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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

MONDAY, DECEMBER 20, 2010

The Senate met at 10 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

PRAYER

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

Let us pray.

Merciful God, look on our lawmakers with kindness and teach them to do Your will. Show them how to live for Your honor and to be instruments of Your peace. Rescue them from the traps that keep us from national prosperity for You are our shelter and strength. Keep them from fear, even if the Earth is shaken and mountains fall into the ocean depths. Stay with us, mighty God, ruling our hearts, our Nation, and our world.

We pray in Your sovereign 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.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

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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 MARK L. PRYOR 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 bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 20, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. PRYOR 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, following leader remarks, the Senate will proceed to executive session and resume consideration of the New START treaty. We have two amendments now pending to the treaty—the Thune amendment regarding delivery vehicles and the Inhofe amendment regarding inspections. We hope to vote in relation to the Thune amendment between 12 and 1 p.m. today and dispose of the Inhofe amendment later this afternoon.

At 1:30, the Senate will recess and reconvene at 2 p.m. in closed session in the Old Senate Chamber. Following the closed session, the Senate will reconvene in open session in the Senate Chamber. We are going to be out of session for that one-half hour period of time to allow the final sweeps to be completed.

As a reminder, last night cloture was filed on the continuing resolution and the START treaty. The cloture vote on the continuing resolution will occur at a time to be determined tomorrow morning. We need to act as quickly as possible; the current CR expires tomorrow at midnight. The filing deadline for first-degree amendments to the START treaty is 1 p.m. today. Senators will be notified if any votes are scheduled today.

Mr. President, I would also say that, to my friends on the other side of the aisle, we could advance these votes not necessarily on the START treaty, but we certainly could on the CR and get that out of the way later today. We have two issues we are going to have to vote on. One is the START treaty, we have to complete work on that, and we have to complete work on the 9/11 bill for the emergency workers who have been devastated with illnesses as a result of all the toxins they inhaled during the time they were working there. Some are really ill. So I hope we can get that done quickly.

I am working with the Republican leader on nominations. We have made a little progress on that. I hope to do better. I look forward to cooperation to finish this work. Last year, we were here at this time up until Christmas Eve. I hope we don't have to do that this year. It certainly wouldn't be to the liking of everyone here. We don't need to be. I hope everyone will cooperate and let us move forward.

RECOGNITION OF THE MINORITY LEADER

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

START TREATY

Mr. MCCONNELL. Mr. President, over the weekend, I indicated that I would be voting against the START treaty. This morning, I would like to explain my decision in a little more detail. And I will begin with the most obvious objection.

First and foremost, a decision of this magnitude should not be decided under the pressure of a deadline. The American people don't want us to squeeze our most important work into the final days of a session. They want us to take the time we need to make informed, responsible decisions. The Senate can do better than to have the consideration of a treaty interrupted by a series of controversial political items.

So leaving aside for a moment any substantive concerns, and we have many, this is reason enough to delay a vote. No Senator should be forced to make decisions like this so we can tick off another item on someone's political check list before the end of the year.

Yet looking back over the past 2 years, it becomes apparent why the administration would attempt to rush this treaty. And it is in this context that we discover another important reason to oppose it. I am referring, of course, to the administration's pattern of rushing to a policy judgment, and then subsequently studying the problem that the policy decision was intended to address, a pattern that again and again created more problems and complications than we started out with.

First there was the Executive Order to close Guantanamo Bay without any plan for dealing with the detainee population there. As we now know, the administration had no plan for returning terrorists who were held at Guantanamo to Yemen, and it is still grappling with questions of how best to prosecute Khalid Sheikh Mohammed.

Next was the President's rush to remove the intelligence community from interrogating captured terrorists, without any consideration as to how to deal with them, whether they were captured on the battlefield or at an airport in Detroit. This became all the more concerning when the President announced his surge strategy in Afghanistan, which predictably led to more prisoners. And even in announcing the strategy itself, the President decided to set a date for withdrawal without any sense at the time of what the state of the conflict would be in July 2011.

Then there was the administration's approach on don't ask, don't tell. The President announced his determination to repeal this policy during his campaign, before the military had the time to study whether this change in policy was in the best interest of combat readiness, before senior enlisted staff and noncommissioned officers of the military had testified, and before those who are currently serving had told us whether, in their expert opinion, the policy should be repealed. Moreover, when the Commandant of the Marine Corps suggested the change would harm unit cohesion, he was ignored.

The administration has taken the same cart-before-the-horse approach on the treaty before us. In this case, the President came to office with a long-term plan to reduce the Nation's arsenal of nuclear weapons and their role in our national security policy. The plan envisioned a quick agreement to replace the START treaty that was allowed to expire, with no bridging agreement for arms inspections, followed by efforts to strengthen international commitments to the Non-Proliferation Treaty, reconsideration of the Comprehensive Test Ban Treaty, and further reductions in nuclear arms over time. And he spoke of ultimately reducing nuclear weapons to ''global zero.''

In other words, the New START treaty was just a first step, and it needed to be done quickly. Leave aside for a moment the fact that the New START treaty does nothing to significantly reduce the Russian Federation's stockpile of strategic arms, ignores the thousands of tactical weapons in the Russian arsenal, and contains an important concession linking missile defense to the strategic arms. We had to rush this treaty, according to the logic of the administration, because it had become an important component in the effort to ''reset'' the bilateral relationship with the Russian Federation. It was brought up for debate prematurely because it was the first step in a predetermined arms control agenda. The Senate's constitutional role of advice and consent became an inconvenient impediment.

The debate over the McCain amendment to strike the language in the preamble of the treaty was instructive. The language in the preamble concerning missile defense is harmful to

our foreign policy because of how it will be viewed not by our President, but how it will be viewed by our allies in Europe and by the Russians. The Russian government opposed the Bush administration plan to place 10 silo-based missiles in Poland and a fixed radar installation in the Czech Republic. Although the Bush administration had reached agreement with the governments of our two allies, and the proposed ballistic missile defense plan posed no threat to Russia's overwhelming ability to strike Europe and the United States, Russia sought to coerce our eastern European allies.

It is worth noting that neither Poland nor the Czech Republic ratified the agreements to go forward with the plan, which the Obama administration cancelled. The McCain amendment would have removed any strategic ambiguity that the Russian Federation will exploit to intimidate NATO members. Many of our NATO partners have been slow to accept the concept of territorial missile defense, and rest assured that they will be slower to fund the program. It is a certainty that if the language in the preamble survives, and this treaty is ratified, the Russians will mount a campaign to obstruct missile defense in Europe. There is no good argument for having voted against the McCain Amendment, which would have significantly improved this treaty.

The principal argument raised against the McCain amendment was that any amendment to the treaty would result in the State Department having to return to a negotiation with the Russian Federation. That may be true, or the amended treaty could be considered by the Russian Duma. In either case, the argument brings into question the Senate's role in providing advice and consent to ratification. If it is the position of the majority that the treaty cannot be amended, as the Senate was unable to amend so many other matters before us these last weeks of this session, why have any debate at all?

This leads us to the subject of verification—a second matter of serious concern. Although the Senate will meet today in closed session to discuss the flawed nature of the verification procedures envisioned by the New START treaty, the majority has filed cloture and stated that the treaty cannot be amended. The senior Senator from Missouri, the vice chairman of the Intelligence Committee, has provided his views to the Senate on this matter, and I join him in his concerns.

Senator BOND has provided a classified assessment of the details related to verification and chances of Russian breakout of the treaty's warhead limits which is available for all Senators to review. To quote the vice chairman of the Intelligence Committee.

> I have reviewed the key intelligence on our ability to monitor this treaty and heard from our intelligence professionals. There is no doubt in my mind that the United States cannot reliably verify the treaty's 1,550 limit on deployed warheads.

I agree with the conclusion that the New START treaty central warhead limit of 1,550 cannot be conclusively verified. The New Start treaty allows the Russians to deploy missiles without a standard or uniform number of warheads. The limited number of warhead inspections provided for under this treaty also limits the access of our inspectors to an upper limit of three percent of the Russian force. It can thus be said that this treaty places higher confidence in trust than on verification.

Compounding these concerns is the history of Russian treaty violations. As the State Department's recent reports on arms control compliance make clear, the Russians have previously violated provisions of the START treaty, the Chemical Weapons Convention, the Conventional Forces in Europe treaty and the Biological Weapons Convention.

This is a not a track record to be rewarded with greater trust. It is a reason to take our verification duties even more seriously.

Despite my opposition to this treaty, I hope the President remains committed to modernizing the nuclear triad. The war on terror has required an expansion of our nation's ground forces, the Marine Corps, the Army, and our Special Operations Forces, and our near-term readiness. As we continue the effort to dismantle, defeat and disrupt al-Qaida, we must also plan for the threats that our country will face in the coming decades.

We must invest not only in the delivery systems and platforms that will preserve our nuclear delivery capability, such as the next generation bomber, nuclear submarines and a new intercontinental ballistic missile, but also in the strike aircraft and naval forces required to control the Pacific rim as economic growth and the military capabilities of China increase.

Although the President has decided there is value in pursuing a disarmament agenda, this country may determine in the coming years to place a greater reliance upon the role of strategic arms, and we must remain committed to defense modernization. Our Nation faces many challenges in the coming decades, some economic, some strategic. It would seem short-sighted to think that as North Korea, Iran and others work to acquire nuclear weapons capabilities we could draw our arsenal down to zero.

So I will oppose this treaty. I thank the chairman and ranking members of the Foreign Relations, Armed Services and Intelligence Committees for the service that they have provided the Senate in reviewing it. It is unfortunate that something as important as the Senate's consideration of a treaty like this one was truncated in order to meet another arbitrary deadline or the wish list of the liberal base. And it is deeply troubling to think that a legislative body charged with the solemn responsibility of advice and consent would be deprived of this role because it would inconvenience our negotiating partners.

As debate over this treaty has intensified over the past few days, these and other concerns have become increasingly apparent to a number of Senators and to the American people. We should wait until every one of them is addressed. Our top concern should be the safety and security of our Nation, not some politician's desire to declare a political victory and host a press conference before the first of the year. Americans have had more than enough of artificial timelines set by politicians eager for attention. They want us to focus on their concerns, not ours, and never more so than on matters of national security.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

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 bill clerk read as follows:

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

Pending:

> Inhofe amendment No. 4833, to increase the number of Type One and Type Two inspections allowed under the Treaty.
>
> Thune amendment No. 4841, to modify the deployed delivery vehicle limits of the Treaty.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I am delighted to be able to say a few words in response to the minority leader. I have great respect for the minority leader. He and I came to the Senate together in the same class, and I appreciate the difficulties of his job and certainly the difficulties of corralling any number of the different personalities. The same is true for the majority leader. These are tough jobs.

But I say to my friend from Kentucky that just because you say something doesn't make it true. Our friends on the other side of the aisle seem to have a habit of repeating things that have been completely refuted by every fact there is. Our old friend Patrick Moynihan used to remind all of us in the Senate and in the country that everybody is entitled to their own opinion, but they are not entitled to their

own facts. John Adams made that famous statement that facts are stubborn things. Mr. President, facts are stubborn things.

The facts are that this treaty is not being rushed. This treaty was delayed at the request of Republicans. This treaty was delayed 13 times separately by Senator LUGAR to respect their desire to have more time to deal with the modernization issue, which the administration has completely, totally, thoroughly dealt with in good faith. I would like to know where the good faith comes from on the other side occasionally. They put extra money in. They sat and negotiated. They sent people to Arizona to brief Senator KYL personally. For weeks, we delayed the procession of moving forward on this treaty in order to accommodate our friends on the other side of the aisle. And now, fully accommodated, with their requests entirely met, they come back and say, oh, it is being rushed.

Well, today marks our sixth day of debate on the New START treaty. That is a fact—6 days of debate on the New START treaty. Now they will come to the floor and say that we had an intervening vote here or there. Sure. That is the way the Senate works. That is the way it worked when they passed the first START treaty in 5 days. We are now spending more time on this treaty than we did on a far more complicated treaty, at a far more complicated time. The fact is that if we go through today, which we will, on this treaty, and depending what happens with cloture and when the other side decides they want to vote, we can be here for 9 days on this treaty, which is more time than we would have spent on the START treaty, START II treaty, and the Moscow Treaty. With the time it took other Senates to deal with three treaties, these folks are complaining about the time to take one treaty, and it will be more time. It is astounding to me.

I hope people in the country will see through this. When the leader comes to the floor and says our national security is being driven by politics, we need to step back and calm down for a moment and think about what is at stake. This treaty is in front of the Senate now not because of some political schedule; it is here because the Republicans asked us to delay it. We wanted to hold this vote before the election. What was the argument then by our friends on the other side of the aisle? ''Oh, no, please don't do that; that will politicize the treaty.'' And so in order to not politicize the treaty, we made a decision on our side to accommodate their interests. Having accommodated their interests, they now turn around and say: You guys are terrible, you are bringing this treaty up at the last minute. Is there no shame ever with respect to the arguments that are made sometimes on the floor of the Senate? Is the idea always, just say it, say it enough, go out there and repeat it, and somewhere it will stick—maybe in the rightwing blogosphere or somewhere—and people will get agitated enough and believe this is being jammed somehow?

This is on the floor for the sixth day. It is a simple add-on treaty to everything that has gone before, over all the years of arms control. It is a simple add-on treaty and extension of the START I treaty.

This is not a new principle; it is not complicated. It is particularly not complicated when the Chairman of the Joint Chiefs of Staff, the Director of National Intelligence, the Secretary of Defense, the Secretary of State, and every prior Republican Secretary of State all say ratify this treaty, ratify it now. We need it now.

Honestly, I scratch my head and am baffled at the place we have seemingly arrived at, where national security interests of our country are going to get wrapped up in ideology, politics, and all of the things that have commanded everybody's attention over the course of the last couple of years.

We did have an election a few weeks ago. It has been much referred to by our colleagues. It did signal the need to do some things differently. One of the things it signaled the need to do differently is something like the START treaty, where the American people expect us to come to the floor and do the Nation's business, particularly the business of keeping America safer.

We have had an excellent debate so far. The two amendments that were proposed were rejected overwhelmingly—60 to 30 was the last one. We had a number of people who were absent. That is a pretty pronounced statement by the Senate. It seems to me the Senator from Kentucky just said the major argument for not approving one of those amendments was that it would require us to go back and renegotiate. No, Mr. Leader, that is not the major argument. That is an argument that underscores the major argument, which is that the language has no meaning. The language doesn't affect missile defense. The major arguments are the facts, the substance of which is that the preamble language has no impact whatsoever on what we are going to do with respect to missile defense, and everybody who has anything to do with missile defense in this administration has said that. That is the major argument. In addition, the major argument is also that Henry Kissinger and Donald Rumsfeld and Secretary Gates have all said that language that has no legal impact and is just an expression of a truism—the reality that offense and defense have a relationship.

