroller General of the United States shall submit to Congress a report, taking into consideration the costs of compliance and other regulatory burdens on small businesses and Federal, State, and local food safety practices and requirements, that evaluates the public health benefits and risks, if any, of limiting—

(A) the product tracing requirements under subsection (d) to foods identified under paragraph (2) of such subsection, including whether such requirements provide adequate assurance of traceability in the event of intentional adulteration, including by acts of terrorism; and

(B) the participation of restaurants in the recordkeeping requirements.

(2) DETERMINATION AND RECOMMENDATIONS.—In conducting the evaluation and report under paragraph (1), if the Comptroller General of the United States determines that the limitations described in such paragraph do not adequately protect the public health, the Comptroller General shall submit to Congress recommendations, if appropriate, regarding recordkeeping requirements for restaurants and additional foods, in order to protect the public health.

(f) FARMS.—

(1) REQUEST FOR INFORMATION.—Notwithstanding subsection (d), during an active investigation of a foodborne illness outbreak, or if the Secretary determines it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak, the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, may request that the owner, operator, or agent of a farm identify potential immediate recipients, other than consumers, of an article of the food that is the subject of such investigation if the Secretary reasonably believes such article of food—

(A) is adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act;

(B) presents a threat of serious adverse health consequences or death to humans or animals; and

(C) was adulterated as described in subparagraph (A) on a particular farm (as defined in section 1.227 of chapter 21, Code of Federal Regulations (or any successor regulation)).

(2) MANNER OF REQUEST.—In making a request under paragraph (1), the Secretary, in consultation and coordination with State and local agencies responsible for food safety, as appropriate, shall issue a written notice to the owner, operator, or agent of the farm to which the article of food has been traced. The individual providing such notice shall present to such owner, operator, or agent appropriate credentials and shall deliver such notice at reasonable times and within reasonable limits and in a reasonable manner.

(3) DELIVERY OF INFORMATION REQUESTED.—The owner, operator, or agent of a farm shall deliver the information requested under paragraph (1) in a prompt and reasonable manner. Such information may consist of records kept in the normal course of business, and may be in electronic or non-electronic format.

(4) LIMITATION.—A request made under paragraph (1) shall not include a request for information relating to the finances, pricing of commodities produced, personnel, research, sales (other than information relating to shipping), or other disclosures that may reveal trade secrets or confidential information from the farm to which the article of food has been traced, other than information necessary to identify potential immediate recipients of such food. Section 301(j) of the Federal Food, Drug, and Cosmetic Act and the Freedom of Information Act shall apply with respect to any confidential commercial information that is disclosed to the Food and Drug Administration in the course of responding to a request under paragraph (1).

(5) RECORDS.—Except with respect to identifying potential immediate recipients in response to a request under this subsection, nothing in this subsection shall require the establishment or maintenance by farms of new records.

(g) NO LIMITATION ON COMMINGLING OF FOOD.—Nothing in this section shall be construed to authorize the Secretary to impose any limitation on the commingling of food.

(h) SMALL ENTITY COMPLIANCE GUIDE.—Not later than 180 days after promulgation of a final rule under subsection (d), the Secretary shall issue a small entity compliance guide setting forth in plain language the requirements of the regulations under such subsection in order to assist small entities, including farms and small businesses, in complying with the recordkeeping requirements under such subsection.

(i) FLEXIBILITY FOR SMALL BUSINESSES.—Notwithstanding any other provision of law, the regulations promulgated under subsection (d) shall apply—

(1) to small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 1 year after the effective date of the final regulations promulgated under subsection (d); and

(2) to very small businesses (as defined by the Secretary in section 103, not later than 90 days after the date of enactment of this Act) beginning on the date that is 2 years after the effective date of the final regulations promulgated under subsection (d).

(j) ENFORCEMENT.—

(1) PROHIBITED ACTS.—Section 301(e) (21 U.S.C. 331(e)) is amended by inserting ''; or the violation of any recordkeeping requirement under section 204 of the FDA Food Safety Modernization Act (except when such violation is committed by a farm)'' before the period at the end.

(2) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting ''or (4) the recordkeeping requirements under section 204 of the FDA Food Safety Modernization Act (other than the requirements under subsection (f) of such section) have not been complied with regarding such article,'' in the third sentence before ''then such article shall be refused admission''.

SEC. 205. SURVEILLANCE.

(a) DEFINITION OF FOODBORNE ILLNESS OUTBREAK.—In this Act, the term ''foodborne illness outbreak'' means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a certain food.

(b) FOODBORNE ILLNESS SURVEILLANCE SYSTEMS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance foodborne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses by—

(A) coordinating Federal, State and local foodborne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of surveillance information on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, the Department of Homeland Security, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a foodborne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of identification practices, including fingerprinting strategies, for foodborne infectious agents, in order to identify new or rarely documented causes of foodborne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating foodborne illness surveillance systems and data with other biosurveillance and public health situational awareness capabilities at the Federal, State, and local levels, including by sharing foodborne illness surveillance data with the National Biosurveillance Integration Center; and

(J) other activities as determined appropriate by the Secretary.

(2) WORKING GROUP.—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food and food testing industries, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of foodborne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on foodborne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to foodborne illness aggregated, de-identified surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers at Federal, State, and local levels to improving foodborne illness surveillance and the utility of such surveillance for preventing foodborne illness;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group's recommendations, and achieve the purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(3) AUTHORIZATION OF APPROPRIATIONS.—To carry out the activities described in paragraph (1), there is authorized to be appropriated $24,000,000 for each fiscal years 2011 through 2015.

(c) IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.—

(1) IN GENERAL.—The Secretary shall develop and implement strategies to leverage

and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve foodborne illness outbreak response and containment.

(B) Accelerate foodborne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal, State, and local partnerships to coordinate food safety and defense resources and reduce the incidence of foodborne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 108.

(2) REVIEW.—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) FOOD SAFETY CAPACITY BUILDING GRANTS.—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b–20(b)) is amended—

(1) by striking ''2002'' and inserting ''2010''; and

(2) by striking ''2003 through 2006'' and inserting ''2011 through 2015''.

SEC. 206. MANDATORY RECALL AUTHORITY.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 202, is amended by adding at the end the following:

''SEC. 423. MANDATORY RECALL AUTHORITY.

''(a) VOLUNTARY PROCEDURES.—If the Secretary determines, based on information gathered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

''(b) PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.—

''(1) IN GENERAL.—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order require, as the Secretary deems necessary, such person to—

''(A) immediately cease distribution of such article; and

''(B) as applicable, immediately notify all persons—

''(i) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

''(ii) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

''(2) REQUIRED ADDITIONAL INFORMATION.—

''(A) IN GENERAL.—If an article of food covered by a recall order issued under paragraph (1)(B) has been distributed to a warehouse-based third party logistics provider without providing such provider sufficient information to know or reasonably determine the precise identity of the article of food covered by a recall order that is in its possession, the notice provided by the responsible party subject to the order issued under paragraph (1)(B) shall include such information as is necessary for the warehouse-based third party logistics provider to identify the food.

''(B) RULES OF CONSTRUCTION.—Nothing in this paragraph shall be construed—

''(i) to exempt a warehouse-based third party logistics provider from the requirements of this Act, including the requirements in this section and section 414; or

''(ii) to exempt a warehouse-based third party logistics provider from being the subject of a mandatory recall order.

''(3) DETERMINATION TO LIMIT AREAS AFFECTED.—If the Secretary requires a responsible party to cease distribution under paragraph (1)(A) of an article of food identified in subsection (a), the Secretary may limit the size of the geographic area and the markets affected by such cessation if such limitation would not compromise the public health.

''(c) HEARING ON ORDER.—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible, but not later than 2 days after the issuance of the order, on the actions required by the order and on why the article that is the subject of the order should not be recalled.

''(d) POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.—

''(1) AMENDMENT OF ORDER.—If, after providing opportunity for an informal hearing under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

''(A) amend the order to require recall of such article or other appropriate action;

''(B) specify a timetable in which the recall shall occur;

''(C) require periodic reports to the Secretary describing the progress of the recall; and

''(D) provide notice to consumers to whom such article was, or may have been, distributed.

''(2) VACATING OF ORDER.—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

''(e) RULE REGARDING ALCOHOLIC BEVERAGES.—The Secretary shall not initiate a mandatory recall or take any other action under this section with respect to any alcohol beverage until the Secretary has provided the Alcohol and Tobacco Tax and Trade Bureau with a reasonable opportunity to cease distribution and recall such article under the Alcohol and Tobacco Tax and Trade Bureau authority.

''(f) COOPERATION AND CONSULTATION.—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

''(g) PUBLIC NOTIFICATION.—In conducting a recall under this section, the Secretary shall—

''(1) ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification—

''(A) of the recall to consumers and retailers to whom such article was, or may have been, distributed; and

''(B) that includes, at a minimum—

''(i) the name of the article of food subject to the recall;

''(ii) a description of the risk associated with such article; and

''(iii) to the extent practicable, information for consumers about similar articles of food that are not affected by the recall;

''(2) consult the policies of the Department of Agriculture regarding providing to the public a list of retail consignees receiving products involved in a Class I recall and shall consider providing such a list to the public, as determined appropriate by the Secretary; and

''(3) if available, publish on the Internet Web site of the Food and Drug Administration an image of the article that is the subject of the press release described in (1).