Are we not capable in the Senate of overlooking nonbinding, nonlegal, nonimpacting language that acknowledges a simple truth about the relationship of offense and defense in the nature of arms control? That is all it does. That is the major argument. It just happens that in addition to having no impact on our defense, and no impact legally, and no impact that is binding—in addition to that, it also requires going back to the Russians and renegotiating the treaty. As we will show in the classified session today, there are a lot of reasons why that doesn't make sense from the security interests of the United States of America. It is not that we should not do our job of advice and consent, but our job of advice and consent requires us to process the facts, requires us to think seriously about what those facts are and how they impact this treaty.

If the Senate does its job of thinking seriously about this treaty, it will separate out language that has no impact and no meaning whatsoever on our national missile defense plans, or on the treaty itself. I don't know how the President could make it more clear than in the letter he wrote to the leadership, in which he said as clearly as possible:

> The United States did not and does not agree with the Russian statement. We believe that continued development and deployment of U.S. missile defense systems, including qualitative and quantitative improvements to such systems, do not and will not threaten the strategic balance with the Russian Federation. Regardless of Russia's actions in this regard, as long as I am President, 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, our deployed forces, and our allies and our partners.

I don't know how you can make it more clear than that. Those are the facts. It is my understanding that today the Joint Chiefs will all be submitting an additional statement for the record here to make it clear it is their view that this treaty has absolutely no negative impact whatsoever on our missile defense, and they believe it is entirely verifiable, and they want to see it ratified. So the issue of advice and consent here is whether we are going to follow the advice of those whom we look to on military matters, on defense intelligence matters, on security matters—those statespeople who have argued these treaties and negotiated these treaties through the years. The Chairman of the Joint Chiefs of Staff, the Joint Chiefs, the Commander of U.S. Strategic Command—and this is Secretary Gates:

> I assess that Russia will not be able to achieve militarily significant cheating or breakout under the New START. Our analysis of the NIE and potential for Russia cheating or breakout confirms the treaty's verification regime is effective.

I hope that facts will control this debate, that the security interests of our country will control this debate, that those who have created this record for the Senate to weigh—we have been on this treaty for a year and a half not just for 6 days. Sixty Members of the Senate—the Armed Services Committee, the Foreign Relations Committee, the National Intelligence Committee, the National Security Working Group, which I cochair with Senator KYL—have all met and considered this treaty. Some people have gone to Geneva and actually met with the negotiators. The negotiators met with us

here. Before the treaty was even signed, we were weighing in on this treaty. We considered it in over 21 hearings and meetings over the course of the last 6 months. This is not 6 days. Let's not kid the American people. This is not 6 days. Three other treaties, one of which had no verification at all—that treaty received a 95-to-0 vote.

The American people voted for us to stop the politics. They voted for us to act like adults and do the business of this country. I believe voting on this treaty in these next hours and days is our opportunity to live up to the hopes of the American people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. LUGAR. Mr. President, a great deal of our day will be spent on discussing the verification regime of the New START treaty. A part of that will be in closed session. But I want to initiate additional debate this morning on the New START verification regime.

The important point is that today we have zero on the ground verification capability for Russian strategic forces, given that START I expired on December 5, 2009, more than a year ago.

Opponents of New START's verification regime have emphasized a peculiar argument, in my judgment. On the one hand we are told we do not need New START because it is a Cold War relic and that more modern approaches to arms control should be sought. On the other hand, opponents lament the passing of START I's Cold War verification regime.

I ask my colleagues which one should it be. Should we prefer modernized verification for a post-Cold War world that reflects the lack of an arms race and our military's desire for flexible force structures? Or should we resort back to Cold War verification?

The fact is, President Bush's Moscow Treaty, approved by a vote of 95 to 0, as the chairman just mentioned, contained no verification whatsoever. Some would cite this as a modern approach to arms control. They fail to mention that the Moscow Treaty explicitly relied on START I's verification regime. As I noted, START I expired more than a year ago.

I point out parenthetically that at numerous hearings in the Senate Foreign Relations Committee, those who extol the virtues of the Moscow Treaty—which, as I pointed out, was ratified 95 to 0—indicated we were in a new day. When we asked in that particular context how about verification, they said there is already verification under START I. We pointed out even then that it would expire in December of 2009. But it was fully anticipated by those advocating the Moscow Treaty that we would have another START regime by that point or that verification apparently would not be needed at all.

Some Senators say we could have just extended START I and kept the Moscow Treaty in place. This, again, overlooks the fact that our military, in particular, disliked aspects of START I and advocated for a more flexible approach in START II or the New START.

Under START, the United States conducted inspections of weapons, their facilities, their delivery vehicles, and warheads in Russia, Kazakhstan, Ukraine, and Belarus. These inspections fulfilled a crucial national security interest by greatly reducing the possibility that we would be surprised by future advancements in Russian weapons technology or deployment. Only through ratification of New START will U.S. technicians return to Russia to resume verification.

New START verification should not be evaluated by Cold War standards. During the Cold War, we wanted to constrain the arms race and improve stability by encouraging a shift away from ICBMs with multiple warheads. Neither of these objectives remain today. START was negotiated at a time when the former Soviet Union had more than 10,000 nuclear warheads on more than 6,000 missiles and bombers, most of them targeted against the United States and our allies.

Under New START, the United States and Russia each will deploy no more than 1,550 warheads for strategic deterrence. Seven years from entry into force, the Russian Federation is likely to have only about 350 deployed missiles. This smaller number of strategic nuclear systems will be deployed at fewer bases, as has been pointed out earlier in the debate.

While we inspected 70 facilities under START, many of these have been shut down in recent years. Under New START, we will be inspecting only 35 Russian facilities. It is likely that Russia will close down even more bases over the life of the treaty.

Both sides agreed at the outset that each would be free to structure its forces as it sees fit, a view consistent with that of the Bush administration. As a practical economic matter, conditions in Russia preclude a massive restructuring of its strategic forces.

For the United States, the New START treaty will allow for flexible modernization and operation of U.S. strategic forces while facilitating transparency regarding the development and the deployment of Russian strategic forces.

The treaty, protocol, and annexes contain a detailed set of rules and procedures for verification of the New START treaty, many of them drawn from START I. Negotiators took the experience of onsite inspection that was well honed during START I and tailored it to the new circumstances of today. The inspection regime contained in New START is designed to provide each party confidence that the other is upholding its obligations while also being simpler and safer for the inspectors to implement, less operationally disruptive for our strategic forces, and less costly than START's regime.

Secretary Gates recently wrote to Congress that ''the Chairman of the Joint Chiefs of Staff, the Joint Chiefs, the Commander, 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.''

That is a very important statement, in my judgment, that Secretary Gates, with affirmation of all of the above officials of our government, says that Russia will not be able to achieve militarily significant cheating or breakout under New START given the verification procedures we have outlined.

Predictably, recent verification and compliance reports covering START have chronicled cases where we disagreed with Russia about START I implementation. Yet despite these issues, neither party violated START I's central limits. We should not expect that New START will eliminate friction, but the treaty will provide a means to deal with such differences constructively, as under START I.

The resolution of ratification approved by the Foreign Relations Committee of the Senate requires further assurances by conditioning ratification on Presidential certification prior to the treaty's entry into force, of our ability to monitor Russian compliance, and on immediate consultations should a Russian breakout from the treaty be detected. For the first time in any strategic arms control treaty, a condition requires a plan for New START monitoring.

Some have asserted there are too few inspections in New START. The treaty does provide for fewer inspections compared to START I. But this is because fewer facilities will require inspection under New START. START I covered 70 facilities in four Soviet successor states, whereas New START only applies to Russia and its 35 facilities. Therefore, we need fewer inspectors to achieve a comparable level of oversight.

New START also maintains the same number of ''re-entry vehicle on-site inspections'' as START I; namely, 10 per year. Baseline inspections that were phased out in New START are no longer needed because we have 15 years of START I treaty implementation and data on which to rely. Of course, if New START is not ratified for a lengthy period, the efficacy of our baseline data would eventually deteriorate.

New START includes the innovation that unique identifiers, or UIDs, be affixed to all Russian missiles and nuclear-capable heavy bombers. UIDs were applied only to Russian road-mobile missiles in START 1. Regular exchanges of UID data will provide confidence and transparency regarding the existence and location of 700 deployed missiles, even when they are on non-deployed status—something that START I did not do.

The New START treaty also codifies and continues important verification

enhancements related to warhead loading on Russian ICBMs and SLBMs. These enhancements, originally agreed to during START I implementation, allow for greater transparency in confirming the number of warheads on each missile.

Under START I and the INF Treaty, the United States maintained a continuous onsite presence of up to 30 technicians at Votkinsk, Russia, to conduct monitoring of final assembly of Russian strategic systems using solid rocket motors. While this portal monitoring is not continued under New START, the decision to phase out this arrangement was made by the Bush administration in anticipation of START I's expiration. With vastly lower rates of Russian missile production, continuous monitoring is not crucial, as it was during the Cold War.

The Moscow Treaty's verification shortcomings were dismissed during debate in the Senate in 2003 because we were told there would be time to fix them before START I expired—something we failed to achieve.

The only binding treaty of any kind in place is the Moscow Treaty which itself will expire in December of 2012, and the Moscow Treaty contains no counting rules and no verification.

An illustration of the benefits of New START compared to the Moscow Treaty: We will have data on the number, by type, of deployed, fixed land-based ICBMs and SLBMs and their launchers. This is not in the Moscow Treaty.

Secondly, we will have data on the number, by type, if they exist, of deployed and nondeployed road-mobile and rail-mobile ICBMs and their launchers, and the production of mobile ICBMs. This, too, is not in the Moscow Treaty.

We will know, thanks to New START preinspection procedures, the actual number of warheads emplaced on each ICBM or SLBM subject to the inspection. The warhead inspection portion of a New START inspection on a deployed missile is used to confirm the accuracy of the declared data on the actual number of warheads emplaced on a designated, deployed ICBM or SLBM. This is not in the Moscow Treaty.

We will have data and inspections for the number of warheads on ICBMs and SLBMs. This is not in the Moscow Treaty.

For the first time, we will have identification and tracking of all nondeployed Russian missiles—nondeployed Russian missiles—not just road-mobile missiles, a unique verification system under New START.

We will have declarations, notifications, and inspections on the aggregate number of deployed missiles.

We will have data on the technical parameters for ballistic missiles through technical exhibitions/inspections for missiles, and we will have data on the number, by type, of deployed heavy bombers, both those that are equipped for nuclear-capable weapons and those that are not, and the number, by type, of formerly nuclear-capable heavy bombers, training aircraft, and heavy bombers equipped for conventional munitions that no longer carry nuclear munitions. We will have data and inspections on the elimination of strategic nuclear launchers and delivery vehicles. We will have tracking, notification, and inspection of the production of ICBMs for mobile launchers of ICBMs to confirm the number of ICBMs for mobile launchers of ICBMs produced. And we will have data and inspections on the elimination of declared facilities.

The bottom line is that every Senator should ponder today that we have zero on-the-ground verification capability for Russian strategic forces, given the fact that START I expired on December 5, 2009. Those who wish to reject this treaty and rely on the Moscow Treaty enjoy the same result—zero verification, because the Moscow Treaty contains none.

I appreciate that we have had vigorous debate not only on the verification procedures but likewise on missile defense and, for that matter, the entire negotiation of the treaty. In my judgment, it is important, given the outline I have explained this morning, no verification and none anticipated until we pass the New START treaty. Unless there are those—and there have been throughout the history of these debates—who simply do not like treaties with the Russians, who would prefer no treaty, who anticipate that some day perfection may come and some negotiation will take place that is clearly not in sight, if rejection of this treaty were to be recorded. I believe it is imperative for our national defense and national security. That is a personal judgment but it is one I strongly advocate. This is why I believe that progress on the New START treaty is extremely important for the national security of our country.

I yield the floor.

The PRESIDING OFFICER (Mr. REED). The Senator from Oklahoma.

Mr. INHOFE. Mr. President, procedurally we have two amendments right now that are pending, my amendment No. 4833 and the Thune amendment No. 4841. Mine is concerning verification. His concerns delivery systems. We will have up until 1:30, when we go into closed session, to debate these. It would be my hope that Members who want to debate would confine their debate only to these two amendments. Because if they don't and we let the time get beyond this, not as many people will be heard on these amendments. I know the Senator from North Dakota wants to speak. I encourage anyone wanting to speak on the treaty other than these two amendments to defer to those who want to speak on these amendments. That is not a unanimous consent request. It is something I think is appropriate to do. These are significant amendments. A good way to do that, if someone wants to talk about the treaty other than these two amendments and there is someone wanting to talk about the amendments, I would hope they would defer to those who want to talk about the amendments.

Let me make a comment about the Senator from Massachusetts. When we talk about the fact that we have been on this thing longer than any other treaty, for years and months and all that, I remind him, I am kind of in a unique situation. I am on both the Armed Services and Foreign Relations Committees. We have had a lot of hearings. That is true. In the Foreign Relations Committee, we had 16 hearings, a total of 30 witnesses. Of the 30 witnesses, 28 were in favor of the treaty, 2 were opposed. What we attempted to do is to get a broader exposure to this very significant treaty on this issue. For that reason, we do need to take more time, because we have only heard one side. Then on the other matter, the idea that this is just an add-on from a previous treaty, let's keep in mind, when the START I treaty came up, that was between two superpowers, everyone understand that, the U.S.S.R. and the United States. That is not the same today.

One of the problems I have with this treaty is that it is a treaty between the United States and Russia. This is not, in my opinion, where the threat is. The threat is with Iran and North Korea. Every time we get an assessment on North Korea, we are wrong. They have more than we believed they have, and then we are put in a position where we know they are trading with countries such as Iran. And Iran right now, according to our intelligence, which is not even classified, would have a delivery system with a nuclear warhead by 2015. So there is where the issue of missile defense comes in.

I know the argument on missile defense. We have the Russian Foreign Minister Lavroc coming out and saying:

> We have not yet agreed on this [missile defense] issue and we are trying to clarify how the agreements reached by the two presidents correlates . . . with the actions taken unilaterally by Washington.

And adding:

> The Obama administration had not coordinated its missile defense plans with Russia.

Then we have, on the opening day of April 8 in Prague, the Russians saying that the treaty can operate and be viable only if the United States refrains from developing its missile defense capabilities, quantitatively and qualitatively. We can sit around and say this isn't going to affect that, but nonetheless, that is on record. We have some Russians who believe that. That is not on my amendment. I wanted to comment that there is a reason for taking the time. I will not get into the debate as to whether we should have done it before the election or after.

I will say, a lot of the things that have come up in this lameduck session have come up because the chances of getting these things through is greater than they would be after eight or nine

new Senators come in. The fact is, these eight or nine new Senators have all joined in a letter asking us, could you refrain from ratifying this very significant treaty until we have a chance to look at it. We are the ones. We are the Senate coming in. I think that is a good argument.

Let me get back to my amendment 4833 and kind of kick it off here. I know we have a lot of people who want to talk about the amendment. Let me share my thoughts first. Right now there are, under the New START treaty, 188 inspections over 10 years. That is 18 a year versus what we had with START I, 600 over 15 years. That is 40. So it is a drop from 40 inspections per year to 18. I believe it would be good to actually have more than we had during START I. Under New START, they inspect to verify the elimination of nuclear weapon delivery systems that have fundamentally changed from those of START I. START I required the elimination of sites. We didn't at that time have to set up a mechanism to look and see if these were actually eliminated because we knew at that time they were. Now we have no way of knowing whether the sites have been reactivated. In fact, the test being used under this New START treaty would be to view the debris that shows that systems were eliminated. It could very well be that they could destroy a system, there would be a lot of debris. There could be three or four systems they don't destroy, but they could spread the debris around. It is not a very good test as to what is actually happening.

The second problem I have is that under New START, 24 hours of advance noticed is required before an inspection, which is quite a dramatic increase. Under the old START treaty it was 9 hours advance notice. If you walk into this and assume the Russians are not going to cheat, that is fine. But I am not willing to do that because in a minute I will document the things they said they would do and have not been doing. If anything, we should certainly not have a no-longer warning than under the old START treaty. My amendment seeks to mitigate some of these negotiated disadvantages by increasing the number of inspections per year. The amendment triples the number of inspections under the New START from the two types of inspections specified under the New START treaty, type one and type two inspections. Type one inspections refer to the ICBM bases, submarine bases, and airbases, to confirm accuracy of declared data on the number and types of deployed and nondeployed warheads located on ICBMs, SLBMs, and heavy bombers.

Type two refers to inspections at formerly declared facilities to confirm that those facilities are not being used for purposes inconsistent with the treaty. That would have been inconsistent with START I.

That is what we talked about a minute ago. I don't see any verification in terms that are meaningful to verification on type two. But type one inspections would increase from 10 to 30 inspections a year. Type two would increase from 8 to 24, a total of 54 inspections.

On July 20, 2010, the principal deputy Under Secretary of Defense for policy, James Miller, testified before the Senate Armed Services Committee. I was there. He said that Russian cheating or breakout, as they sometimes say, a kinder phrase, under the treaty would have little effect because of the U.S. second-strike strategic nuclear capability. I disagree with that. If this is something where we have people who agree and disagree, certainly we should fall down on the side of protection for the United States.

As we get to the argument saying we don't need as many inspections because we have a smaller number of facilities to inspect or the smaller size of the nuclear arsenal, as in New START, the larger the impact of cheating has on a strategic nuclear balance, this is kind of a hard thing for people to understand. But 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. Having the facilities reduced is of more concern.

Let me quote a few people who have weighed in on this issue.

Former Secretary of Defense Harold Brown explained, on October 23, 1991, when they were looking into the future and saying this was something they thought was going to happen, in testimony before the Senate Foreign Relations Committee on the original START treaty:

> 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.

Is he the only one who believes this? No. Former Secretary of Arms Control John Bolton stated just this year, on May 3:

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

That is where we are now, lower warhead levels.

In 1997, Brent Scowcroft said:

> Current force levels provide a kind of buffer because they are high enough to be relatively sensitive to imperfect intelligence and modest force changes.

He said:

> 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.

Yesterday when we were having this debate, I acknowledged that both the Senator from Massachusetts and I have been aviators for a number of years. I recalled going across Siberia in a flight around the world. You go through time zone after time zone of wilderness, and you think of all the places things could be. That is not the way it is in our country. That is what Brent Scowcroft was saying, that:

> As the 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 actions of nuclear third parties.

Then in May of this year in the Senate Foreign Relations Committee, former Secretary 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 and diverse treaty obligations and prohibitions under START 1. This complex part of the treaty is even more crucial when fewer deployed nuclear warheads are allowed than were allowed in the past.

So I think we have this unanimity of people who believe as the level comes down, the inspections become more critical. I think we also have to look at the fact—and I know it is not nice to say, and this offends a lot of people—Russia cheats on every arms control treaty we have had with them. We had a recent thing—I am glad it came out—I think it was in the summer of this year, with the report on foreign country compliance. This is what our report said.

It starts out with the START. It says there are a number of longstanding compliance issues—such as 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 on December 5, 2009.

Then, if you look, they break it down.

The Biological Weapons Convention. In 2005, the State Department concluded that ''Russia maintains a mature offensive biological weapons program and that its nature and status have not changed.'' This was in this report we had. In 2010, the State Department report states this: Russia confidence-building measure declarations since 1992 have not satisfactorily documented whether its biological weapons program was terminated.

They said the same thing 5 years later that they said back in 2005. So we do not know right now. They were supposed to be eliminating that program, as to the Biological Weapons Convention, and they did not do it.

The Chemical Weapons Convention. In 2005, the State Department assessed that ''Russia is 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.

So what they are saying now is, 5 years later, after they had been warned in 2005 they had to do this, that they were in noncompliance, they are still in noncompliance. That is as to chemical weapons.

As to conventional forces in Europe, the report says: ''The United States notes that Russia's actions have resulted in noncompliance with its Treaty obligations.'' The Wall Street Journal recently reported that, 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.

So I think if you look at the record of Russia, they don't tell us the truth. They agree to something, and then they do not do it. That is why verification probably—it may be the most significant frailty in this New START treaty that needs to be addressed.

For starters, I want to repeat that we have fewer inspections now under this treaty. The idea that you can determine by the debris that remains after something is supposed to be destroyed is, to me, a nonstarter. The advance notice—the fact that we now give them advance notice three times as long as we did at one time—as weapons decrease, I think everybody agrees we need to have more of the opportunities to inspect. Then lastly is the fact that Russia cheats.

I will yield the floor at this point. I do not see anyone around who wants to talk about these two amendments, so I will yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. INHOFE. Mr. President, will the Senator from North Dakota yield?

Mr. DORGAN. Mr. President, of course I will yield.

Mr. INHOFE. I wish to ask the Senator, there may be some who may wish to talk on these two amendments. About how long will the Senator speak on the general subject of missile defense or the treaty? About how long will the Senator be talking on something other than specifically these two amendments?

Mr. DORGAN. Mr. President, I would estimate about 15 to 20 minutes would be the maximum.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I spoke yesterday to most of the arguments. I do not think there is a need to go back over them. I appreciate the arguments and concerns of the Senator from Oklahoma. So I think I will let that stand where it was, and we will see if another Senator comes to pick up.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, this is a very significant and important issue. As I have indicated previously, we deal with a lot of issues here in the Senate, some less relevant, some more important. We often treat the serious too lightly, and the light too seriously. In this case, I think everybody understands that negotiating a treaty with the Russians dealing with arms reductions is critically important. And that is what this is.

I do not think, when you talk about nuclear weapons, there are other issues that are similar to it. If, God forbid, before sundown today, we learn that a nuclear weapon has been obtained by a terrorist group or a rogue nation and detonated in the middle of a major city on this planet Earth, and hundreds of thousands of people are killed, life on Earth will change forever.

This is a big issue, a very important issue. I just described the horror of a circumstance where a nuclear weapon was detonated in a major city on this planet. We have 25,000 nuclear weapons that exist on this planet. The question is, are we able to find a way to systematically reduce the number of nuclear weapons and, therefore, reduce the threat of the use of nuclear weapons while, at the same time, trying to keep nuclear weapons out of the hands of terrorists and rogue nations?

These days, it seems to me, the question of the nuclear threat is very different than when previous treaties were negotiated. The reason for that is, we have found a new enemy on this planet. It is called terrorism—terrorists who are very happy to give up their lives as long as they can take the lives of others.

That terrorist threat, and the threat that a terrorist organization might acquire a nuclear weapon, and then very happily detonate that nuclear weapon and kill hundreds of thousands of people—innocent people—that is a very serious problem. That is why there is a new urgency to not only arms control and arms reduction negotiations, but to the passage of treaties that are, in fact, negotiated.

We have successfully negotiated various arms control treaties. I will not go through the list of successes, as I did previously. But we have been very successful in reducing the number of nuclear weapons and the number of delivery vehicles—bombers and submarines and intercontinental ballistic missiles. We have fields in which sunflowers now grow where missiles were once planted with nuclear warheads aimed at our country.

That is a success, in my judgment. There is no doubt that what we have done over the years has been successful. Yet there remain on this planet some 25,000 nuclear weapons.

I have listened to this debate, and I do not believe there is anyone involved in this debate who represents bad faith. I think there are differences of opinion, and I believe people who come here and offer amendments believe in their heart they are pursuing the right strategy. But in some ways it also seems to me to be kind of the three or four stages of denial; that is, you take a position, and when that is responded to, then you take a second position: I wasn't there. If I was there, I didn't do it. If I did it, I am sorry.

The stages of denial are pretty interesting to me. Let me go through a few of them.

The first was, some were very worried in this Chamber that if we proceeded with START without adequately funding the nuclear weapons complex and funding the necessary investments in our current nuclear weapons stockpile, the investments for modernization, the investments for life extension programs, and so on—if we did that without adequate funding for that, that would be a serious problem.

The fact is, President Obama proposed adequate funding in coordination with those who were raising that question. Particularly Senator KYL was raising that question a great deal. He and I talked about it a substantial amount because I chair the subcommittee that funds the nuclear weapons complex and the life extension programs and the modernization programs.

So while most other areas of the Federal budget were being trimmed or frozen or held static, we increased, at President Obama's request, the nuclear weapons line item in the budget that deals with modernization and life extension programs, and so on. We increased that by nearly 10 percent in FY 2011 budget; and then another 10 percent in the FY 2012 budget President Obama will send Congress in February; and then, on top of a 10-percent increase and a 10-percent increase, another $4 billion increase over the next five years thrown on top of all of that.

I do not think anyone can credibly suggest there is now a problem with funding. The President kept his promise, and then did more than that—two 10-percent increases, taking us to $7.6 billion, and then, on top of that, adding another $4 billion in 5 years. It is hard to find another part of the budget that has been as robustly funded.

Again, as chairman of the subcommittee that funds this, I believe we have done what was necessary, and much more to satisfy the concerns expressed by those who worried that the funding would not be there. This President said it will be there. He made those proposals with two big increases and then an even larger third increase, and that ought to lay to rest that subject for good.

Will our current stockpile be properly maintained with life extension programs and modernization expenditure? The answer is yes. It is clearly yes. The funding has been made available, and there ought not to be debate about that any longer.

Now the question of time. Some have said—and I heard this morning on television one of my colleagues say: Well, this is being rushed through at the end of a session. That is not true. That is an example of what I described previously on the floor of inventing a reality, and then debating off that new

invention. It is not true that we are rushing this through. We have had meeting after meeting after meeting. I am on the National Security Working Group, and all through the negotiation with the Russians on this treaty, Republicans and Democrats on that committee were called to secret sessions and briefed all along the way, to say: Here is what is going on. The negotiators would say: Here is where we are. Here is what we are doing. And we were always kept abreast of all of that. So there is nothing at all that is running away quickly at the end of a session to try to get this done.

In fact, this has been delayed much longer than, in my judgment, I would have preferred. But, nonetheless, we are here, and it seems to me this ought not be part of the routine business of the Congress. This is an arms control treaty on nuclear arms reduction. This ought to be one of those areas that rises well above that which is the normal business in a Congress.

But there is no credibility at all to suggest this is being rushed. I can recall day after day sitting in secret sessions with negotiators telling us along the way: Here is what we are doing. They met with Republicans and Democrats. We met altogether in a room in the Capitol Visitor Center and had briefing after briefing after briefing on the National Security Working Group, and it includes most of those in this Chamber who have spoken on this issue.

So it is not the case that there were Members of Congress uninformed about what was happening. All of us were informed. This administration, I thought, did an exceptional job of coming to us to say: We want to keep you advised and informed of what we are doing. It is not the case at the end of this session it is being rushed through. It should have been done a few months ago. I wish it had been, but it has not been. So, therefore, we find ourselves at this intersection. But it should not let anybody believe this is being pushed and rushed without time to consider. All of us have had ample time over many months, and over a year before that, while the negotiations were taking place to seriously consider and be a part of what this is and what it means for our country.

The other issue that is being raised constantly is, it will limit our capabilities with respect to missile defense. Again, it is not the case. I understand what people have been reading in order to make that case. But every living Secretary of State from the Republican and Democratic administrations have come out in favor of this treaty—every one.

The Chairman of the Joint Chiefs of Staff has made a very assertive, strong statement in support of this treaty. They didn't do that because somehow we are limited on missile defense. In fact, the President has written to us and said: ''That is not what exists with respect to us and an agreement with the Russians.'' It just is not.

Yesterday, the argument was, well, this doesn't include tactical weapons. No, it doesn't. We do need to limit tactical weapons. I wish it had been a part of the Moscow Treaty. I wish it was part of this treaty. It wasn't. But that doesn't mean we should stop progress on the strategic weapons limitations, a reduction of the number of strategic nuclear weapons.

Why would you not take the progress in the area of limiting strategic nuclear weapons and the delivery of vehicles, airplanes, missiles, submarines, and so on, with which those weapons are delivered—why would you not take the progress that exists with respect to limiting strategic weapons? Of course we should do that. Certainly, I don't disagree at all with those who are worried about tactical weapons. So am I. So is this administration. All of us would have loved to have had an agreement on tactical nuclear weapons 5 and 10 years ago, but that was not possible and it was not the case. So now we work on this, and this provides measurable reductions in the number of nuclear warheads and measurable reductions in the delivery vehicles for those warheads—bombers, missiles, submarines, and so on. It would be unthinkable, it seems to me, for our country to decide that, no, this is not the direction in which we want to move.