''(h) NO DELEGATION.—The authority conferred by this section to order a recall or vacate a recall order shall not be delegated to any officer or employee other than the Commissioner.

''(i) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall, or to issue an order to cease distribution or to recall under any other provision of this Act or under the Public Health Service Act.

''(j) COORDINATED COMMUNICATION.—

''(1) IN GENERAL.—To assist in carrying out the requirements of this subsection, the Secretary shall establish an incident command operation or a similar operation within the Department of Health and Human Services that will operate not later than 24 hours after the initiation of a mandatory recall or the recall of an article of food for which the use of, or exposure to, such article will cause serious adverse health consequences or death to humans or animals.

''(2) REQUIREMENTS.—To reduce the potential for miscommunication during recalls or regarding investigations of a food borne illness outbreak associated with a food that is subject to a recall, each incident command operation or similar operation under paragraph (1) shall use regular staff and resources of the Department of Health and Human Services to—

''(A) ensure timely and coordinated communication within the Department, including enhanced communication and coordination between different agencies and organizations within the Department;

''(B) ensure timely and coordinated communication from the Department, including public statements, throughout the duration of the investigation and related foodborne illness outbreak;

''(C) identify a single point of contact within the Department for public inquiries regarding any actions by the Secretary related to a recall;

''(D) coordinate with Federal, State, local, and tribal authorities, as appropriate, that have responsibilities related to the recall of a food or a foodborne illness outbreak associated with a food that is subject to the recall, including notification of the Secretary of Agriculture and the Secretary of Education in the event such recalled food is a commodity intended for use in a child nutrition program (as identified in section 25(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769f(b)); and

''(E) conclude operations at such time as the Secretary determines appropriate.

''(3) MULTIPLE RECALLS.—The Secretary may establish multiple or concurrent incident command operations or similar operations in the event of multiple recalls or

foodborne illness outbreaks necessitating such action by the Department of Health and Human Services.''.

(b) SEARCH ENGINE.—Not later than 90 days after the date of enactment of this Act, the Secretary shall modify the Internet Web site of the Food and Drug Administration to include a search engine that—

(1) is consumer-friendly, as determined by the Secretary; and

(2) provides a means by which an individual may locate relevant information regarding each article of food subject to a recall under section 423 of the Federal Food, Drug, and Cosmetic Act and the status of such recall (such as whether a recall is ongoing or has been completed).

(c) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting ''or any person who does not comply with a recall order under section 423'' after ''section 402(a)(2)(B)''.

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

''(xx) The refusal or failure to follow an order under section 423.''.

(e) GAO REVIEW.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

(A) identifies State and local agencies with the authority to require the mandatory recall of food, and evaluates use of such authority with regard to frequency, effectiveness, and appropriateness, including consideration of any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant authority to have been an error;

(B) identifies Federal agencies, other than the Department of Health and Human Services, with mandatory recall authority and examines use of that authority with regard to frequency, effectiveness, and appropriateness, including any new or existing mechanisms available to compensate persons for general and specific recall-related costs when a recall is subsequently determined by the relevant agency to have been an error;

(C) considers models for farmer restitution implemented in other nations in cases of erroneous recalls; and

(D) makes recommendations to the Secretary regarding use of the authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by this section) to protect the public health while seeking to minimize unnecessary economic costs.

(2) EFFECT OF REVIEW.—If the Comptroller General of the United States finds, after the review conducted under paragraph (1), that the mechanisms described in such paragraph do not exist or are inadequate, then, not later than 90 days after the conclusion of such review, the Secretary of Agriculture shall conduct a study of the feasibility of implementing a farmer indemnification program to provide restitution to agricultural producers for losses sustained as a result of a mandatory recall of an agricultural commodity by a Federal or State regulatory agency that is subsequently determined to be in error. The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study, including any recommendations.

(f) ANNUAL REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the use of recall authority under section 423 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)) and any public health advisories issued by the Secretary that advise against the consumption of an article of food on the ground that the article of food is adulterated and poses an imminent danger to health.

(2) CONTENT.—The report under paragraph (1) shall include, with respect to the report year—

(A) the identity of each article of food that was the subject of a public health advisory described in paragraph (1), an opportunity to cease distribution and recall under subsection (a) of section 423 of the Federal Food, Drug, and Cosmetic Act, or a mandatory recall order under subsection (b) of such section;

(B) the number of responsible parties, as defined in section 417 of the Federal Food, Drug, and Cosmetic Act, formally given the opportunity to cease distribution of an article of food and recall such article, as described in section 423(a) of such Act;

(C) the number of responsible parties described in subparagraph (B) who did not cease distribution of or recall an article of food after given the opportunity to cease distribution or recall under section 423(a) of the Federal Food, Drug, and Cosmetic Act;

(D) the number of recall orders issued under section 423(b) of the Federal Food, Drug, and Cosmetic Act; and

(E) a description of any instances in which there was no testing that confirmed adulteration of an article of food that was the subject of a recall under section 423(b) of the Federal Food, Drug, and Cosmetic Act or a public health advisory described in paragraph (1).

SEC. 207. ADMINISTRATIVE DETENTION OF FOOD.

(a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking ''credible evidence or information indicating'' and inserting ''reason to believe''; and

(2) striking ''presents a threat of serious adverse health consequences or death to humans or animals'' and inserting ''is adulterated or misbranded''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 208. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator''), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

(b) DEVELOPMENT OF STANDARDS.—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) DEVELOPMENT OF MODEL PLANS.—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) EXERCISES.—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

(e) MODIFICATIONS.—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) PRIORITIZATION.—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

SEC. 209. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.

(a) IMPROVING TRAINING.—Chapter X (21 U.S.C. 391 et seq.) is amended by adding at the end the following:

''SEC. 1011. IMPROVING THE TRAINING OF STATE, LOCAL, TERRITORIAL, AND TRIBAL FOOD SAFETY OFFICIALS.

''(a) TRAINING.—The Secretary shall set standards and administer training and education programs for the employees of State, local, territorial, and tribal food safety officials relating to the regulatory responsibilities and policies established by this Act, including programs for—

''(1) scientific training;

''(2) training to improve the skill of officers and employees authorized to conduct inspections under sections 702 and 704;

''(3) training to achieve advanced product or process specialization in such inspections;

''(4) training that addresses best practices;

''(5) training in administrative process and procedure and integrity issues;

''(6) training in appropriate sampling and laboratory analysis methodology; and

''(7) training in building enforcement actions following inspections, examinations, testing, and investigations.

''(b) PARTNERSHIPS WITH STATE AND LOCAL OFFICIALS.—

''(1) IN GENERAL.—The Secretary, pursuant to a contract or memorandum of understanding between the Secretary and the head of a State, local, territorial, or tribal department or agency, is authorized and encouraged to conduct examinations, testing, and investigations for the purposes of determining compliance with the food safety provisions of this Act through the officers and

employees of such State, local, territorial, or tribal department or agency.

''(2) CONTENT.—A contract or memorandum described under paragraph (1) shall include provisions to ensure adequate training of such officers and employees to conduct such examinations, testing, and investigations. The contract or memorandum shall contain provisions regarding reimbursement. Such provisions may, at the sole discretion of the head of the other department or agency, require reimbursement, in whole or in part, from the Secretary for the examinations, testing, or investigations performed pursuant to this section by the officers or employees of the State, territorial, or tribal department or agency.

''(3) EFFECT.—Nothing in this subsection shall be construed to limit the authority of the Secretary under section 702.

''(c) EXTENSION SERVICE.—The Secretary shall ensure coordination with the extension activities of the National Institute of Food and Agriculture of the Department of Agriculture in advising producers and small processors transitioning into new practices required as a result of the enactment of the FDA Food Safety Modernization Act and assisting regulated industry with compliance with such Act.

''(d) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

''(1) IN GENERAL.—In order to improve food safety and reduce the incidence of foodborne illness, the Secretary shall, not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, enter into one or more memoranda of understanding, or enter into other cooperative agreements, with the Secretary of Agriculture to establish a competitive grant program within the National Institute for Food and Agriculture to provide food safety training, education, extension, outreach, and technical assistance to—

''(A) owners and operators of farms;

''(B) small food processors; and

''(C) small fruit and vegetable merchant wholesalers.

''(2) IMPLEMENTATION.—The competitive grant program established under paragraph (1) shall be carried out in accordance with section 405 of the Agricultural Research, Extension, and Education Reform Act of 1998.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years 2011 through 2015.''.

(b) NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.—Title IV of the Agricultural Research, Extension, and Education Reform Act of 1998 is amended by inserting after section 404 (7 U.S.C. 7624) the following:

''SEC. 405. NATIONAL FOOD SAFETY TRAINING, EDUCATION, EXTENSION, OUTREACH, AND TECHNICAL ASSISTANCE PROGRAM.

''(a) IN GENERAL.—The Secretary shall award grants under this section to carry out the competitive grant program established under section 1011(d) of the Federal Food, Drug, and Cosmetic Act, pursuant to any memoranda of understanding entered into under such section.

''(b) INTEGRATED APPROACH.—The grant program described under subsection (a) shall be carried out under this section in a manner that facilitates the integration of food safety standards and guidance with the variety of agricultural production systems, encompassing conventional, sustainable, organic, and conservation and environmental practices.

''(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to projects that target small and medium-sized farms, beginning farmers, socially disadvantaged farmers, small processors, or small fresh fruit and vegetable merchant wholesalers.

''(d) PROGRAM COORDINATION.—

''(1) IN GENERAL.—The Secretary shall coordinate implementation of the grant program under this section with the National Integrated Food Safety Initiative.

''(2) INTERACTION.—The Secretary shall—

''(A) in carrying out the grant program under this section, take into consideration applied research, education, and extension results obtained from the National Integrated Food Safety Initiative; and

''(B) in determining the applied research agenda for the National Integrated Food Safety Initiative, take into consideration the needs articulated by participants in projects funded by the program under this section.

''(e) GRANTS.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall make competitive grants to support training, education, extension, outreach, and technical assistance projects that will help improve public health by increasing the understanding and adoption of established food safety standards, guidance, and protocols.

''(2) ENCOURAGED FEATURES.—The Secretary shall encourage projects carried out using grant funds under this section to include co-management of food safety, conservation systems, and ecological health.

''(3) MAXIMUM TERM AND SIZE OF GRANT.—

''(A) IN GENERAL.—A grant under this section shall have a term that is not more than 3 years.

''(B) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to an entity under this section after such entity has received 3 years of grant funding under this section.

''(f) GRANT ELIGIBILITY.—

''(1) IN GENERAL.—To be eligible for a grant under this section, an entity shall be—

''(A) a State cooperative extension service;

''(B) a Federal, State, local, or tribal agency, a nonprofit community-based or non-governmental organization, or an organization representing owners and operators of farms, small food processors, or small fruit and vegetable merchant wholesalers that has a commitment to public health and expertise in administering programs that contribute to food safety;

''(C) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a foundation maintained by an institution of higher education;

''(D) a collaboration of 2 of more eligible entities described in this subsection; or

''(E) such other appropriate entity, as determined by the Secretary.

''(2) MULTISTATE PARTNERSHIPS.—Grants under this section may be made for projects involving more than 1 State.

''(g) REGIONAL BALANCE.—In making grants under this section, the Secretary shall, to the maximum extent practicable, ensure—

''(1) geographic diversity; and

''(2) diversity of types of agricultural production.

''(h) TECHNICAL ASSISTANCE.—The Secretary may use funds made available under this section to provide technical assistance to grant recipients to further the purposes of this section.

''(i) BEST PRACTICES AND MODEL PROGRAMS.—Based on evaluations of, and responses arising from, projects funded under this section, the Secretary may issue a set of recommended best practices and models for food safety training programs for agricultural producers, small food processors, and small fresh fruit and vegetable merchant wholesalers.

''(j) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.''.

SEC. 210. ENHANCING FOOD SAFETY.

(a) GRANTS TO ENHANCE FOOD SAFETY.—Section 1009 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399) is amended to read as follows:

''SEC. 1009. GRANTS TO ENHANCE FOOD SAFETY.

''(a) IN GENERAL.—The Secretary is authorized to make grants to eligible entities to—

''(1) undertake examinations, inspections, and investigations, and related food safety activities under section 702;

''(2) train to the standards of the Secretary for the examination, inspection, and investigation of food manufacturing, processing, packing, holding, distribution, and importation, including as such examination, inspection, and investigation relate to retail food establishments;

''(3) build the food safety capacity of the laboratories of such eligible entity, including the detection of zoonotic diseases;

''(4) build the infrastructure and capacity of the food safety programs of such eligible entity to meet the standards as outlined in the grant application; and

''(5) take appropriate action to protect the public health in response to—

''(A) a notification under section 1008, including planning and otherwise preparing to take such action; or

''(B) a recall of food under this Act.

''(b) ELIGIBLE ENTITIES; APPLICATION.—

''(1) IN GENERAL.—In this section, the term 'eligible entity' means an entity—

''(A) that is—

''(i) a State;

''(ii) a locality;

''(iii) a territory;

''(iv) an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act); or

''(v) a nonprofit food safety training entity that collaborates with 1 or more institutions of higher education; and

''(B) that submits an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

''(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

''(A) an assurance that the eligible entity has developed plans to engage in the types of activities described in subsection (a);

''(B) a description of the types of activities to be funded by the grant;

''(C) an itemization of how grant funds received under this section will be expended;

''(D) a description of how grant activities will be monitored; and

''(E) an agreement by the eligible entity to report information required by the Secretary to conduct evaluations under this section.

''(c) LIMITATIONS.—The funds provided under subsection (a) shall be available to an eligible entity that receives a grant under this section only to the extent such entity funds the food safety programs of such entity independently of any grant under this section in each year of the grant at a level equal to the level of such funding in the previous year, increased by the Consumer Price Index. Such non-Federal matching funds may be provided directly or through donations from public or private entities and may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

''(d) ADDITIONAL AUTHORITY.—The Secretary may—

''(1) award a grant under this section in each subsequent fiscal year without reapplication for a period of not more than 3

years, provided the requirements of subsection (c) are met for the previous fiscal year; and

''(2) award a grant under this section in a fiscal year for which the requirement of subsection (c) has not been met only if such requirement was not met because such funding was diverted for response to 1 or more natural disasters or in other extenuating circumstances that the Secretary may determine appropriate.

''(e) DURATION OF AWARDS.—The Secretary may award grants to an individual grant recipient under this section for periods of not more than 3 years. In the event the Secretary conducts a program evaluation, funding in the second year or third year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

''(f) PROGRESS AND EVALUATION.—

''(1) IN GENERAL.—The Secretary shall measure the status and success of each grant program authorized under the FDA Food Safety Modernization Act (and any amendment made by such Act), including the grant program under this section. A recipient of a grant described in the preceding sentence shall, at the end of each grant year, provide the Secretary with information on how grant funds were spent and the status of the efforts by such recipient to enhance food safety. To the extent practicable, the Secretary shall take the performance of such a grant recipient into account when determining whether to continue funding for such recipient.

''(2) NO DUPLICATION.—In carrying out paragraph (1), the Secretary shall not duplicate the efforts of the Secretary under other provisions of this Act or the FDA Food Safety Modernization Act that require measurement and review of the activities of grant recipients under either such Act.

''(g) SUPPLEMENT NOT SUPPLANT.—Grant funds received under this section shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 2011 through 2015.''.

(b) CENTERS OF EXCELLENCE.—Part P of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following:

''SEC. 399V–5. FOOD SAFETY INTEGRATED CENTERS OF EXCELLENCE.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the working group described in subsection (b)(2), shall designate 5 Integrated Food Safety Centers of Excellence (referred to in this section as the 'Centers of Excellence') to serve as resources for Federal, State, and local public health professionals to respond to foodborne illness outbreaks. The Centers of Excellence shall be headquartered at selected State health departments.

''(b) SELECTION OF CENTERS OF EXCELLENCE.—

''(1) ELIGIBLE ENTITIES.—To be eligible to be designated as a Center of Excellence under subsection (a), an entity shall—

''(A) be a State health department;

''(B) partner with 1 or more institutions of higher education that have demonstrated knowledge, expertise, and meaningful experience with regional or national food production, processing, and distribution, as well as leadership in the laboratory, epidemiological, and environmental detection and investigation of foodborne illness; and

''(C) provide to the Secretary such information, at such time, and in such manner, as the Secretary may require.

''(2) WORKING GROUP.—Not later than 180 days after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food industry, including food retailers and food manufacturers, consumer organizations, and academia to make recommendations to the Secretary regarding designations of the Centers of Excellence.

''(3) ADDITIONAL CENTERS OF EXCELLENCE.—The Secretary may designate eligible entities to be regional Food Safety Centers of Excellence, in addition to the 5 Centers designated under subsection (a).

''(c) ACTIVITIES.—Under the leadership of the Director of the Centers for Disease Control and Prevention, each Center of Excellence shall be based out of a selected State health department, which shall provide assistance to other regional, State, and local departments of health through activities that include—

''(1) providing resources, including timely information concerning symptoms and tests, for frontline health professionals interviewing individuals as part of routine surveillance and outbreak investigations;

''(2) providing analysis of the timeliness and effectiveness of foodborne disease surveillance and outbreak response activities;

''(3) providing training for epidemiological and environmental investigation of foodborne illness, including suggestions for streamlining and standardizing the investigation process;

''(4) establishing fellowships, stipends, and scholarships to train future epidemiological and food-safety leaders and to address critical workforce shortages;

''(5) training and coordinating State and local personnel;

''(6) strengthening capacity to participate in existing or new foodborne illness surveillance and environmental assessment information systems; and

''(7) conducting research and outreach activities focused on increasing prevention, communication, and education regarding food safety.