As I indicated earlier, on every occasion where we have debated the issue of arms control and arms reduction—understanding it is our responsibility; it falls on the shoulders of this country, the United States, to assume the leadership—on every occasion where we have debated the issue of trying to reduce the number of nuclear weapons on this planet and reduce the number of delivery vehicles and the threat from nuclear weapons, we have done that exclusive of this new threat which now casts a shadow over everything we talk about; that is, the threat of terrorism—a new threat in the last decade—terrorists who are very anxious to take their own lives if they can kill thousands or hundreds of thousands of others. The specter of having a terrorist group acquire a nuclear weapon and detonate that nuclear weapon on this planet will change life on the planet as we know it.

So it is a much more urgent requirement that we finally respond to this by continuing this relentless march to reduce the number of nuclear weapons and try to make certain we keep nuclear weapons out of the hands of terrorists, to reduce the number of rogue nations that would have nuclear weapons. That is our responsibility. It is our leadership responsibility in this country.

The signal we send to the world with respect to this vote and others dealing with arms control and arms reductions is unbelievably important. That is why this vote in this Chamber at this point is so urgent.

I mentioned terrorism, and it is now a few days before Christmas. Last Christmas, we were reminded about terrorism once again. A man got on an airplane with a bomb sewn in his underwear. Before that he was preceded by a man getting on an airplane with a bomb in his shoe. They were perfectly interested in bringing down an entire plane full of people. The terrorists who were interested in killing several thousand Americans on 9/11/2001 are even more interested in acquiring a nuclear weapon and killing hundreds of thousands of people somewhere in a major city on this planet.

That is why this responsibility, the responsibility of continuing to negotiate and negotiate and negotiate treaties that represent our interests—yes, they have to represent our interests, and this one does. Look at the list of people who support this treaty. I have brought out charts before that show all of the Republicans and Democrats, the folks who have worked on these things for so long, Secretaries of State and military leaders and former Presidents.

It is our responsibility to make progress. Frankly, as I said, I don't suggest there is bad faith on the part of anybody who stood up with their opinion. That is not my suggestion. I think people in this Chamber are people of good faith. But it seems to me that some have not yet understood the increasing urgency now to address this issue. This issue is in our national interests. This issue with the Russians—this treaty with the Russians was negotiated very, very carefully, representing our national interests—yes, on verification, representing our national interests. It represents our interests in every other way. Missile defense—we didn't give up anything with respect to missile defense. So as I hear some of my colleagues come to the floor very concerned about these issues, all of them are responded to easily, in my judgment.

Money—we are spending more money than has ever been spent on the nuclear weapons complex to make sure our nuclear weapons work. Linton Brooks, the previous head of NNSA said: I would have killed for a budget like they now have for the life extension programs and the modernization program. I would have killed for that, he said. He was the man who ran the NNSA under the previous President, President George W. Bush. So money is not an issue. Clearly, that is not an issue.

Time? This is not being pressed into a tiny little corner with an urgent time requirement. This has been delayed and should not have been delayed. But it is sufficiently important to stay here and do this and hope the work that has been done on a bipartisan basis can be supported by the entire Senate.

It is easy to compliment people in the Chamber, and you don't compliment those with whom you disagree, I suppose. But let me compliment Senator KERRY and Senator LUGAR because I think the work they have done, which is very strongly bipartisan, to bring

this treaty to the floor of the Senate for ratification is a representation of the best of the Senate. It is the way this place really ought to work. Searching out and holding hearings and hearings and hearings, the best thinkers to come and give us advice about all of these issues—they did that. There is nothing this issue is represented by with respect to pushing it into a tight timeframe. They have done this the right way—the right kinds of hearings, the right kind of consultation. Now, they have come to the floor of the Senate saying this is urgent. Let's get this done.

I just wanted to come today—I was driving to work this morning, and I saw the Martin Luther King memorial being built on the Mall. I recalled what he once said. He said, ''The means by which we live have outdistanced the ends for which we live.'' He said, ''We have learned the secret of the atom and forgotten the sermon on the mount.''

Well, the secret of the atom is something we have indeed learned. In recent years, the specter of having so many nuclear weapons on this planet and the specter of terrorists acquiring one requires us to be ever more vigilant and to proceed to ratify treaties we negotiate over a long period of time. Again, as I indicated, it is our responsibility.

This responsibility for stopping the arms race rests on our shoulders. Yes, we must do it in our national interests, protecting ourselves as we do. In my judgment, this treaty meets every one of those measures. I am pleased to support it and pleased to be here to say that I hope my colleagues will look at what Senator KERRY and Senator LUGAR have done and come to the floor of the Senate with robust support for what I think is outstanding work.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

TRIBUTES TO RETIRING SENATORS

BYRON DORGAN

Mr. KERRY. I know the Senator from South Dakota is here. I know he wishes to speak. I will not be long. I wish to take advantage of this moment with the Senator from North Dakota on the floor to say a couple of things.

First of all, I am very grateful to him personally for the comments he has made about both my efforts and the efforts of Senator LUGAR. I appreciate them enormously. But more importantly, the Senator is going to be leaving the Senate at the end of this session. I wish to say there are few Senators who combine as many qualities of ability as does the Senator from North Dakota. He is one of the most articulate Members of the Senate. He is one of the most diligent Members of the Senate. He is one of the most thoughtful Members of the Senate.

I have had the pleasure of serving with him on the Commerce Committee. I have seen how creative and determined he is with respect to the interests of consumers on Internet issues, on fairness issues, consumer issues in which he has taken an enormous interest. He has been head of the policy committee for I think almost 10 years or so. He has been responsible for making sure the rest of us are informed on issues. He has kept us up to date on the latest thinking. He has put together very provocative weekly meetings with some of the best minds in the country so we think about these things.

So I wanted to say to the Senator from North Dakota personally through the Chair how well served I think the citizens of North Dakota have been, how grateful we are for his service, and how extraordinarily lucky we have been to have someone representing one of the great 50 States as effectively as he has. I think he has been a superb Senator, and he will be much missed here.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I wish to speak to an amendment I have pending at the desk, but before I do that, I wish to make some general observations as well about where we are with regard to this process because there has been a lot said about Republicans not wanting to vote on this or trying to delay this. But I think one would have to admit that we have now talked about missile defense, which I think is a very valid issue with respect to this treaty. There are very significant areas of disagreement with regard to how it treats missile defense. We have had a discussion about tactical weapons, which, in my judgment, also is a very important issue relative to our national security interests and the interests of our allies around the world. We have had a debate about verification, about which the amendment of Senator INHOFE is currently pending. Those are all very valid and substantive issues to debate and discuss with regard to this treaty.

The amendment I will offer will deal with the issue of delivery vehicles, which is something that is important as well where this treaty is concerned.

So I would simply say that it is consistent with our role in the U.S. Senate to provide advice and consent. If it were just consent, if that is what the Founders intended, we could rubber-stamp this. But we have a role in this process, and that role is to look at these issues in great detail and make sure the national security interests of the United States are well served by a treaty of this importance.

So I think the words of the treaty matter, and I think the words of the preamble matter. I am not going to relitigate the debate we have already had on missile defense, but I believe that if we have language in a preamble to a document such as this, not unlike the preamble we have in our Constitution which is frequently quoted, it has meaning. To suggest that the preamble doesn't mean anything, that it is a throwaway and has throwaway language, to me really misses the point. Obviously, it matters to someone. It matters greatly to the Russians, and I don't think, if it didn't, it would be in there. That is why I believe that having this linkage between offensive strategic arms and defensive strategic arms in the preamble—it is in there for a reason. Somebody wanted it in there, obviously, and I think it certainly has weight and consequence beyond what has been suggested here on the floor of the Senate.

I would also argue as well that the signing statement we have already talked about where the Russians made it very clear in the signing statement, in Prague on April 8 of 2010, that the treaty can operate and be viable only if the United States of America refrains from developing its missile defense capabilities qualitatively or quantitatively—if you tie that back to article XIV of the withdrawal clause of the treaty where it talks about being able to withdraw for exceptional circumstances, you can certainly see the pretext by which the Russians may decide to withdraw from this treaty.

So missile defense is not an inconsequential issue. It is a very important issue with regard to this treaty, and the amendment that was offered on Saturday and voted on attempted to address that. Unfortunately, that failed. I hope we have subsequent opportunities to get at the issue of missile defense because I certainly think it is an unresolved issue in my view and in the view of many of us.

AMENDMENT NO. 4841

The amendment I offer today is very straightforward and modest. It would simply increase the number of deployed delivery vehicles—in other words, bombers, submarines, and land-based missiles—allowed for in the New START treaty from 700 to 720. It simply adds 20 additional vehicles to the number in order to match up with the administration's plan presented to the Senate for fielding 720 delivery vehicles rather than the 700 called for in the text of this treaty.

Before I continue, I ask unanimous consent that Senator SCOTT BROWN of Massachusetts be added as a cosponsor of this amendment.

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

Mr. THUNE. For those watching this debate who may be unfamiliar with some of the terminology used in these arms control treaties such as the term ''delivery vehicles,'' it is important to understand that delivery vehicles simply means the nuclear triad of systems: bombers, submarines, and land based intercontinental ballistic missiles or ICBMs. This triad of delivery vehicles is very valuable because it is resilient, survivable, and flexible, meaning that if, God forbid, we suffer a nuclear attack, those who attacked us can never be sure that they have knocked out our ability to respond with a nuclear strike. Obviously, without the means to deliver nuclear weapons, an adversary would not take seriously our ability to respond to a nuclear attack. As the numbers of delivery vehicles goes

down, it becomes more and more important to make sure they are modernized and that they work as intended. And as numbers get reduced, it begins to have an impact on whether we can effectively retain the triad, making it more likely that our nation would have to eliminate a leg of the triad.

On July 9, 2009, at an Armed Services Committee hearing, I asked GEN James Cartwright, the Vice Chairman of the Joint Chiefs, about the administration's commitment at that time to reduce our strategic delivery vehicles to somewhere in the range of 500 to 1,100 systems, and to specify at what point in this range would he become concerned that delivery vehicle reductions would necessitate making our nuclear triad into a dyad. General Cartwright responded that he ''would be very concerned if we got down below those levels about mid point,'' meaning that he would be concerned if the negotiated number fell below 800 delivery vehicles. This treaty caps delivery vehicles at 700, substantially below the number that General Cartwright stated a year and a half ago.

Now, the treaty makes this odd distinction between ''deployed'' and ''non-deployed'' delivery vehicles, and the treaty's proponents will point out that the total cap for the treaty is 800 ''deployed and non-deployed'' systems. And of course, there is a letter from General Cartwright in the committee report accompanying the treaty stating that he is comfortable with the distinction between deployed and non-deployed delivery vehicles, and the overall limits to delivery vehicles. But it is important to understand that the administration has not articulated how it will deploy a nuclear force conforming to the number of 700. Instead, the administration has presented a plan for how it will deploy 720 delivery vehicles. And that is the motivation behind this amendment. I find it very troubling that the administration has yet to articulate how it will deploy a nuclear force conforming to the number of 700. The comprehensive plan for delivery vehicle force structure the administration was required to present to Congress under section 1251 of the fiscal year 2010 Defense authorization bill, known as the 1251 report, provides a very troubling lack of specificity concerning force structure under the New START treaty. Specifically, the administration's fact sheet on the section 1251 report explains that the U.S. nuclear force structure under this treaty could comprise up to 60 bombers, up to 420 ICBMs, and 240 SLBMs. The only number that is a certainty in the 1251 report is the number of SLBMs. I hope the members from states with bomber bases and ICBM bases will pay attention to this important point. Since deployments at the maximum level of all three legs of the triad under the explanation provided by the administration's 1251 report add up to 720 delivery vehicles, it is mathematically impossible for the U.S. to make such a deployment and be in compliance with the treaty's limit of 700 deployed strategic nuclear delivery vehicles. Clearly, additional reduction decisions will be made with respect to U.S. force structure under this treaty, and obviously those reductions will come out of bombers and/or ICBMs.

Secretary Gates and Admiral Mullen acknowledged in a hearing before the Senate Armed Services Committee on June 17, 2010, that further reductions would still be required to meet the treaty's central limits. They went on to argue that because the United States will have 7 years to reduce its forces to these limits, they did not find it necessary to identify a final force structure at this point; meaning the Senate will commit the United States to a delivery vehicle force of 700 without knowing how that force will be composed.

Compounding this problem of not knowing what the final force structure will look like is the fact that the Obama administration conceded to Russian demands to place limits on conventional prompt global strike systems by counting conventionally armed strategic ballistic missiles against the 700 allowed for delivery vehicles. For those who are unfamiliar with prompt global strike, it is simply a program that would allow the United States to strike targets anywhere on Earth with conventional weapons in as little as an hour. Development of these systems is an important niche capability that would allow us to attack high-value targets or fleeting targets, such as WMD, terrorist, and missile threats. A recent Defense Science Board report states that ''the most mature option for prompt, long-range, conventional strike is the ballistic missile'' and that ''Building on the legacy of these [intercontinental ballistic missile] weapon systems provides a relatively low-risk path to a conventional weapon system with global reach.'' Yet this treaty will not permit us to develop this low-risk concept for conventional prompt global strike without it having an impact on the central limits under this treaty of 700 delivery vehicles.

To be very blunt, this treaty was so poorly negotiated that for every ICBM or SLBM deployed with a conventional warhead, one less nuclear delivery vehicle will be available to the United States. This one-for-one reduction in deployed nuclear forces is one we can ill afford at the levels of delivery vehicles allowed under this treaty. When the Commander of U.S. Strategic Command, General Chilton, testified before the Armed Services Committee on April 22, 2010, he specifically said that we could not replace the deterrent effects of nuclear weapons with a conventional capability on a one-for-one basis or ''even ten-for-one.''

Treaty proponents will point out that there are other potential new conventional prompt global strike systems on the drawing board that may not fall under the treaty's limitations, such as a hypersonic glide delivery vehicle. But why are we tying the hands of future administrations that may need to quickly field such systems, especially since converting ICBMs to carry a conventional warhead are the most advanced systems we have right now on conventional prompt global strike?

The Senate should not ratify the treaty without knowing what kind of conventional prompt global strike systems may be counted and how that will affect our triad at the much reduced delivery vehicle limits. According to the DOD, an assessment on treaty implications for conventional prompt global strike proposals will not be ready until early 2011. If we pass this treaty now, Senators won't know the details on this important issue until the treaty enters into force, when it is too late. Adopting my amendment would provide a hedge against the issues that are raised by the conventional prompt global strike niche capability and its impact on the treaty's limit of 700 delivery vehicles. With a 700 delivery vehicle limit, conventional prompt global strike counting against that number, we will have fewer nuclear delivery vehicles, and this limit will be a disincentive to develop and deploy conventional prompt global strike as a result. Moreover, why should we accept these constraints in a treaty that was about strategic nuclear weapons?