''(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall submit to Congress a report that—

''(1) describes the effectiveness of the Centers of Excellence; and

''(2) provides legislative recommendations or describes additional resources required by the Centers of Excellence.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

''(f) NO DUPLICATION OF EFFORT.—In carrying out activities of the Centers of Excellence or other programs under this section, the Secretary shall not duplicate other Federal foodborne illness response efforts.''.

SEC. 211. IMPROVING THE REPORTABLE FOOD REGISTRY.

(a) IN GENERAL.—Section 417 (21 U.S.C. 350f) is amended—

(1) by redesignating subsections (f) through (k) as subsections (i) through (n), respectively; and

(2) by inserting after subsection (e) the following:

''(f) CRITICAL INFORMATION.—Except with respect to fruits and vegetables that are raw agricultural commodities, not more than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary may require a responsible party to submit to the Secretary consumer-oriented information regarding a reportable food, which shall include—

''(1) a description of the article of food as provided in subsection (e)(3);

''(2) as provided in subsection (e)(7), affected product identification codes, such as UPC, SKU, or lot or batch numbers sufficient for the consumer to identify the article of food;

''(3) contact information for the responsible party as provided in subsection (e)(8); and

''(4) any other information the Secretary determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food.

''(g) GROCERY STORE NOTIFICATION.—

''(1) ACTION BY SECRETARY.—The Secretary shall—

''(A) prepare the critical information described under subsection (f) for a reportable food as a standardized one-page summary;

''(B) publish such one-page summary on the Internet website of the Food and Drug Administration in a format that can be easily printed by a grocery store for purposes of consumer notification.

''(2) ACTION BY GROCERY STORE.—A notification described under paragraph (1)(B) shall include the date and time such summary was posted on the Internet website of the Food and Drug Administration.

''(h) CONSUMER NOTIFICATION.—

''(1) IN GENERAL.—If a grocery store sold a reportable food that is the subject of the posting and such establishment is part of chain of establishments with 15 or more physical locations, then such establishment shall, not later than 24 hours after a one page summary described in subsection (g) is published, prominently display such summary or the information from such summary via at least one of the methods identified under paragraph (2) and maintain the display for 14 days.

''(2) LIST OF CONSPICUOUS LOCATIONS.—Not more than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop and publish a list of acceptable conspicuous locations and manners, from which grocery stores shall select at least one, for providing the notification required in paragraph (1). Such list shall include—

''(A) posting the notification at or near the register;

''(B) providing the location of the reportable food;

''(C) providing targeted recall information given to customers upon purchase of a food; and

''(D) other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of the enactment of the FDA Food Safety Modernization Act to provide notice of such recalls to consumers as considered appropriate by the Secretary.''.

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 206, is amended by adding at the end the following:

''(yy) The knowing and willful failure to comply with the notification requirement under section 417(h).''.

(c) CONFORMING AMENDMENT.—Section 301(e) (21 U.S.C. 331(e)) is amended by striking ''417(g)'' and inserting ''417(j)''.

TITLE III—IMPROVING THE SAFETY OF IMPORTED FOOD

SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

''SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.

''(a) IN GENERAL.—

''(1) VERIFICATION REQUIREMENT.—Except as provided under subsections (e) and (f), each importer shall perform risk-based foreign supplier verification activities for the purpose of verifying that the food imported by the importer or agent of an importer is—

''(A) produced in compliance with the requirements of section 418 or section 419, as appropriate; and

''(B) is not adulterated under section 402 or misbranded under section 403(w).

''(2) IMPORTER DEFINED.—For purposes of this section, the term 'importer' means, with respect to an article of food—

''(A) the United States owner or consignee of the article of food at the time of entry of such article into the United States; or

''(B) in the case when there is no United States owner or consignee as described in subparagraph (A), the United States agent or representative of a foreign owner or consignee of the article of food at the time of entry of such article into the United States.

''(b) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist importers in developing foreign supplier verification programs.

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a).

''(2) REQUIREMENTS.—The regulations promulgated under paragraph (1)—

''(A) shall require that the foreign supplier verification program of each importer be adequate to provide assurances that each foreign supplier to the importer produces the imported food in compliance with—

''(i) processes and procedures, including reasonably appropriate risk-based preventive controls, that provide the same level of public health protection as those required under section 418 or section 419 (taking into consideration variances granted under section 419), as appropriate; and

''(ii) section 402 and section 403(w).

''(B) shall include such other requirements as the Secretary deems necessary and appropriate to verify that food imported into the United States is as safe as food produced and sold within the United States.

''(3) CONSIDERATIONS.—In promulgating regulations under this subsection, the Secretary shall, as appropriate, take into account differences among importers and types of imported foods, including based on the level of risk posed by the imported food.

''(4) ACTIVITIES.—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

''(d) RECORD MAINTENANCE AND ACCESS.—Records of an importer related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

''(e) EXEMPTION OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—This section shall not apply to a facility if the owner, operator, or agent in charge of such facility is required to comply with, and is in compliance with, 1 of the following standards and regulations with respect to such facility:

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

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

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

The exemption under paragraph (3) shall apply only with respect to microbiological hazards that are regulated under the standards for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers under part 113 of chapter 21, Code of Federal Regulations (or any successor regulations).

''(f) ADDITIONAL EXEMPTIONS.—The Secretary, by notice published in the Federal Register, shall establish an exemption from the requirements of this section for articles of food imported in small quantities for research and evaluation purposes or for personal consumption, provided that such foods are not intended for retail sale and are not sold or distributed to the public.

''(g) PUBLICATION OF LIST OF PARTICIPANTS.—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.''.

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 211, is amended by adding at the end the following:

''(zz) The importation or offering for importation of a food if the importer (as defined in section 805) does not have in place a foreign supplier verification program in compliance with such section 805.''.

(c) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is amended by adding ''or the importer (as defined in section 805) is in violation of such section 805'' after ''or in violation of section 505''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

''SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

''(a) IN GENERAL.—Beginning not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(1) establish a program, in consultation with the Secretary of Homeland Security—

''(A) to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program; and

''(B) consistent with section 808, establish a process for the issuance of a facility certification to accompany food offered for importation by importers who have voluntarily agreed to participate in such program; and

''(2) issue a guidance document related to participation in, revocation of such participation in, reinstatement in, and compliance with, such program.

''(b) VOLUNTARY PARTICIPATION.—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program established by the Secretary under subsection (a).

''(c) NOTICE OF INTENT TO PARTICIPATE.—An importer that intends to participate in the program under this section in a fiscal year shall submit a notice and application to the Secretary of such intent at the time and in a manner established by the Secretary.

''(d) ELIGIBILITY.—Eligibility shall be limited to an importer offering food for importation from a facility that has a certification described in subsection (a). In reviewing the applications and making determinations on such applications, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

''(1) The known safety risks of the food to be imported.

''(2) The compliance history of foreign suppliers used by the importer, as appropriate.

''(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards for a designated food.

''(4) The compliance of the importer with the requirements of section 805.

''(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

''(6) The potential risk for intentional adulteration of the food.

''(7) Any other factor that the Secretary determines appropriate.

''(e) REVIEW AND REVOCATION.—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

''(f) FALSE STATEMENTS.—Any statement or representation made by an importer to the Secretary shall be subject to section 1001 of title 18, United States Code.

''(g) DEFINITION.—For purposes of this section, the term 'importer' means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.''.

SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.

(a) IN GENERAL.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: ''With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (q) that such food be accompanied by a certification or other assurance that the food meets applicable requirements of this Act, then such article shall be refused admission.''.

(b) ADDITION OF CERTIFICATION REQUIREMENT.—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

''(q) CERTIFICATIONS CONCERNING IMPORTED FOODS.—

''(1) IN GENERAL.—The Secretary may require, as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity described in paragraph (3) provide a certification, or such other assurances as the Secretary determines appropriate, that the article of food complies with applicable requirements of this Act. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of certified facilities that manufacture, process, pack, or hold such food, or in such other form as the Secretary may specify.

''(2) FACTORS TO BE CONSIDERED IN REQUIRING CERTIFICATION.—The Secretary shall base the determination that an article of food is required to have a certification described in paragraph (1) on the risk of the food, including—

''(A) known safety risks associated with the food;

''(B) known food safety risks associated with the country, territory, or region of origin of the food;

''(C) a finding by the Secretary, supported by scientific, risk-based evidence, that—

''(i) the food safety programs, systems, and standards in the country, territory, or region of origin of the food are inadequate to ensure that the article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act; and

''(ii) the certification would assist the Secretary in determining whether to refuse or admit the article of food under subsection (a); and

''(D) information submitted to the Secretary in accordance with the process established in paragraph (7).

''(3) CERTIFYING ENTITIES.—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

''(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by the Secretary; or

''(B) such other persons or entities accredited pursuant to section 808 to provide such certification or assurance.

''(4) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary may—

''(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

''(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is not valid or reliable.

''(5) ELECTRONIC SUBMISSION.—The Secretary shall provide for the electronic submission of certifications under this subsection.

''(6) FALSE STATEMENTS.—Any statement or representation made by an entity described in paragraph (2) to the Secretary shall be subject to section 1001 of title 18, United States Code.

''(7) ASSESSMENT OF FOOD SAFETY PROGRAMS, SYSTEMS, AND STANDARDS.—If the Secretary determines that the food safety programs, systems, and standards in a foreign region, country, or territory are inadequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act, the Secretary shall, to the extent practicable, identify such inadequacies and establish a process by which the foreign region, country, or territory may inform the Secretary of improvements made to such food safety program, system, or standard and demonstrate that those controls are adequate to ensure that an article of food is as safe as a similar article of food that is manufactured, processed, packed, or held in the United States in accordance with the requirements of this Act.''.

(c) CONFORMING TECHNICAL AMENDMENT.—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking ''with respect to an article included within the provision of the fourth sentence of subsection (a)'' and inserting ''with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761,''.

(d) NO LIMIT ON AUTHORITY.—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.

(a) IN GENERAL.—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting ''any country to which the article has been refused entry;'' after ''the country from which the article is shipped;''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart I of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 305. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD SAFETY.

(a) IN GENERAL.—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory food safety capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) CONSULTATION.—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, the Secretary of Homeland Security, the United States Trade Representative, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) PLAN.—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for secure electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations on whether and how to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and testing and detection techniques.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the regulation of dietary supplements under the Dietary Supplement Health and Education Act of 1994 (Public Law 103–417).

SEC. 306. INSPECTION OF FOREIGN FOOD FACILITIES.

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by inserting at the end the following:

''SEC. 807. INSPECTION OF FOREIGN FOOD FACILITIES.

''(a) INSPECTION.—The Secretary—

''(1) may enter into arrangements and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

''(2) shall direct resources to inspections of foreign facilities, suppliers, and food types, especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

''(b) EFFECT OF INABILITY TO INSPECT.—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign factory, warehouse, or other establishment of which the owner, operator, or agent in charge, or the government of the foreign country, refuses to permit entry of United States inspectors or other individuals duly designated by the Secretary, upon request, to inspect such factory, warehouse, or other establishment. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge does not permit an inspection of a factory, warehouse, or other establishment during the 24-hour period after such request is submitted, or after such other time period, as agreed upon by the Secretary and the foreign factory, warehouse, or other establishment.''.

(b) INSPECTION BY THE SECRETARY OF COMMERCE.—

(1) IN GENERAL.—The Secretary of Commerce, in coordination with the Secretary of Health and Human Services, may send 1 or more inspectors to a country or facility of an exporter from which seafood imported into the United States originates. The inspectors shall assess practices and processes used in connection with the farming, cultivation, harvesting, preparation for market, or transportation of such seafood and may provide technical assistance related to such activities.

(2) INSPECTION REPORT.—

(A) IN GENERAL.—The Secretary of Health and Human Services, in coordination with the Secretary of Commerce, shall—

(i) prepare an inspection report for each inspection conducted under paragraph (1);

(ii) provide the report to the country or exporter that is the subject of the report; and

(iii) provide a 30-day period during which the country or exporter may provide a rebuttal or other comments on the findings of the report to the Secretary of Health and Human Services.

(B) DISTRIBUTION AND USE OF REPORT.—The Secretary of Health and Human Services shall consider the inspection reports described in subparagraph (A) in distributing inspection resources under section 421 of the Federal Food, Drug, and Cosmetic Act, as added by section 201.

SEC. 307. ACCREDITATION OF THIRD-PARTY AUDITORS.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 306, is amended by adding at the end the following:

''SEC. 808. ACCREDITATION OF THIRD-PARTY AUDITORS.

''(a) DEFINITIONS.—In this section:

''(1) AUDIT AGENT.—The term 'audit agent' means an individual who is an employee or agent of an accredited third-party auditor and, although not individually accredited, is qualified to conduct food safety audits on behalf of an accredited third-party auditor.

''(2) ACCREDITATION BODY.—The term 'accreditation body' means an authority that performs accreditation of third-party auditors.

''(3) THIRD-PARTY AUDITOR.—The term 'third-party auditor' means a foreign government, agency of a foreign government, foreign cooperative, or any other third party, as the Secretary determines appropriate in accordance with the model standards described in subsection (b)(2), that is eligible to be considered for accreditation to conduct food safety audits to certify that eligible entities meet the applicable requirements of this section. A third-party auditor may be a single individual. A third-party auditor may employ or use audit agents to help conduct consultative and regulatory audits.

''(4) ACCREDITED THIRD-PARTY AUDITOR.—The term 'accredited third-party auditor' means a third-party auditor accredited by an accreditation body to conduct audits of eligible entities to certify that such eligible entities meet the applicable requirements of this

section. An accredited third-party auditor may be an individual who conducts food safety audits to certify that eligible entities meet the applicable requirements of this section.

''(5) CONSULTATIVE AUDIT.—The term 'consultative audit' means an audit of an eligible entity—

''(A) to determine whether such entity is in compliance with the provisions of this Act and with applicable industry standards and practices; and

''(B) the results of which are for internal purposes only.

''(6) ELIGIBLE ENTITY.—The term 'eligible entity' means a foreign entity, including a foreign facility registered under section 415, in the food import supply chain that chooses to be audited by an accredited third-party auditor or the audit agent of such accredited third-party auditor.

''(7) REGULATORY AUDIT.—The term 'regulatory audit' means an audit of an eligible entity—

''(A) to determine whether such entity is in compliance with the provisions of this Act; and

''(B) the results of which determine—

''(i) whether an article of food manufactured, processed, packed, or held by such entity is eligible to receive a food certification under section 801(q); or

''(ii) whether a facility is eligible to receive a facility certification under section 806(a) for purposes of participating in the program under section 806.

''(b) ACCREDITATION SYSTEM.—

''(1) ACCREDITATION BODIES.—

''(A) RECOGNITION OF ACCREDITATION BODIES.—

''(i) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish a system for the recognition of accreditation bodies that accredit third-party auditors to certify that eligible entities meet the applicable requirements of this section.

''(ii) DIRECT ACCREDITATION.—If, by the date that is 2 years after the date of establishment of the system described in clause (i), the Secretary has not identified and recognized an accreditation body to meet the requirements of this section, the Secretary may directly accredit third-party auditors.

''(B) NOTIFICATION.—Each accreditation body recognized by the Secretary shall submit to the Secretary a list of all accredited third-party auditors accredited by such body and the audit agents of such auditors.

''(C) REVOCATION OF RECOGNITION AS AN ACCREDITATION BODY.—The Secretary shall promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

''(D) REINSTATEMENT.—The Secretary shall establish procedures to reinstate recognition of an accreditation body if the Secretary determines, based on evidence presented by such accreditation body, that revocation was inappropriate or that the body meets the requirements for recognition under this section.

''(2) MODEL ACCREDITATION STANDARDS.—Not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall develop model standards, including requirements for regulatory audit reports, and each recognized accreditation body shall ensure that third-party auditors and audit agents of such auditors meet such standards in order to qualify such third-party auditors as accredited third-party auditors under this section. In developing the model standards, the Secretary shall look to standards in place on the date of the enactment of this section for guidance, to avoid unnecessary duplication of efforts and costs.

''(c) THIRD-PARTY AUDITORS.—

''(1) REQUIREMENTS FOR ACCREDITATION AS A THIRD-PARTY AUDITOR.—

''(A) FOREIGN GOVERNMENTS.—Prior to accrediting a foreign government or an agency of a foreign government as an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of food safety programs, systems, and standards of the government or agency of the government as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that the foreign government or agency of the foreign government is capable of adequately ensuring that eligible entities or foods certified by such government or agency meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import into the United States.

''(B) FOREIGN COOPERATIVES AND OTHER THIRD PARTIES.—Prior to accrediting a foreign cooperative that aggregates the products of growers or processors, or any other third party to be an accredited third-party auditor, the accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) shall perform such reviews and audits of the training and qualifications of audit agents used by that cooperative or party and conduct such reviews of internal systems and such other investigation of the cooperative or party as the Secretary deems necessary, including requirements under the model standards developed under subsection (b)(2), to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity or food meets the requirements of this Act.

''(2) REQUIREMENT TO ISSUE CERTIFICATION OF ELIGIBLE ENTITIES OR FOODS.—

''(A) IN GENERAL.—An accreditation body (or, in the case of direct accreditation under subsection (b)(1)(A)(ii), the Secretary) may not accredit a third-party auditor unless such third-party auditor agrees to issue a written and, as appropriate, electronic food certification, described in section 801(q), or facility certification under section 806(a), as appropriate, to accompany each food shipment for import into the United States from an eligible entity, subject to requirements set forth by the Secretary. Such written or electronic certification may be included with other documentation regarding such food shipment. The Secretary shall consider certifications under section 801(q) and participation in the voluntary qualified importer program described in section 806 when targeting inspection resources under section 421.