While we are required under the treaty to cut the number of delivery vehicles to the bone, Russia will not have to make any similar cut to their delivery vehicles, leaving one to wonder what we received in return for this significant concession. The treaty essentially requires the United States to make unilateral reductions in delivery vehicles, as Russia is already well below the delivery vehicle limits and would have drastically reduced its arsenal with or without this treaty. As CRS writes, ''[Russia] currently has only 620 launchers, and this number may decline to around 400 deployed and 444 total launchers. This would likely be true whether or not the treaty enters into force because Russia is eliminating older missiles as they age, and deploying newer missiles at a far slower pace than that needed to retain 700 deployed launchers.''

So I want to put a fine point on that, Mr. President. Essentially what we are doing here is we have about 856 delivery vehicles in our arsenal today. We are reducing that down to 700. So we are taking a significant haircut, a significant cut in the number of delivery vehicles that would be available to us. The Russians, on the other hand, are currently only at 620 launchers, delivery vehicles, which is already well below the 700. On the attrition path they are on, it would very soon be down to about 400 deployed launchers and 444 total launchers. So the United States has made huge concessions regarding delivery vehicles in this treaty, and the

Russians have conceded nothing on this point. It seems to me this is another area in which we made significant concessions and received very little in return.

Mr. President, we are binding ourselves to the number of delivery vehicles we negotiate with Russia, even though we have security commitments to extend our nuclear deterrent to more than 30 countries, while Russia has none. Given geographic realities, U.S. strategic nuclear forces are part of how the United States provides this extended deterrence. As we face an uncertain future, where other nations like China continue to modernize their nuclear forces, we will need to be able to hold more potential targets at risk to deter attacks. That means we need to be very careful about reducing delivery vehicle levels, and this amendment would simply use the administration's 1251 report force structure plan of 720 delivery vehicles as the ceiling for delivery vehicles under this treaty, rather than the current number of 700 reflected in the treaty.

Some of my colleagues will probably warn that even this modest amendment is a ''treaty killer'' amendment. But article II, section 2 of the Constitution says that the President ''shall have power, by and with the advice and consent of the Senate, to make treaties.'' When the other side admonishes us about ''treaty killer'' amendments, it becomes apparent that we are supposed to be a rubberstamp for this treaty, wanting us to provide our consent but not to provide our advice. It should be made clear what a ''treaty killer'' amendment is. It is any amendment seeking to remedy an issue with the treaty the Russians steamrolled us on during the negotiation process but which New START proponents do not wish to adopt because protecting American interests will annoy the Russians and perhaps jeopardize entry into force of the treaty.

One thing should be clear: The Senate cannot kill New START in the way some are suggesting. If the Senate gives its consent to New START with amendment to the text, that just means the treaty is sent to Russia for its approval with the amendment. The ball will then be in Russia's court. As CRS has outlined in its study on the role of the Senate in the treaty process: ''Amendments are proposed changes in the actual text of the treaty. . . . [They] amount, therefore, to Senate counter offers that alter the original deal agreed to by the United States and the other country.''

Simply put, an amendment to the treaty text would not kill the treaty, it would merely require Russian consent to the amendment as a matter of international negotiation. If Russia chooses to reject that amendment, it will not be the Senate that kills the treaty, it will be the Russian government.

As a side note, I believe it is important to recall that General Chilton's support for New START levels was predicated on no Russian cheating. He testified to the Senate Armed Services Committee on April 22, 2010, that one of the assumptions made when the Nuclear Posture Review was completed was ''an assumption . . . that the Russians in the post negotiation time period would be compliant with the treaty.'' It has been pointed out many times now how Russia is a serial violator of arms control commitments.

In conclusion, reducing U.S. strategic nuclear forces, especially with delivery systems, is a very serious matter that has received insufficient attention. We have little to gain, and much to lose, if we cannot be certain that the numbers in New START are adequate. I think it is worth noting that former Defense Secretary Schlesinger testified to the Senate Foreign Relations Committee on April 29, 2010, that ''as to the stated context of strategic nuclear weapons, the numbers specified are adequate though barely so.'' Again, this is a modest amendment that takes into account the administration's own force structure plan of 720 delivery vehicles. This amendment would simply use the administration's 1251 report force structure plan of 720 delivery vehicles as the ceiling for delivery vehicles under this treaty rather than the current number of 700 reflected in the treaty. In light of all of these issues, I ask my colleagues to carefully consider this amendment, and I respectfully ask for a vote in its favor.

Mr. President, I ask my colleagues to support this amendment. I simply say that with regard to maintaining a triad and a system of bombers, ICBMs, and SLBMs, in order to do that, the 700-number ceiling makes that very complicated.

If you assume 420 ICBMs and 240 SLBMs, that leaves room for some bombers but not a lot of room. Frankly, if you go down from the 720 number to the 700 number, if you assume up to 260 bombers—that is, if you assume the 700 number and take it out of bombers, you would be down to 40 bombers, 96 B–52s and B–1s that are nuclear capable, nuclear weapons we use with nuclear-launch vehicles for extended deterrence around the globe. Going down to 40 would be a two-thirds reduction in the number of bombers we have to provide that type of extended deterrence. It strikes me that we are getting perilously close with this number to moving from a triad to a dyad.

Furthermore, we are tying our hands when it comes to our ability to have the necessary delivery vehicles at our disposal, if and when that time would ever come.

Again, this is a very straightforward amendment. It takes the number from 700 to 720. It is consistent with the 1251 report and what the administration says they can accommodate in terms of launch vehicles. I hope my colleagues will support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, before I say a few words about the amendment, let me see if I can get an agreement from my colleagues. We have a lot of colleagues asking when we are going to vote, and we need to have some votes. We have only had two votes on this treaty after 6 days. Obviously, I can move to table, but I do not want to do that, at least not yet.

I ask the Senator from South Dakota if we can set up a time to have a vote on his amendment at 12:30.

Mr. THUNE. Mr. President, I say to the Senator from Massachusetts, we are prepared to debate. The Senator from Oklahoma wants to talk at length about the verification issue. I do not think we are prepared at this point to enter into a time agreement for any time certain on votes. Until we can get some indication from our colleagues who would like to speak on this amendment, it would be very difficult to do that.

Mr. KERRY. Mr. President, I say to my colleague, we are getting into the sixth day of debate. Christmas is coming. It is surprising to me that we do not have any indication who would like to speak on this amendment.

Mr. THUNE. Mr. President, I say to the Senator from Massachusetts, we do have others who want to speak, not only on this amendment but also on the amendment of the Senator from Oklahoma. These, as I said, are very significant, substantive amendments that deal fundamentally with the issues that are important to this treaty. I do not think we are prepared at this point to cut off that debate. Until we get some indication from some of our colleagues about who else might want to come down and speak to either of these issues, I object to entering into any kind of time agreement.

Mr. KERRY. Mr. President, I accept that. The point I am trying to make is, we have allowed each of the prior amendments to come to an up-or-down vote. We have not tabled them, which is an often-used practice, as everybody knows. We could have debated all last night; there was nobody here to debate. Now we are here debating. We are happy to leave time for debate. But I ask my colleagues if they could inquire into who might want to come so we could at least, out of courtesy to our colleagues, give them a sense of what the schedule might be, and then we can set a time for that debate allowing everybody adequate time.

I am not suggesting in any way that the topics we are discussing are not important. They are important, and they are worthy of debate and are worthy of discussion. We welcome that discussion.

Mr. INHOFE. Will the Senator yield?

Mr. KERRY. I yield for a question.

Mr. INHOFE. In addition to what Senator THUNE said, there are several people who said they want to go into closed session first and address issues having to do with my amendment and his amendment before a vote.

Mr. KERRY. Mr. President, I respect that. I am perfectly comfortable if we are able to set a time after that closed session. I think everybody would feel good if we can find the time. I understand the need to want to have that session. That is the Senator's right, and we respect that. We certainly can do it. Maybe we can find a time when we come out of that session when we can have a couple of votes back to back. I think that would help a lot of people.

I thank the Senator from South Dakota for his amendment. It is one that is worthy of some discussion. Obviously, some of that discussion is going to have to take place in the context of a classified session.

He said one of the arguments that will be used is that this will result in going back to the Russians and having to renegotiate the treaty. That is not a casual argument. It is not a small thing. But it is not the principal reason—it is one of the reasons, obviously, I think this amendment is ill-advised. But, most importantly, this amendment is unnecessary.

All of us on our side have a very clear understanding of the importance of delivery vehicles with respect to our national defense. But here is what we have to balance the comments of the Senator from South Dakota against: the President of the United States, the Secretary of Defense, the Joint Chiefs of Staff, the commander of the U.S. Strategic Command, and others have all determined that we can safely reduce our deployed ICBMs and our deployed SLBMs and our deployed heavy bombers—the three legs of the triad—that they could be reduced to the 700 number.

That figure was picked, obviously, after an enormous amount of thinking by all of those parties concerned—the Strategic Command, the Air Force folks, the Navy SLBM—and they did so only after seeing the results of force-on-force analyses of exactly where that would leave us in terms of America's response should there—happily in the current atmosphere—be the unlikely event of a nuclear confrontation. Obviously, we need to think about these issues in that larger context of where we are today, what direction we are moving in, and what is the reality.

As the Senator knows, without going into any details, that force-on-force determination was made not just in the likelihood of a Russian-U.S. confrontation but in a multiparty confrontation. Again, we will discuss some of that later.

The gravamen of the Senator's complaint is that he is concerned that the administration has failed to thus far state precisely how it is going to reduce the deployed ICBMs—intercontinental ballistic missiles—and the SLBMs—submarine-launched ballistic missiles—and heavy bombers, how do we meet the treaty's requirement of 700. I want the chairman of the Senate Armed Services Committee to weigh in.

I will say quickly, the administration has made it clear that it intends to maintain 20 launchers on the 12 ballistic missile submarines that we keep operationally deployed, meaning our submarine force will account for 240 of the 700 limit. We agree on that. That leaves room for 460 deployed delivery vehicles combined from the two other legs of the triad—from the ICBMs and from the heavy bomber forces.

The Senator also said the administration has said in its 1251 report that it has not made a final decision on going all the way up to the 420 ICBMs or all the way up to 60 bombers or somewhere in between. That decision has not been made.

In other words, out of the total deployed delivery vehicle limit of 700, the administration has left itself some room to maneuver, to make a decision on 20 of its ICBMs and bombers.

Under the agreement, we have 7 years of room before we have to meet that limit. When asked about this sort of available time of 7 years, General Chilton, the commander of our Strategic Command, told the Armed Services Committee for the record:

> The force structure construct, as reported in the section 1251 report, is sufficient to meet the Nation's strategic deterrence mission. Furthermore, the New START treaty provides flexibility to manage the force drawdown while maintaining an effective and safe strategic deterrent.

As a technical matter, the Senator's amendment would require the President to go back to the Russians, move the limit up from 700 to 720, even though the military is perfectly comfortable with the level we have. That is when we begin to get into the question, if they are telling us that this is good and comfortable and we can do what we need to do in this context, I might add, of a very different Russia, very different United States, very different set of strategic demands at this moment, why would we reopen the treaty for renegotiation?

I have more to say, particularly on the subject of the Prompt Global Strike because the Prompt Global Strike likewise is not impacted negatively by this, and there are a number of reasons we have options as to how we arm certain legs in the triad and what we choose to do.

It is important to point out also—I think this is important—there may be some concern. I understand the geography of the Senator's representation, so there may be some concern from some Senators, and the comments that the Senator made that those of you who have people concerned with the ICBM bases or the SLBM bases or the bomber bases need to be focused on this, let me be clear that the administration has made it clear. None of the three ICBM bases are going to be closed because of the New START treaty. We are maintaining all of them.

What is more, the administration has made it clear that it is committed to the ICBM force in the years to come. In its updated 1251 report, the Minuteman III will remain in service through 2030 and then be replaced by a follow-on ICBM to be determined.

If people are concerned about cutting bombers, Senators should remember that to meet the New START's limits, we are not going to need to eliminate any bombers. We plan to simply convert some bombers to a conventional role, at which point they will no longer count toward the treaty limits.

With that stated as part of the RECORD, I yield 5 minutes, or such time as the Senator from Michigan would like to consume, to the chairman of the Armed Services Committee.

Mr. INHOFE. Mr. President, it was my understanding that we had an informal arrangement that we would go back and forth. I would like to be recognized.

Mr. KERRY. I completely understand that. We had the two Senators speak. I would like to yield to the chairman of the Armed Services Committee for 5 minutes and then come back.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the amendment of Senator THUNE would amend the treaty by changing one of the elements of the treaty, which is the number of deployed strategic forces that we have. Under the treaty, the limit, of course, is 700. But the critically important part to our military is that each side would have the ability to change the mix to reach 700 as it suits our respective needs.

The amendment of Senator THUNE would alter the limit of 700 to 720 deployed SLBMs, heavy bombers equipped with nuclear arms, and ICBMs. These limits, as the chairman of the Foreign Relations Committee has just said, were agreed upon only after careful analysis by the U.S. military leadership, particularly General Chilton who is the commander of our U.S. Strategic Command and the man responsible for these strategic systems.

Senator KERRY has quoted General Chilton. I want to add one additional quote of his which he testified to before the Armed Services Committee on July 20 of this year. General Chilton stated that the force levels in the treaty meet the current guidance for deterrence for the United States. By the way, that guidance was laid out by President George W. Bush.

> The options we provided in this process focused on ensuring America's ability to continue to deter potential adversaries, assure our allies, and sustain strategic stability for as long as nuclear weapons exist. This rigorous approach, rooted in deterrence strategy and assessment of potential adversary capabilities—

Here are the key words—

> supports both the agreed-upon limits in the new START and recommendations in the Nuclear Posture Review (NPR).

So General Chilton is on record in a number of places very precisely and specifically saying that the options which were provided, including the one which was adopted here, rooted in the

strategy, rooted in the provisions, the guidance as laid out by President Bush, support the agreed upon limits in the START treaty. I don't know how much more precise and I don't know how much more significant you can get with the words of the commander who is in charge of these weapons.

The 1251 report, the report says up to those numbers. It is not specifically committed to those numbers. The important thing about the report is not just that it says up to in I think at least two of the three cases it also says it is important that we remain flexible as to this number.

So the 700 force structure that is in the treaty would retain the nuclear triad, retains all three delivery legs, bombers, SLBMs, and ICBMs. On that point General Chilton said we are going to retain the vital nuclear delivery systems, and if there is a failure technically in one of the nuclear systems, we can rearrange our deployed force structure and treaty limits to compensate.