''(B) PURPOSE OF CERTIFICATION.—The Secretary shall use certification provided by accredited third-party auditors to—

''(i) determine, in conjunction with any other assurances the Secretary may require under section 801(q), whether a food satisfies the requirements of such section; and

''(ii) determine whether a facility is eligible to be a facility from which food may be offered for import under the voluntary qualified importer program under section 806.

''(C) REQUIREMENTS FOR ISSUING CERTIFICATION.—

''(i) IN GENERAL.—An accredited third-party auditor shall issue a food certification under section 801(q) or a facility certification described under subparagraph (B) only after conducting a regulatory audit and such other activities that may be necessary to establish compliance with the requirements of such sections.

''(ii) PROVISION OF CERTIFICATION.—Only an accredited third-party auditor or the Secretary may provide a facility certification under section 806(a). Only those parties described in 801(q)(3) or the Secretary may provide a food certification under 301(g).

''(3) AUDIT REPORT SUBMISSION REQUIREMENTS.—

''(A) REQUIREMENTS IN GENERAL.—As a condition of accreditation, not later than 45 days after conducting an audit, an accredited third-party auditor or audit agent of such auditor shall prepare, and, in the case of a regulatory audit, submit, the audit report for each audit conducted, in a form and manner designated by the Secretary, which shall include—

''(i) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

''(ii) the dates of the audit;

''(iii) the scope of the audit; and

''(iv) any other information required by the Secretary that relates to or may influence an assessment of compliance with this Act.

''(B) RECORDS.—Following any accreditation of a third-party auditor, the Secretary may, at any time, require the accredited third-party auditor to submit to the Secretary an onsite audit report and such other reports or documents required as part of the audit process, for any eligible entity certified by the third-party auditor or audit agent of such auditor. Such report may include documentation that the eligible entity is in compliance with any applicable registration requirements.

''(C) LIMITATION.—The requirement under subparagraph (B) shall not include any report or other documents resulting from a consultative audit by the accredited third-party auditor, except that the Secretary may access the results of a consultative audit in accordance with section 414.

''(4) REQUIREMENTS OF ACCREDITED THIRD-PARTY AUDITORS AND AUDIT AGENTS OF SUCH AUDITORS.—

''(A) RISKS TO PUBLIC HEALTH.—If, at any time during an audit, an accredited third-party auditor or audit agent of such auditor discovers a condition that could cause or contribute to a serious risk to the public health, such auditor shall immediately notify the Secretary of—

''(i) the identification of the eligible entity subject to the audit; and

''(ii) such condition.

''(B) TYPES OF AUDITS.—An accredited third-party auditor or audit agent of such auditor may perform consultative and regulatory audits of eligible entities.

''(C) LIMITATIONS.—

''(i) IN GENERAL.—An accredited third party auditor may not perform a regulatory audit of an eligible entity if such agent has performed a consultative audit or a regulatory audit of such eligible entity during the previous 13-month period.

''(ii) WAIVER.—The Secretary may waive the application of clause (i) if the Secretary determines that there is insufficient access to accredited third-party auditors in a country or region.

''(5) CONFLICTS OF INTEREST.—

''(A) THIRD-PARTY AUDITORS.—An accredited third-party auditor shall—

''(i) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such auditor;

''(ii) in carrying out audits of eligible entities under this section, have procedures to ensure against the use of any officer or employee of such auditor that has a financial conflict of interest regarding an eligible entity to be certified by such auditor; and

''(iii) annually make available to the Secretary disclosures of the extent to which

such auditor and the officers and employees of such auditor have maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

''(B) AUDIT AGENTS.—An audit agent shall—

''(i) not own or operate an eligible entity to be audited by such agent;

''(ii) in carrying out audits of eligible entities under this section, have procedures to ensure that such agent does not have a financial conflict of interest regarding an eligible entity to be audited by such agent; and

''(iii) annually make available to the Secretary disclosures of the extent to which such agent has maintained compliance with clauses (i) and (ii) relating to financial conflicts of interest.

''(C) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to implement this section and to ensure that there are protections against conflicts of interest between an accredited third-party auditor and the eligible entity to be certified by such auditor or audited by such audit agent. Such regulations shall include—

''(i) requiring that audits performed under this section be unannounced;

''(ii) a structure to decrease the potential for conflicts of interest, including timing and public disclosure, for fees paid by eligible entities to accredited third-party auditors; and

''(iii) appropriate limits on financial affiliations between an accredited third-party auditor or audit agents of such auditor and any person that owns or operates an eligible entity to be certified by such auditor, as described in subparagraphs (A) and (B).

''(6) WITHDRAWAL OF ACCREDITATION.—

''(A) IN GENERAL.—The Secretary shall withdraw accreditation from an accredited third-party auditor—

''(i) if food certified under section 801(q) or from a facility certified under paragraph (2)(B) by such third-party auditor is linked to an outbreak of foodborne illness that has a reasonable probability of causing serious adverse health consequences or death in humans or animals;

''(ii) following an evaluation and finding by the Secretary that the third-party auditor no longer meets the requirements for accreditation; or

''(iii) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.

''(B) ADDITIONAL BASIS FOR WITHDRAWAL OF ACCREDITATION.—The Secretary may withdraw accreditation from an accredited third-party auditor in the case that such third-party auditor is accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked, if the Secretary determines that there is good cause for the withdrawal.

''(C) EXCEPTION.—The Secretary may waive the application of subparagraph (A)(i) if the Secretary—

''(i) conducts an investigation of the material facts related to the outbreak of human or animal illness; and

''(ii) reviews the steps or actions taken by the third party auditor to justify the certification and determines that the accredited third-party auditor satisfied the requirements under section 801(q) of certifying the food, or the requirements under paragraph (2)(B) of certifying the entity.

''(7) REACCREDITATION.—The Secretary shall establish procedures to reinstate the accreditation of a third-party auditor for which accreditation has been withdrawn under paragraph (6)—

''(A) if the Secretary determines, based on evidence presented, that the third-party auditor satisfies the requirements of this section and adequate grounds for revocation no longer exist; and

''(B) in the case of a third-party auditor accredited by an accreditation body for which recognition as an accreditation body under subsection (b)(1)(C) is revoked—

''(i) if the third-party auditor becomes accredited not later than 1 year after revocation of accreditation under paragraph (6)(A), through direct accreditation under subsection (b)(1)(A)(ii) or by an accreditation body in good standing; or

''(ii) under such conditions as the Secretary may require for a third-party auditor under paragraph (6)(B).

''(8) NEUTRALIZING COSTS.—The Secretary shall establish by regulation a reimbursement (user fee) program, similar to the method described in section 203(h) of the Agriculture Marketing Act of 1946, by which the Secretary assesses fees and requires accredited third-party auditors and audit agents to reimburse the Food and Drug Administration for the work performed to establish and administer the accreditation system under this section. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism. Fees authorized under this paragraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriation Acts. Such fees are authorized to remain available until expended.

''(d) RECERTIFICATION OF ELIGIBLE ENTITIES.—An eligible entity shall apply for annual recertification by an accredited third-party auditor if such entity—

''(1) intends to participate in voluntary qualified importer program under section 806; or

''(2) is required to provide to the Secretary a certification under section 801(q) for any food from such entity.

''(e) FALSE STATEMENTS.—Any statement or representation made—

''(1) by an employee or agent of an eligible entity to an accredited third-party auditor or audit agent; or

''(2) by an accredited third-party auditor to the Secretary,

shall be subject to section 1001 of title 18, United States Code.

''(f) MONITORING.—To ensure compliance with the requirements of this section, the Secretary shall—

''(1) periodically, or at least once every 4 years, reevaluate the accreditation bodies described in subsection (b)(1);

''(2) periodically, or at least once every 4 years, evaluate the performance of each accredited third-party auditor, through the review of regulatory audit reports by such auditors, the compliance history as available of eligible entities certified by such auditors, and any other measures deemed necessary by the Secretary;

''(3) at any time, conduct an onsite audit of any eligible entity certified by an accredited third-party auditor, with or without the auditor present; and

''(4) take any other measures deemed necessary by the Secretary.

''(g) PUBLICLY AVAILABLE REGISTRY.—The Secretary shall establish a publicly available registry of accreditation bodies and of accredited third-party auditors, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies and auditors.

''(h) LIMITATIONS.—

''(1) NO EFFECT ON SECTION 704 INSPECTIONS.—The audits performed under this section shall not be considered inspections under section 704.

''(2) NO EFFECT ON INSPECTION AUTHORITY.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.''.

SEC. 308. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall establish offices of the Food and Drug Administration in foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

(b) CONSULTATION.—In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Homeland Security, and the United States Trade Representative.

(c) REPORT.—Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices, the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

SEC. 309. SMUGGLED FOOD.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Secretary shall, in coordination with the Secretary of Homeland Security, develop and implement a strategy to better identify smuggled food and prevent entry of such food into the United States.

(b) NOTIFICATION TO HOMELAND SECURITY.—Not later than 10 days after the Secretary identifies a smuggled food that the Secretary believes would cause serious adverse health consequences or death to humans or animals, the Secretary shall provide to the Secretary of Homeland Security a notification under section 417(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350f(k)) describing the smuggled food and, if available, the names of the individuals or entities that attempted to import such food into the United States.

(c) PUBLIC NOTIFICATION.—If the Secretary—

(1) identifies a smuggled food;

(2) reasonably believes exposure to the food would cause serious adverse health consequences or death to humans or animals; and

(3) reasonably believes that the food has entered domestic commerce and is likely to be consumed,

the Secretary shall promptly issue a press release describing that food and shall use other emergency communication or recall networks, as appropriate, to warn consumers and vendors about the potential threat.

(d) EFFECT OF SECTION.—Nothing in this section shall affect the authority of the Secretary to issue public notifications under other circumstances.

(e) DEFINITION.—In this subsection, the term ''smuggled food'' means any food that a person introduces into the United States through fraudulent means or with the intent to defraud or mislead.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FUNDING FOR FOOD SAFETY.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of

the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration such sums as may be necessary for fiscal years 2011 through 2015.

(b) INCREASED NUMBER OF FIELD STAFF.—

(1) IN GENERAL.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(A) 4,000 staff members in fiscal year 2011;

(B) 4,200 staff members in fiscal year 2012;

(C) 4,600 staff members in fiscal year 2013; and

(D) 5,000 staff members in fiscal year 2014.

(2) FIELD STAFF FOR FOOD DEFENSE.—The goal under paragraph (1) shall include an increase of 150 employees by fiscal year 2011 to—

(A) provide additional detection of and response to food defense threats; and

(B) detect, track, and remove smuggled food (as defined in section 309) from commerce.

SEC. 402. EMPLOYEE PROTECTIONS.

Chapter X of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.), as amended by section 209, is further amended by adding at the end the following:

"SEC. 1012. EMPLOYEE PROTECTIONS.

''(a) IN GENERAL.—No entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

''(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of any provision of this Act or any order, rule, regulation, standard, or ban under this Act, or any order, rule, regulation, standard, or ban under this Act;

''(2) testified or is about to testify in a proceeding concerning such violation;

''(3) assisted or participated or is about to assist or participate in such a proceeding; or

''(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this Act, or any order, rule, regulation, standard, or ban under this Act.

''(b) PROCESS.—

''(1) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor (referred to in this section as the 'Secretary') alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

''(2) INVESTIGATION.—

''(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

''(B) REASONABLE CAUSE FOUND; PRELIMINARY ORDER.—If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

''(C) DISMISSAL OF COMPLAINT.—

''(i) STANDARD FOR COMPLAINANT.—The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(ii) STANDARD FOR EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(iii) VIOLATION STANDARD.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

''(iv) RELIEF STANDARD.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

''(3) FINAL ORDER.—

''(A) IN GENERAL.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

''(B) CONTENT OF ORDER.—If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

''(i) to take affirmative action to abate the violation;

''(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

''(iii) to provide compensatory damages to the complainant.

''(C) PENALTY.—If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

''(D) BAD FAITH CLAIM.—If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $1,000, to be paid by the complainant.

''(4) ACTION IN COURT.—

''(A) IN GENERAL.—If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(C).

''(B) RELIEF.—The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

''(i) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

''(ii) the amount of back pay, with interest; and

''(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

''(5) REVIEW.—

''(A) IN GENERAL.—Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

''(B) NO JUDICIAL REVIEW.—An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

''(6) FAILURE TO COMPLY WITH ORDER.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or

in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

''(7) CIVIL ACTION TO REQUIRE COMPLIANCE.—

''(A) IN GENERAL.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

''(B) AWARD.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

''(c) EFFECT OF SECTION.—

''(1) OTHER LAWS.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

''(2) RIGHTS OF EMPLOYEES.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

''(d) ENFORCEMENT.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

''(e) LIMITATION.—Subsection (a) shall not apply with respect to an employee of an entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food who, acting without direction from such entity (or such entity's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, rule, regulation, standard, or ban under this Act.''.

SEC. 403. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes, regulations, or agreements regarding voluntary inspection of non-amenable species under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.);

(2) alter the jurisdiction between the Alcohol and Tobacco Tax and Trade Bureau and the Secretary of Health and Human Services, under applicable statutes and regulations;

(3) limit the authority of the Secretary of Health and Human Services under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act;

(4) alter or limit the authority of the Secretary of Agriculture under the laws administered by such Secretary, including—

(A) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(B) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(C) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(D) the United States Grain Standards Act (7 U.S.C. 71 et seq.);

(E) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(F) the United States Warehouse Act (7 U.S.C. 241 et seq.);

(G) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.); and

(H) the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with the amendments made by the Agricultural Marketing Agreement Act of 1937; or

(5) alter, impede, or affect the authority of the Secretary of Homeland Security under the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) or any other statute, including any authority related to securing the borders of the United States, managing ports of entry, or agricultural import and entry inspection activities.

SEC. 404. COMPLIANCE WITH INTERNATIONAL AGREEMENTS.

Nothing in this Act (or an amendment made by this Act) shall be construed in a manner inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

SEC. 405. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SA 4891. Mr. HARKIN (for Mr. REID) proposed an amendment to the bill H.R. 2751, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply, as follows:

Amend the title as to read:

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

CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 74, H.R. 2751.

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

The legislative clerk read as follows:

A bill (H.R. 2751) to accelerate motor fuel savings nationwide and provide incentives to registered owners of high polluting automobiles to replace such automobiles with new fuel efficient and less polluting automobiles.

Mr. REID. I ask unanimous consent that the text of S. 510, as passed the Senate and modified with the changes at the desk, be inserted in lieu thereof and agreed to; that the bill, as amended, be read a third time.

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

The amendment (No. 4890), in the nature of a substitute, as modified, was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. REID. Is there a question on passage of the bill?

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall the bill pass?

The bill, (H.R. 2751), as amended, was passed.

Mr. REID. I move to reconsider and table the vote.

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

Mr. REID. Mr. President, I ask unanimous consent that the title amendment, which is at the desk, be considered and agreed to, and the motion to reconsider be laid upon the table, and any statements related to the measure be printed in the RECORD.

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

The amendment (No. 4891) was agreed to, as follows:

Amend the title as to read:

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

MILITARY CONSTRUCTION AND VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House with respect to H.R. 3082.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 3082) entitled ''An Act making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, and for other purposes,'' with an amendment.

MOTION TO CONCUR WITH AMENDMENT NO. 4885

Mr. REID. I move to concur in the House amendment to the Senate amendment to H.R. 3082, with an amendment, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to concur in the House amendment to the Senate amendment to H.R. 3082 with an amendment No. 4885.

Mr. REID. I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. I also ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk and ask that it be reported.

The PRESIDING OFFICER. The cloture motion having been presented pursuant to 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, hereby move to bring to a close debate on the motion to concur in the House amendment to the Senate amendment to H.R. 3082, the Full Continuing Appropriations Act, with an amendment.

Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Richard J. Durbin, Mark L. Pryor, Robert Menendez, Amy Klobuchar, Patty Murray, Kay R. Hagan, Christopher J. Dodd, Daniel K. Inouye, Mark Begich, Al Franken, Robert P. Casey, Jr., Tom Carper.

AMENDMENT NO. 4886 TO AMENDMENT NO. 4885

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4886 to amendment No. 4885.

The amendment is as follows:

At the end, insert the following:

The provisions of this Act shall become effective within 5 days of enactment.

MOTION TO REFER WITH AMENDMENT NO. 4887

Mr. REID. Mr. President, I have a motion to refer the House message to the Senate Appropriations Committee, with instructions to report back forthwith with the following amendment, which I ask the clerk to state.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to refer the House message with respect to H.R. 3082 to the Appropriations Committee, with instructions to report back forthwith with an amendment numbered 4887, as follows:

At the end, insert the following:

The Senate Appropriations Committee is requested to study the impact on any delay in extending government funding for all federal agencies, and that the study should be concluded within 10 days of enactment.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4888

Mr. REID. Mr. President, I have an amendment to my instructions, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4888 to the instructions of the motion to refer H.R. 3082.

The amendment is as follows:

In the amendment, strike ''10'' and insert ''6''.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4889 TO AMENDMENT NO. 4888

Mr. REID. Mr. President, I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 4889 to Amendment No. 4888.

The amendment is as follows:

In the amendment, strike ''6'' and insert ''4''.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

EXECUTIVE SESSION

TREATY WITH RUSSIA ON MEASURES FOR FURTHER REDUCTION AND LIMITATION OF STRATEGIC OFFENSIVE ARMS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed now to executive session and resume consideration of the START treaty.

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

CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been filed under rule XXII, the clerk will report 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, hereby move to bring to a close debate on Treaties Calendar No. 7, Treaty Document No. 111–5, the START treaty.