Some have said the United States will have to make significant reductions to reach the 700 level and the Russians will have to make none. According to General Chilton, this argument is a distraction. What he said is that the ''new START limits''—in his words, the ''new START limits the number of Russian ballistic missile warheads that can target the United States, missiles that pose the most prompt threat to our forces and our Nation. Regardless of whether Russia would have kept its missile force levels within those limits without a new START treaty, upon ratification they would now be required to do so.'' And that certainly is very important to our Strategic Commander, General Chilton, because he said:

> The constraints of the treaty actually do constrain Russia with regard to deployed launchers and deployed strategic weapons, and that is an important element as well. Without that they are unconstrained.

He explained that the limits were important because without those limits

> There would be no constraints placed upon the Russian Federation as the number of strategic delivery systems or warheads they could deploy. And I think it is important for the United States—

he concluded

> that there be limits there, limits that we would also be bound by, obviously.

General Chilton is not only comfortable with the limits in this treaty, it was his analysis that formed the underpinning for the 700 limit. He doesn't need the strategic, the additional 20 strategic nuclear delivery systems to maintain our strong deterrence, and other than to kill this treaty there is no reason to add these 20 additional systems. We should respect General Chilton's judgment that the United States can maintain an effective deterrent and that such a change would kill this treaty.

I yield the floor and I thank the Chair.

Mr. INHOFE. Madam President, I do want to be recognized for the purpose of further explaining my amendment No. 4833 and also to respond to the Senator from Massachusetts. Before doing that I would ask if the Senator from South Dakota has any responses he wishes to make at this time, and then I wish to keep the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from South Dakota.

Mr. THUNE. I thank the Senator for giving me the opportunity to respond, if I might, to some of these issues.

One of the issues General Chilton, the Stratcom commander, I think testified to was an assumption there would be nobody cheating. As I said before, history is replete with examples of the Russians cheating on these agreements. And furthermore, what they agreed to was not—the treaty is 700, but what General Chilton and the nuclear force structure plan would call for is 720. It is 240 submarine-launched ballistic missiles, up to 420 ICBMs, and up to 60 bombers. Again that adds up to 720. All this amendment does is simply make consistent what the nuclear force structure plan as outlined by General Chilton and others would be with what the treaty requirements would be as well.

Again I want to make one point about this. I said this earlier but we have 856 launch vehicles, delivery vehicles in our arsenal today. The treaty calls for 700 so we are making a 156-delivery vehicle reduction to get down to the 700 number. The Russians today at 620 in effect are already below the 700 number and they are headed down even lower to somewhere in the 400 range. So we have made a significant concession with respect for delivery vehicles at no cost whatsoever to the Russians. I would point out also that the concern I have, as I said before, in taking a 720 number and reducing it to 700 assumes again that even if you keep 240 submarine-launched ballistic missile delivery vehicles, assume that, and if you assume 420 ICBMs, you would have to reduce the bomber inventory down to 40 to get under the 700 level.

I think most people understand it is the bombers, the heavy bombers that have given us the extended deterrence. They are visible, they are recallable, they are psychological, they are political. You put them into a theater, they loiter, they persist, and that is a powerful deterrent to those who would like to proliferate nuclear weapons. If we take our bomber fleet and we reduce down to the limits that would be talked about under this treaty, we are putting at great risk the triad. A lot of these bombers need to be updated and they are getting older. We need a next generation bomber which I think is going to be critical that that also be a nuclear bomber. But I think it is important to point out that this particular treaty relative to where we are today and to what our needs could be in the future, particularly as it pertains to bombers, the need for extended deterrence, we are reducing to a level that I think makes many of us uncomfortable and gets below the number that was prescribed in the nuclear force structure plan as had been outlined. The 720 as opposed to 700—the 700 number is well below where I think we need to be and does put in peril the triad which has served us well for a long period of time. In fact, in the early stage of the Cold War it was the heavy bombers that provided the bulk of the work. When we developed the ICBM, and SLBMs, now some of the bombers have been converted to conventional use and they have been doing a great job in that mission as well. But if we are going to have extended deterrence in the future we are going to have to have a very robust nuclear fleet that is nuclear capable, and a 700 number puts that in great jeopardy.

With that, I yield back to the Senator.

Mr. LEVIN. Will the Senator yield for one question before he yields the floor?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Will the Senator yield for a question?

Is it not true that the 1251 report says that the numbers which they talk about are up-to numbers, in the case of both ICBMs and the nuclear bombers?

Mr. THUNE. Madam President, it is my understanding that is correct; it is up to the 240 SLBMs, up to 420 ICBMs, and up to 60 bombers.

Mr. LEVIN. So the 720 is not proscribed by the 1251 report. Thus the total of the three numbers, two of which are up-to numbers, is that correct?

Mr. THUNE. Madam President, to answer the question of the Senator from Michigan, that I believe to be the case. It is not proscriptive. All I am simply saying is if you make an assumption that you are going to take the additional 20 delivery vehicles out of the bomber fleet, you would take it from 60 down to 40 at a time when we have about almost 120 bombers in our inventory. That is a significant reduction in our ability to provide extended deterrence, and the bombers are the best form of extended deterrence.

Mr. LEVIN. I thank the Senator and I thank the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. It is my intention now—I made my presentation earlier on and a similar presentation yesterday and the Senator from Massachusetts responded. I wish to respond to his responses to clarify some of the things that might be a little unclear.

First of all, the Senator from Massachusetts said every Senator on our side and, most importantly, the unbelievably experienced negotiators who put this treaty together, have made a lifetime of trying to understand these kinds of relationships and the ways in which you adequately verify, and they

wanted to expand, which I appreciated, how qualified these people were, but here is the problem we have and I think it was articulated by the Senator from South Dakota. We have a constitutional responsibility. We take an oath of office to support the Constitution, and one of the things it is up to us—not to anybody but us—to provide for common defense. Article II, section 2 of the Constitution specifically gives us not just the right but the obligation for advice and consent, and quite often we talk about all these smart people who have agreed with this. That leaves one group out. That is us. We happen to be the ones who are accountable to the people through our election.

The Senator from Massachusetts also said that the treaty itself, talking about the amendment, my amendment, he said he opposes an amendment to the treaty itself which we all understand now after two votes that it would kill the treaty, essentially saying that if you amend the treaty it is dead.

I think we need to stop and reevaluate what our obligation is, not just the constitutional obligation, as the CRS has outlined in a study of the role of the Senate in the treaty process. Amendments are proposed changes in the actual text of the treaty. They amount therefore to Senate counteroffers that alter the original deal agreed upon by the United States and the other country.

If the Senate gives its consent to New START with amendments to the text, the treaty is sent to Russia for its approval with the amendments. Both the Russian Duma and the United States Senate have a constitutional right to change portions of this treaty and it is up to them to do. So this reinserts it back into the process. I feel that is exactly what our Founding Fathers wanted us to be doing in these treaties and that is what we are trying to do.

The third thing that was stated by the Senator from Massachusetts is, he was talking about the concept of the type one inspections and the type two inspections as a new one. Well, it is a new process because type two inspections are inspections on formerly declared facilities. Obviously in the START I treaty we didn't have formally declared facilities. They came as a result of the first treaty. Type one refers to inspections of ICBM bases, submarine bases, and air bases to confirm the accuracy of declared data on the number and types of deployed and nondeployed warheads located on ICBMs, SLBMs, and heavy bombers. So I would say that type two inspections weren't even addressed in the first treaty.

The Senator also said we said we ought to send this back ''but it doesn't rise to that level in my judgment.'' Now he talks about the level of significance. All these amendments are significant. Each one of us who is an author has a little bit of bias because we have studied a little bit more in our particular area. I can't think of anything that is more significant than verification. The interesting thing that was brought out by the Senator from North Dakota was General Chilton's support. I am reading from the report right now. It says General Chilton's support for the New START level was predicated on no Russian cheating or changes in the geopolitical environment.

Well, historically they have been cheating on everything. Let me go ahead and reread what I said before. We had the meeting, the convention in 2005, and then again 5 years later in 2010, came out in May or June of this year, and in that one, talking about the biological weapons convention in 2005, the State Department concluded that Russia maintains a mature offensive biological weapons program and that its nature and status have not changed. That is what they said in 2005. Now 5 years later the new report came out and the State Department report states the Russian confidence-building measures since 1992 have not satisfactorily documented whether its biological program was terminated. Therefore, they are saying the same thing 5 years later, so they lied 5 years ago and it appears that they have not done—or they cheated, I should say.

Chemical weapons the same thing.

In 2005, the State Department assessed that:

> Russia is in violation of its Chemical Weapons Convention obligations because its declaration was incomplete with respect to declaration of production and development facilities.

Then, in 2010, 5 years later, the State Department again stated 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 and all of its chemical weapons development facilities.

If we are predicating all that on General Chilton, who said cheating has all of a sudden miraculously stopped, this is a great reform measure, and I would like to see the evidence of it before we assume that is the case.

The Senator from Massachusetts also stated people responsible for verification of this treaty would never have been sent to the United States. This treaty would never have been sent to the United States if the treaty did not have adequate verification measures. So it talks about all these verification measures.

Then he says: It is the judgment of our military, our State Department, and our intelligence community that these measures are adequate.

That may be true with those who are currently answering to our President who strongly support this treaty. But if we look at the State Department and the military and the intelligence of the past, those people who have commented, James Baker, as I recall, Secretary of State, summarized that the New START verification regime is ''weaker than its predecessor,'' testifying to Congress in May of this year. I happen to have been there. He said the New START verification program:

> . . . does not appear as rigorous or extensive as the one that verified the numerous and diverse treaty obligations and prohibitions 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.

Insofar as the military is concerned, Richard Perle, former Assistant Secretary of Defense in the Reagan administration, stated on December 2, a few days ago, that:

> New START has a very weak verification regime, one that establishes a dangerous precedent and lowers our standards for verification.

Here is the military weighing in.

He goes on to say that:

> New START's verification provisions would provide little or no help in detecting illegal activity at locations the Russians did not declare, are off limits to U.S. inspectors, or are hidden from U.S. satellites.

James Woolsey—when we talk about intelligence, I have a bias because James Woolsey is from Oklahoma. He was the Director of Central Intelligence from 1993 to 1995. He was adviser to the SALT I negotiations up through 1970, a delegate at large to the START and defense and space negotiations.

He stated, on November 15, that under this treaty, unlike the original START treaty, Russia is free to encrypt telemetry from missile tests, making it harder for us to know what new capabilities it is developing. There is no longer the requirement for permanent onsite monitoring of Russia's primary missile production facility, which under old START helped us keep track of new mobile missiles entering the Soviet force.

He goes on and on. That is agreed with by Paula DeSutter, former Assistant Secretary for Verification, Compliance, and Implementation at the U.S. State Department, who pointed out on July 12 that New START has glaring holes in its verification regime. New START is ''much less verifiable than the original START.''

I only say this because my friend from Massachusetts talked about the military, the State Department, and the intelligence community. One thing that is ingrained in our system is that we have a President who is Commander in Chief. He has a lot of influence over the State Department and the military. We have heard some very well respected people along those lines.

One of the arguments or rebuttals the Senator from Massachusetts had against my opening statement yesterday was that we have fewer sites now than during the development of the START I treaty. This is true. We do have fewer sites. An argument can be made—and most people agree with the fact—that if you have fewer sites, you need more inspections.

Former Under Secretary of State for Arms Control and International Security John Bolton stated, on May 3, that

''while [verification] is important in any arms-control treaty, verification becomes even more important at lower warhead levels.''

Brent Scowcroft and Arnold Kanter weighed in on the same thing 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.

In May of this year, in front of the 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 and diverse treaty obligations. . . .''

He goes on to say it is more significant as you reduce your number of inspected facilities.

Further, the Senator from Massachusetts responded to me by saying they are going to demand the same number of inspections of our military bases, and we would have to be prepared to host them three times more in inspections. That is true. This is bilateral. Everything we are asking them to do, we to have do too. I like that idea. He went on to talk about the inconvenience, but my amendment applies to both the United States and to Russia. My amendment increases inspections for both sides, which will improve confidence, trust, and transparency. More importantly, it improves our ability to catch the Russians cheating and deter Russian cheating. I am fully aware we have to do the same thing the Russians have to do.

Furthermore, it was stated by the Senator from Massachusetts, in his response to my statement:

So I think it's one thing to ask our strategic nuclear forces to do that ten times a year, or less than once a month. It's another thing for them to be waiting for 30 inspections a year. We have 2 submarine bases, 3 bomber bases, and 3 ICBM bases.

I might add, Russia has 3 submarine bases, 3 bomber bases and 12 ICBM bases. So we are actually not on parity there.

Quoting from a letter Secretary Gates sent this summer about whether the Russians would 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, and the U.S. strategic command and I assess that Russia will not be able to achieve militarily significant cheating or breakout.

In other words, they are not going to cheat. This is this conversion I guess they have had.

Mr. KERRY. Madam President, would the Senator yield for a moment?

Mr. INHOFE. Just for a moment, for a question.

Mr. KERRY. I just want to be clear. The Senator read my words accurately, which were the quote of the general who said ''militarily significant.'' I don't think he said that.

Mr. INHOFE. I didn't hear the Senator.

Mr. KERRY. With respect to the issue of cheating, what he said was he didn't think there would be anything militarily significant. Again, this is material we could go into, which we will probably, in the classified session. But I just want that distinction to be clear.

Mr. INHOFE. I thought that is exactly what I said. I apologize for the misunderstanding.

Further, the Senator from Massachusetts made the statement that:

Our analysis of the N.I.E. and the potential for Russian cheating or breakout confirms that the treaty's verification regime is effective.

I have to always be a little suspect of what comes out of the N.I.E. I think all of us are. We don't take it as gospel. This is actually a true story. Back in the Clinton administration, it was August 24, 1998, I asked the question: How long will it be until North Korea has a multistage rocket? The response that came back in August of 1998 was 5 to 10 years. Seven days later, on August 31 of 1998, they fired a three-stage rocket.

I think we need to look at some of the intelligence estimates. They have been wrong in the past. When you are talking about something as significant as the issue we are talking about here, about the threat that is out there, then we have to be right.

Then, the Senator from Massachusetts quoted Condoleezza Rice. I actually agree with her. She said:

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.

I agree with that. Obviously, she is not saying she supports this. She is saying she supports some kind of a verification. There is none today, so anything is better than nothing. I think that is what she is saying. She also agreed, in her next statement in the Wall Street Journal of December 7:

Still, there are legitimate concerns about New Start that must and can be addressed in the ratification process. . . .