Harry Reid, Joseph I. Lieberman, John D. Rockefeller, IV, Byron L. Dorgan, John F. Kerry, Sheldon Whitehouse, Mark L. Pryor, Jack Reed, Robert Menendez, Mark Begich, Benjamin L. Cardin, Kent Conrad, Bill Nelson, Amy Klobuchar, Patty Murray, Barbara A. Mikulski, Christopher J. Dodd, Richard G. Lugar.

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

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

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged of the following nominations: PN2352, Darrell James Bell, U.S. Marshal, Montana; PN2348, Edwin Sloane, U.S. Marshal, District of Columbia; that the Senate then proceed en bloc to the nominations; that the nominations be confirmed en bloc, and the motions to reconsider be laid upon the table; that any statements relating to the nominations be printed in the RECORD as if read; that the President be immediately notified of the Senate's action and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc, are as follows:

Darrell James Bell, of Montana, to be United States Marshal for the District of Montana for the term of four years.

Edwin Donovan Sloane, of Maryland, to be United States Marshal for the District of Columbia for the term of four years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

ORDER OF BUSINESS

Mr. REID. Mr. President, for the benefit of all Senators, we just sent to the House, again, the food safety legislation—extremely important legislation. I just got something on my desk today about a woman who is going to be—well, she was in the hospital a year and a half and is expected to be there for 2 more years as a result of eating some contaminated food. So it is so important.

I am deeply appreciative of the cooperation from everyone, including my friend, the Republican leader, to help us get this done. It is very important for our country. Perfect legislation? No. But it is a broad step in the right direction. We haven't done anything in this regard for more than 100 years for our country, with all the change there has been in the processing of food. It is so important. I spoke to the Speaker tonight, and this will now pass the House when they come back Monday night or Tuesday. So that is extremely important.

We had to file cloture on the continuing resolution to fund the government for the next couple of months. We hope to complete that on Tuesday. I hope that it won't be necessary to use any of the postcloture time. I rather doubt we will, but I certainly hope not.

We are going to proceed, once cloture is invoked, to the cloture on the START treaty. We have made—from my observation as sort of an outsider watching all the good work of Senators KERRY and LUGAR—some good progress on this, and I do hope this matter will pass. We will work on that as long as it takes. As I explained to a number of Democratic and Republican Senators today, we will work on it tomorrow. We will have a secret session tomorrow in the Old Senate Chamber at 2 p.m., and then we will come in tomorrow night and continue to work on it. We can work on it, of course, all day Tuesday and for however long it takes. It is extremely important.

As everyone knows, Senator WYDEN is sick. He is going to surgery at 10 o'clock in the morning because of a situation that has been in the press. He has prostate cancer. We wish him and

his wonderful wife and his twins the very best. He is very confident he is getting the best care in the world, and I am also certain he is going to be just fine.

ORDERS FOR MONDAY, DECEMBER 20, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Monday, December 20; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to executive session and resume consideration of the New START treaty; that at 1:30 p.m., the Senate recess until 2 p.m. and then meet in closed session in the Old Senate Chamber; that following the closed session, the Senate return to the Senate Chamber and reconvene in open session.

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

PROGRAM

Mr. REID. Mr. President, tomorrow the Senate, as I indicated, will resume consideration of the START treaty. Senators are encouraged to come forth to offer and debate their amendments. Rollcall votes are possible before and after the closed session.

As I said, Mr. President—and if I didn't, I want to make it clear again—we must complete the funding resolution on Tuesday because after midnight, the funding runs out for our country. So we will have those cloture votes Tuesday unless we can expedite them with unanimous consent prior to that time.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:12 p.m., adjourned until Monday, December 20, 2010, at 10 a.m.

DISCHARGED NOMINATIONS

The Senate Committee on the Judiciary was discharged from further consideration of the following nominations by unanimous consent and the nominations were confirmed:

EDWIN DONOVAN SLOANE, OF MARYLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.

DARRELL JAMES BELL, OF MONTANA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MONTANA FOR THE TERM OF FOUR YEARS.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Sunday, December 19, 2010:

THE JUDICIARY

RAYMOND JOSEPH LOHIER, JR., OF NEW YORK, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT.

CARLTON W. REEVES, OF MISSISSIPPI, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

EDWIN DONOVAN SLOANE, OF MARYLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF FOUR YEARS.

DARRELL JAMES BELL, OF MONTANA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MONTANA FOR THE TERM OF FOUR YEARS.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S10705–S10772

Measures Introduced: No measures were introduced.

Measures Reported:

S. 1619, to establish the Office of Sustainable Housing and Communities, to establish the Interagency Council on Sustainable Communities, to establish a comprehensive planning grant program, to establish a sustainability challenge grant program, with an amendment in the nature of a substitute. **Page S10737**

Measures Passed:

Consumer Assistance to Recycle and Save Act: Senate passed H.R. 2751, to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply, after agreeing to the following amendments proposed thereto: **Page S10770**

Reid (for Harkin) Amendment No. 4890, in the nature of a substitute. **Page S10770**

Reid (for Harkin) Amendment No. 4891, to amend the title. **Page S10770**

House Messages:

Full-year Continuing Appropriations Act: Senate began consideration of the amendment of the House to the amendment of the Senate to H.R. 3082, making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2010, taking action on the following amendments and motions proposed thereto: **Pages S10770–71**

Pending:

Reid motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid Amendment No. 4885 (to the House amendment to the Senate amendment), of a perfecting nature. **Page S10770**

Reid Amendment No. 4886 (to Amendment No. 4885), to change the enactment date. **Page S10771**

Reid motion to refer the message of the House on the bill to the Committee on Appropriations, with instructions, Reid Amendment No. 4887, to provide for a study. **Page S10771**

Reid Amendment No. 4888 (to (the instructions) Amendment No. 4887), of a perfecting nature. **Page S10771**

Reid Amendment No. 4889 (to Amendment No. 4888), of a perfecting nature. **Page S10771**

A motion was entered to close further debate on the motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Reid Amendment No. 4885 (to the House amendment to the Senate amendment), and, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, December 21, 2010. **Page S10771**

Treaty With Russia on Measures for Further Reduction and Limitation of Strategic Offensive Arms—Agreement: Senate continued consideration of Treaty Doc. 111–5, between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol, taking action on the following amendments proposed thereto: **Pages S10706–24, S10726–30, S10771**

Rejected:

By 32 yeas to 60 nays (Vote No. 283), Risch Amendment No. 4839, to amend the preamble to the Treaty to acknowledge the interrelationship between non-strategic and strategic offensive arms. **Pages S10706–24**

Pending:

Inhofe Amendment No. 4833, to increase the number of Type One and Type Two inspections allowed under the Treaty. **Pages S10717, S10726–30**

Thune Amendment No. 4841, to modify the deployed delivery vehicle limits of the Treaty. **Page S10726**

A motion was entered to close further debate on the treaty, and, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, December 21, 2010. **Page S10771**

A unanimous-consent agreement was reached providing for further consideration of the treaty at approximately 10 a.m., on Monday, December 20, 2010; that at 1:30 p.m., the Senate recess until 2

p.m., and then meet in closed session in the Old Senate Chamber; that following the closed session, the Senate return to the Senate chamber and reconvene in open session. **Page S10772**

Nominations Confirmed: Senate confirmed the following nominations:

By unanimous vote of 92 yeas (Vote No. EX. 284), Raymond Joseph Lohier, Jr., of New York, to be United States Circuit Judge for the Second Circuit. **Pages S10724–25, S10772**

Carlton W. Reeves, of Mississippi, to be United States District Judge for the Southern District of Mississippi.

Edwin Donovan Sloane, of Maryland, to be United States Marshal for the District of Columbia for the term of four years. (Prior to this action, Committee on the Judiciary was discharged from further consideration.)

Darrell James Bell, of Montana, to be United States Marshal for the District of Montana for the term of four years. (Prior to this action, Committee on the Judiciary was discharged from further consideration.) **Pages S10725, S10771, S10772**

Measures Placed on the Calendar: **Page S10737**

Additional Cosponsors: **Page S10737**

Additional Statements: **Page S10737**

Amendments Submitted: **Pages S10737–70**

Record Votes: Two record votes were taken today. (Total—284) **Page S10724, S10725**

Adjournment: Senate convened at 12 noon and adjourned at 7:12 p.m., until 10 a.m. on Monday, December 20, 2010. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S10772.)

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.

House of Representatives

Chamber Action

The House was not in session today. The House is scheduled to meet at 10 a.m. on Tuesday, December 21, 2010.

Committee Meetings

No Committee meetings were held.

Joint Meetings

No joint committee meetings were held.

COMMITTEE MEETINGS FOR MONDAY, DECEMBER 20, 2010

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No Committee Meetings are scheduled.

Next Meeting of the SENATE

10 a.m., Monday, December 20

Senate Chamber

Program for Monday: Senate will continue consideration of the New START Treaty, with rollcall votes expected to occur throughout the day.

(Senate will recess at 1:30 p.m. and reconvene in closed session at 2 p.m. in the Old Senate Chamber. Following the closed session, the Senate will reconvene in open session in the Senate chamber.)

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m. Tuesday, December 21

House Chamber

Program for Tuesday: To be announced.

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