Implying that there is nothing wrong with having amendments.

Lastly, one of the statements the Senator from Massachusetts made in response to my comments was:

Finally, I'd like to point out that we addressed the importance of this verification question in condition 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 the provisions of the New START treaty and timely warning of Russian preparation.

Here is the problem I have with that. The President can only certify what he knows. Our intelligence experts are telling him what they are seeing in Russia. This amendment provides that the President will have more information. I would think, if that is the concern, we would want to give the President more information.

Lastly, I see the Senator from Arizona is here, and I know he wants to be heard. Let me mention one last thing my good friend, the Senator from Massachusetts, stated. He was talking about the fact that these are killer amendments. I think it is worth restating what we said before.

The CRS has outlined in its study on the role of the Senate in the treaty process:

Amendments are proposed changes in the actual text of the treaty. [They] amount, therefore, to Senate counteroffers that alter the original deal agreed to by the United States and the other country.

If the Senate gives its consent to New START with amendments to the text, the treaty is sent to Russia for its approval with an amendment. That means we go back and forth and hopefully come out with a treaty that would be workable.

According to the 2005 and 2010 State Department reports on arms compliance, Russia has a bad habit of cheating on these agreements. In fact, I think we have covered that adequately at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I wish to talk about both the Thune amendment and the Inhofe amendment. With respect to the Inhofe amendment on verification, we are going to go into executive session of the Senate at 2 o'clock this afternoon, where there will be an opportunity for all Senators to examine classified materials that have been presented by our intelligence agencies, some of which relate specifically to the treaty and, in particular, the verification provisions in the treaty. It is too bad it is not possible for us to discuss with very much specificity the nature of the intelligence we will be discussing, but I will say I think it is a good thing we will be voting on the Inhofe amendment following that session, because a lot of the material we are going to be exposed to in executive session relates to the verification provisions of this treaty and past experience with verification.

That is about all I wish to say right now, except that I hope colleagues would attend that session because their vote on the Inhofe amendment would at least be partially predicated on their being briefed in that executive session.

With respect to the Thune amendment, I very much support it as well. The reason is because the whole point of this treaty was to reduce the nuclear

warheads and the delivery vehicles of the Russian Federation and the United States. That is the essence of the treaty. There is a lot more to it, but it reduces to 1,550 the actual warheads and reduces to 700 the delivery vehicles. There is a special definition or counting rule of those delivery vehicles that we don't need to get into here, but the reality is, it is 700 deployed delivery vehicles, with another 100 that could theoretically be deployed at a later date.

But 700 is the number. That is important for a couple of reasons. As we have talked about before, the Russians will actually have room to build up. There are a lot of different estimates over the number of delivery vehicles they are planning on having. But because missiles and bombers and submarines are expensive, the Russians could be well below that number in a few years. So that number does not help the United States at all. The Russians are already below it by at least—well, over 100—and they will be going lower than that.

One unfortunate consequence of that is they are MIRVing their ICBM delivery vehicles in a way that, obviously, is going to be much more destabilizing. Throughout the Cold War, both sides developed missiles that allowed them to put more than one warhead on top of a missile. The problem is, that is very destabilizing in a potential nuclear conflict because of the notion that you lose it if you do not use it.

So it was an incentive for either side to launch their missiles before the other side could attack them and destroy them. If you hit one missile silo and that missile in the silo has 8 warheads on it or 10 warheads on it, you have killed 10 warheads, not just one. Those warheads—the way they work is, when the missile gets up to the top of its apogee, those warheads are splayed out, and each one has a different trajectory down to potentially 8 or 10 different targets. So they are very destabilizing. The incentive is for the person doing the first strike to kill them all so the other side does not have that capability coming back at you.

Well, both the United States and the then-Soviet Union recognized how destabilizing this was and moved toward a single warhead per missile, which is much less destabilizing, obviously. Since one of the benefits of this treaty is allegedly the stability that comes from it, one is very troubled by the idea that, unfortunately, that is not the way it works. The treaty is much more destabilizing, not stabilizing, because of this incentive for the Russians to put more than one warhead on each missile. The United States, by contrast, is limiting our missiles to one warhead apiece. In a way, that puts us at a big disadvantage.

Another way it puts us at a disadvantage is we are above the 700, and we are going to have to retire a lot of our delivery vehicles to get down to 700. So the treaty is not symmetrical in this regard. They could actually build up to 700. We will have to bring down to 700.

It is also not symmetrical because our obligations around the world are much more diverse than are Russia's obligations. Russia will be defending Russia. The United States has an understanding with 31 other countries that our nuclear umbrella is available to them for their nuclear deterrence as well. So this requires a more sophisticated defense plan on our part as to how we would deliver various warheads to what targets, and it essentially expands the number of weapons we need.

So it is a big deal to get down to the number of 700. As Senator THUNE has noted—and I will not repeat this—before the treaty was negotiated, a lot of our miliary people were testifying to various numbers that, obviously, led to the conclusion that 700 was way too low. Dr. Schlesinger has, for example, said that 700 might be barely enough.

The problem is, that, A, we are even going to go below 700 if we proceed with something the administration wants to do, many of us here want to do; that is, to develop what is called a conventional Prompt Global Strike. A conventional Prompt Global Strike is using an ICBM but with a conventional warhead on it, not a nuclear warhead, to strike at a target of potentially a rogue nation or some terrorist group or someplace where you have actionable intelligence that is of very short life. You want to destroy a target. You obviously do not want to use a nuclear warhead. But you want to get there fast, and it is a long way away. So you might need to use, essentially, the same kind of missile you would use to deliver a nuclear warhead.

Well, the Russians did not like that, so they said: If you do any of those, you are going to have to count them against your nuclear delivery limit. So if we did 25 of those, let's say, then instead of 700 vehicles to deliver nuclear weapons, we would only have 675. That is why the Thune amendment talks about going back up to 730, which, without getting into classified material, I believe represents a number that more closely approximates what people think is going to be necessary for the United States on into the future.

The other thing that is troubling about it is, the administration has yet to commit to a full triad nuclear capable. Even though they have said they are fully committed to the triad, which means bombers, submarines, and ICBMs, they have not been willing to say the new bombers we build will be nuclear capable or will have cruise missiles that can deliver a nuclear warhead.

So while they say ''triad,'' they are not willing to commit to anything but a diad. The problem with that is, there is much less stability and capability if you only have two ways of delivering your nuclear weapons. If there is something wrong with your ICBM force—remember, about 2 months ago, the power went out in several States, and our ICBMs were actually down for—I have forgotten what it was—an hour and a half or something like that because they did not have any electrical power.

Well, obviously, nothing happened during that period of time. But a single point of failure is never desirable in the military context, where if one thing goes wrong, a lot of weapons or capability is taken off the table. The problem is, if you get down to just two ways of delivering these weapons, rather than the three we have today, you are going to be much less capable. Your deterrent is not going to deter as much. That is what Senator THUNE is trying to get at.

Let's at least modestly increase the number of delivery vehicles we have. It is a modest amendment. It is an appropriate amendment. Yet as we have just seen from Reuters today—something we already knew but the latest iteration of it—''Russia warns U.S. not to change nuclear pact.'' In effect, what they are saying is, the Senate can debate all it wants to, but if it makes one change, changes one comma, one thing is different in the treaty, well, then what? Then, as my colleague, Senator KERRY, said, we would have to see if the Russians were willing to agree to it. Otherwise, they would have to renegotiate at least that part of the treaty.

Well, what is wrong with that? Unless you think the U.S. Constitution was stupid to give the Senate a role in this, it does not seem to me there is anything wrong with the Senate saying: You got about nine-tenths of it just fine, President Obama and President Medvedev, your negotiators. These negotiators are good, smart people and they are dedicated public servants, but they are not necessarily the last word. The Senate is the last word, according to our Constitution. We gave our advice. The administration did not take our advice in two specific ways, but yet they expect us to give them their consent to the treaty.

The reality is, the Senate should not be a rubberstamp. In the first START treaty, we said: You have not dealt with a subject here that needs to be dealt with—the potential for Russian submarine-launched cruise nuclear weapons. We need to have a side agreement on that. It did not blow up START. We did a side agreement. The world did not end when the Senate said no to the Comprehensive Test Ban Treaty. The predictions were that this was going to destroy our relations with Russia forever. It did not. Here we are today now told again: If you change one thing in this treaty, then Russia will not go along with it and our relationship could deteriorate significantly.

Well, if our relationship depends upon ratification of the treaty exactly like it is, then it is a lot weaker than the President and Vice President are making it out to be when they talk about this wonderful new reset relationship. Surely, it could stand the Senate making a modest change to the

treaty. If it cannot, then I do not buy the argument that this is a wonderful reset relationship.

So for my colleagues who say: We will not abide by any amendments to the treaty, I say: Well, then, you have just said the Senate is irrelevant in the treaty process. We might as well forget about having the Senate consider these treaties in the first place.

Senator THUNE and Senator INHOFE have good amendments. I am looking forward to supporting both of them when we return from our closed session this afternoon. I urge my colleagues to do the same.

Mr. THUNE. Madam President, will the Senator yield for a question?

Mr. KYL. I would be happy to yield for a question.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. The Senator from Arizona made some good points, I think, about the importance of the triad in maintaining our nuclear capability and deterrence.

I am interested in knowing if the Senator is aware that even if you assume the numbers that are in the 1251 report that would take the number of bombers down to 60—and it is up to 60, but the treaty calls for 700 delivery vehicles, which, if you took that out of bombers, would take you down to 40—that even taking it to 60 would cut in half the number of nuclear bombers.

Is the Senator also aware bombers are the best vehicle to enforce extended deterrence? The ICBMs, the missiles we have, our adversaries sometimes cannot see those. A bomber is visible. A bomber can be sent into theater. It has an impact, a psychological impact, a political impact. It is recallable. It is something that can be out there that makes those who would proliferate nuclear weapons even more concerned about the capability we have to respond.

The importance of maintaining that leg of the triad is, in this Senator's judgment, critical. It sounds like, from what the Senator is saying, he understands that as well.

I want to know if the Senator is aware that the limits that are imposed not only in the 1251 report but, more important, in the treaty would significantly reduce the number of nuclear bombers we have at our disposal today.

Mr. KYL. Madam President, I say to Senator THUNE, I was not aware it would be cut in half. I was aware it would be drastically reduced. That is a huge reduction, especially if the administration is unwilling to commit that we are even going to have a nuclear-capable bomber force in the next generation of our triad. They have been willing to say we have a great triad today. That is true as far as it goes. But part of that triad on the bomber force, for example, are B–52s that were designed—when—back in the 1950s and built in the 1960s and 1970s.

We have to replace all three legs of our triad. The decision has been made on the submarine. That is a good thing. But the decisions have not yet been made on the ICBM or on the bomber force.

One of our concerns about modernization is that modernization of the nuclear warheads is fine—I mean, it is necessary. But if we do not also modernize the method by which we deliver those warheads, then modernizing our warheads is of little significance.

The final point to Senator THUNE's question, of course, is that other countries, including Russia and China, are all modernizing both their warheads and their delivery vehicles. So the United States does not want to get caught in the position where we are down to very few workable weapons, especially the bomber force, which, as the Senator noted, can also be called back, unlike the missiles that are launched either from ground or from submarine. Once they are launched, they are launched. At least a bomber can be called back.

Mr. THUNE. I guess the concern and observation the Senator raised I would make as well. With regard to a follow-on bomber, a next-generation bomber, much of our bomber fleet today—47 percent of it is pre-Cuban missile era. So they are older. They need to be replaced. We need a next-generation bomber. The question the Senator raised about the ambiguity coming out of whether a next-generation bomber would, in fact, be nuclear is a real concern because that would put at risk the existence of the triad, which I think allows us to maintain the flexibility, the versatility we have today in terms of nuclear deterrence.

So I would echo what the Senator from Arizona has voiced as a concern about this discussion of a next-generation bomber and whether, one, it will be done, and, two, it will be a nuclear bomber.

Mr. KYL. I will conclude by saying, I hope we have at least a short moment or period of debate following the closed session so both Senator THUNE and Senator INHOFE can make a brief closing argument to remind our colleagues about what the debate has been all about. I regret more of our colleagues were not on the floor to hear the debate.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, of course, we will accommodate, hopefully, some brief statements prior to the votes, and I am confident we can agree on some reasonable period, hopefully, not more than 5 minutes or something like that, to summarize.

But let me say to my friend from Arizona, because I heard him saying fairly passionately: What is the point of having the Senate involved if it cannot advise and consent and cannot amend the treaty, none of us on our side are arguing we should not have that right, that we do not have that right, that this is not a worthy debate, and that we should not debate a legitimate attempt to amend the treaty. That is not what we are saying. In fact, if I thought it was a flawed treaty and if I thought there were enormous gaps in it, I would try to amend the treaty, I am sure. I think if that were true, we wouldn't have had a 60-to-30 vote against doing it yesterday. Sixty Senators made the judgment that we don't want to; we don't think it rises to that level.

I would simply say to my colleague, it is not that the amendment—that we shouldn't have the debate and that somehow not doing this now rejects the notion that we are capable of doing it; it is that we don't think it is a good amendment. We don't think the amendment rises to the level where it raises an issue that it merits sending the treaty back to the Russians.

So we will retain that right—and I will protect that as long as I am a Senator—to give that proper advice and consent. But I believe we gave the proper advice and consent and we rejected an amendment, as I hope we will reject these other two amendments, and I will further the arguments with respect to that later.

I think the Senator from Pennsylvania is waiting for time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. KERRY. Madam President, I ask the indulgence of the Senator from Pennsylvania for a moment. Let me also reiterate I don't know where this constant questioning of the triad keeps coming from, because the Secretary of Defense, in testimony as well as in letters, not to mention the Defense Department through the Joint Chiefs and then others, have repeatedly stated their commitment to a viable, forward-going triad. The triad is not in question here. There will be a triad, we are committed to the triad, and I will have something more to say about that later.

I yield the floor, and I thank my colleague.

The PRESIDING OFFICER (Mr. CARDIN). The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

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

Mr. CASEY. Mr. President, I rise to speak about two or three topics in this debate on the START treaty, but first and foremost, one that speaks directly to the amendment that is pending. That is the question of verification—the ability for the United States to verify by way of inspection and other means what the Russian Federation has in terms of its nuclear weapons.

First of all, I would say as a foundational principle in this debate, nothing in this treaty will in any way compromise the safety, security, effectiveness, and reliability of our nuclear arsenal. That is critical to make that point, and I think the American people understand that. But as the American people are listening to this debate

about verification, I think it is important to outline the distinctions between the amendment and I think what is, in fact, the case in the treaty.

The treaty itself allows each party up to 18 short-notice, on-site inspections, and that is each year, with up to 10 so-called type one inspections conducted at operating bases for ICBMs, strategic nuclear-powered ballistic missiles, submarines, and finally nuclear-capable heavy bombers. So that is the type one inspections, up to 18 of those, which are short-notice inspections. Secondly, under the type two inspections, these are conducted in places such as storage sites, test ranges, formerly declared facilities, and conversion or elimination facilities.

Some have asked whether we lose any valuable elements of the original START agreement's inspection regime. The Under Secretary of Defense for Policy James Miller replied to that question, a similar question I posed during the Senate Foreign Relations Committee hearing on the verification of the New START treaty. It was a hearing I chaired. He said that under New START, we will conduct, as I said a moment ago, 18 inspections per year for 35 sites; so 18 inspections, 35 Russian sites. Under START I, there were 28 inspections for 70 Russian facilities. We are going from a verification regime where there are 28 inspections for 70 sites to one that goes to 18 inspections for 35 sites. The ratio is actually better under this treaty in terms of the numbers of inspections and sites.

Mr. Miller, Under Secretary of Defense Miller, said that the ratio of inspections to facilities ''is improved under the New START treaty relative to the original START treaty.'' That is Under Secretary of State Miller. That is not my words but his.

ADM Mike Mullen, Chairman of our Joint Chiefs of Staff, reiterated this point on March 26 of 2010 when he said that the New START ''features a much more effective transparent verification method that demands quicker data exchanges and notifications.''

In addition, this does not take into account that some of the inspections under the New START treaty allow us to do two inspections at once, unlike the first START treaty. I would also say the inspection regime we have in place under this treaty has also been changed to reflect the current security environment, an enhanced relationship with the Russian Federation and more than a decade of our experience in conducting inspections. The New START inspection regime is simpler and cheaper than that which was conducted under the original START treaty. We conduct fewer overall inspections under this new treaty because there are, in fact, fewer sites in Russia to inspect, and we have gotten better at inspecting in the years since this has transpired.

I would also say we are standing here today on December 20 of 2010, 380 days without inspectors on the ground in Russia. That is one of the reasons why I say ratification of this New START treaty makes us safer than not ratifying this treaty; in fact, makes us less safer. One of the reasons for that—not the only reason, but one of the reasons—is that 380 days have passed without inspectors on the ground. This is, in a word, unacceptable to our national security. I think the American people believe that as well.

We need to vote on this treaty. While I and many of our colleagues who have worked on this believe there is a sense of urgency, we also believe the views of the other side of the aisle have been engaged in a serious debate. We have had day after day now of debate on the floor. Of course, all of the debate here now and last week—almost a full week now—all of that was preceded by months and months of work on the Foreign Relations Committee, the Intelligence Committee, and other parts of the Senate.

This is not new. The President made an agreement back in the spring of this year. We passed this treaty out of our committee back in the fall. We have had a lot of work. More than 900 questions have been asked of the administration and more than 900 questions have been answered by the administration; something like 20 separate hearings among several committees. We have had a lot of time and a lot of work put into this. The pace of this, in my judgment, has not been too fast, but it has been done with a sense of urgency to finally—after all of these months of work, all of these months of debate, all of these months of hearings, we are at a point now where we can ratify this treaty. I think in the end there is going to be bipartisan and broad support for ratification and we look forward to that vote.

My decision to support the New START treaty came after informed study of this issue as a member of the Foreign Relations Committee, and it is based, in large part, on relying upon and asking questions of folks such as Admiral Mullen, to name one—someone who has spent years in the service of this country, concerned about and doing something about the defense and the security of this country. So often we hear in this Chamber we should respect the opinions of commanders on the ground, and we should. We have heard that in the context of the war in Iraq, and we continue to hear it in the context of the war in Afghanistan. We should respect and take into consideration the determinations and judgments made by commanders on the ground, those who have direct experience with military questions and, in this case, have direct experience with the defense of our country.

I think when it comes to the New START treaty, we should apply the same rule as well when it comes to Admiral Mullen or any other military leader who has an opinion about this treaty. The commanders on the ground as it relates to this treaty have spoken and they have done so without equivocation and, I would argue, unanimously. On this vital treaty and on this national security issue, they have spoken with one voice: We need to take action to secure our country and we need to take action to defend our country. We need to make sure we are taking actions that will result in a nuclear arsenal that will be safe, secure, effective, and reliable, and one of the steps to get there is to make sure we ratify this treaty.

Let me move to one other topic. I know we have colleagues here who wish to speak. Let me ask how much time I have remaining.

The PRESIDING OFFICER. The Senator has 7½ minutes remaining.

Mr. CASEY. Thank you. I wish to speak about missile defense and I may be able to do it within that time or less. First of all, I wish to commend the work by this administration for the letter that was sent recently that reiterated once again the commitment of the United States. I would argue that is an unwavering commitment to missile defense, consistent with the goal of having a nuclear arsenal and having defense for this country—but especially as it relates to the nuclear arsenal—that is safe, secure, effective, and reliable. This New START treaty does not place any constraints on our ability to defend ourselves. Over the past few days, this has been made clear by Chairman KERRY on the floor, making these strong arguments, as well as those made repeatedly by our uniformed military leadership.

Let me give some flavor of that by reading the following. This is a quotation from LTG Patrick O'Reilly who thinks the New START treaty could actually provide more flexibility in implementing our missile defense plans. He said:

> The New START treaty reduces constraints on the development of the missile defense program in several areas. For example, MDA's intermediate-range LV–2 target booster system, used in key tests to demonstrate homeland defense capabilities and components of the new European Phased Adaptive Approach, was accountable under the previous START treaty, because it employed the first range of the now-retired Trident 1 SLBM. Under New START, this missile is not accountable, thus we will have greater flexibility in conducting testing with regard to launch locations, telemetry collection, and processing, thus allowing more efficient test architectures and operationally realistic intercept geometries.

That is a very technical summation by LTG Patrick O'Reilly. He is the Director of the Missile Defense Agency. He is not just making some casual observation in a think tank or even as a Member of Congress. We listen to a lot of voices here and many of them are respected voices. But I think when we are listening to the Missile Defense Agency Director, who is a lieutenant general, and he talks about this New START treaty providing more flexibility as it relates to missile defense, I think we should listen very carefully.

I know Republicans here in Washington have over many days now directly or indirectly tried to assert that this administration is not committed to missile defense. They are wrong. I think the record is very clear. The President made clear that this administration is inalterably committed—my words—to a missile defense that is effective. I would argue as well to a missile defense that ensures we have a safe, secure, effective, and reliable nuclear arsenal. It is also a missile defense that is capable of growing and adapting to threats posed by countries such as Iran.

I have heard a lot of folks here on both sides of the aisle stand up and make statements about the threat caused by Iran's nuclear program. We should listen to voices that are concerned about that in the context of making sure that this ratification is consistent with that, which it is. It is consistent with our efforts to ensure that Iran does not have that capability.

So what are these capabilities? Well, here is a quick summation.

We currently have 30 ground based interceptors at Fort Greely, AK, and Vandenberg Air Force Base in California defending the homeland. Defense Under Secretary Flournoy and General Cartwright have asserted that we will continue to improve and further augment these existing ground-based interceptor systems, noting that these ''U.S. based defenses will be made more effective by the forward basing of a TPY–2 radar—which we plan by 2011.''

In Europe, the United States has worked to defend our allies in NATO. The European Phased Adaptive Approach is a network of increasingly capable sensors and standard missile SM–3 interceptors that will provide a capacity to address near term threats, while also developing new technologies to combat future threats.

The first stage, to be completed in 2011, will deploy Aegis ships with SM–3 interceptors in Northern and Southern Europe to protect our troops and Allies from short-range medium regional ballistic missile threats.

The second phase, estimated to be operational by 2015, it will field upgraded sea- and land-based SM–3s in Southern and Central Europe to expand protection of the continent.

The third phase will introduce a more capable version of the SM–3 that is currently under development, which will provide full protection for our allies in Europe from short, medium, and intermediate range ballistic missiles by 2018.

The final phase, planned for 2020, it will field an even further improved SM–3 missile with anti-ICBM capabilities to augment current defense of the U.S. homeland from Iranian long-range missile threats.

So when you look at it from each of these three points of view—meaning the three phases—we are going to have in place a system that will defend our homeland and will also help our European allies.

Let me conclude with one quotation. I mentioned Admiral Mullen, Chairman of the Joint Chiefs. This is what he said about the so-called phased adaptive approach:

> The Joint Chiefs, combatant commanders and I also fully concur with the Phased Adaptive Approach as outlined in the Ballistic Missile Defense Review Report. As with the Nuclear Posture Review, the Joint Chiefs and combatant commanders were deeply involved throughout the review process.

So whether it is the Joint Chiefs, the combatant commanders, or other commentators, we are going to make sure that in the aftermath of the ratification of this treaty and consistent with and as part of and because of the ratification of this treaty, our missile defense will be as strong as it can be. And we are going to make sure that, without a doubt, we are going to protect the American people and take every step necessary to make sure our nuclear arsenal is safe, secure, effective, and reliable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr LEMIEUX. Mr. President, I ask unanimous consent to speak for up to 10 minutes on the New START Treaty.

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

AMENDMENT NO. 4847

Mr. LEMIEUX. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside and that amendment No. 4847 be called up.

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

The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Florida (Mr. LEMIEUX), for himself and Mr. CHAMBLISS, proposes an amendment numbered 4847.

Mr. LEMIEUX. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

> (Purpose: To amend the Treaty to require negotiations to address the disparity between tactical nuclear weapon stockpiles)
>
> At the end of Article I of the New START Treaty, add the following:
>
> 3. The Parties shall enter into negotiations within one year of ratification of this Treaty to address the disparity between the non-strategic (tactical) nuclear weapons stockpiles of the Parties, in accordance with the September 1991 United States commitments under the Presidential Nuclear Initiatives and Russian Federation commitments made by President Gorbachev in October 1991 and reaffirmed by President Yeltsin in January 1992. The negotiations shall not include discussion of defensive missile systems.

Mr. LEMIEUX. Mr. President, I rise to offer an amendment to the New START Treaty—this important treaty that we are discussing between the United States of America and Russia concerning strategic nuclear weapons.

I have a lot of concerns about this treaty. Many of those concerns have already been expressed by my colleagues. I have concerns about the verification procedures, that they are weakened from the previous START Treaty. I have concerns about the linkage of missile defense systems with strategic offensive weapons. Those concerns have been addressed as well, and I share them.

The biggest concern I have about this treaty is its failure to deal with what are called tactical nuclear weapons. Now, to those folks at home who may be listening to this, it is probably not readily apparent—it wasn't initially to me—the difference between what a strategic nuclear weapon is and a tactical nuclear weapon. A strategic nuclear weapon is usually considered to be a large vehicle, like an intercontinental ballistic missile, or ICBM. It travels over a very long range. These strategic nuclear weapons can also be delivered by a submarine or a long-range bomber. A tactical nuclear weapon is generally much smaller in size. It has a smaller range and has a delivery vehicle that may be on the back of a truck, for example.

In many ways, in the world we live in today, where we are not in the Cold War atmosphere with the former Soviet Union, the tactical nuclear weapon is of much more concern than the strategic. The great fear we all have is that one of these nuclear weapons would get into the hands of a terrorist. A tactical nuclear weapon, by its very nature, is portable, and it could be something that is even capable of being moved by one person or, as I said before, on the back of a truck.

Why this treaty doesn't deal with tactical nuclear weapons is beyond me. I realize in the past, when we were in the Cold War environment with the Soviet Union, we didn't deal with tactical nuclear weapons because we were concerned about these big missiles that could cross the ocean and strike our country. We were concerned about heavy bombers delivering missiles or bombs that would hit the homeland. That makes sense. But we are in a completely different environment now. While we should still be concerned with those strategic weapons, the tactical weapons are actually much more of a danger to us because they are the very weapons that could get into the hands of a rogue nation. Those are the very weapons that could get into the hands of a terrorist.

This treaty doesn't have anything to do with that. It doesn't address it at all. It would be as if we were going to enter into a treaty about guns, and we had a big negotiation in a treaty where we talked about long arms, shotguns, and rifles, but we failed to talk about pistols. It doesn't make any sense to me. It doesn't make any sense to me because these are the very weapons about which we should be the most

concerned. It also doesn't make sense to me because of the disparity between how many tactical nuclear weapons we have versus how many the Russians have. This treaty limits the amount of those weapons to each country to around 1,500. But the Russians have 3,000 tactical nuclear weapons, and we have 300. So the Russians have a 10-to-1 advantage over us in tactical nuclear weapons. If we approve this treaty, the Russians then will approximately have 4,500 nuclear weapons, and we will have 1,800. That doesn't make a lot of sense either. They have a 10-to-1 advantage on these tactical nuclear weapons.

I think it is incumbent upon us to realize that we have to have a treaty on tactical nuclear weapons. It should have been part of this treaty. It wasn't part of these START treaties in the past because the total number of weapons that the United States had and the former Soviet Union had was immense. When we had 20,000 or 30,000 strategic nuclear weapons, the fact that they had 3,000 tacticals didn't matter. It wasn't an important number in the overall scheme.

But now that we are in this new world where we are concerned about nuclear proliferation, and we don't want terrorists to get these weapons, plus the fact that they are going to end up having 4,500 and we are going to end up everything 1,800, it matters a lot.

My amendment says that within a year of the ratification of this treaty, the Russians and the United States must sit down and negotiate a tactical nuclear weapon agreement. It doesn't require that it be resolved within a year. It requires that it be started. That seems to me—I am a little biased, but that seems to me eminently reasonable. I am proud that Senators CHAMBLISS and INHOFE have joined me on this amendment. Who could be against having the Russians and the United States sit down within a year's time of ratification and begin the negotiation on tacticals? Who could be against that?

You will hear from my friends on the other side, who are defending this treaty and voting down all of the amendments being offered on this side of the aisle, that we can't amend the treaty because, if we do, it is a poison pill, and the Russians will not accept it.

If that is true, then we are not really fulfilling much of a function, are we? Under the Constitution, there are some special privileges that are imbued to the Senate.

One of them is the treaty privilege, the treaty power, where all treaties must be confirmed by the Senate on a two-thirds vote. If we can't amend it, and all we are doing is either saying yes or no, to me that limits our ability. If my friends on the other side think this is a poison pill, I ask them to look at the language. I am just putting in the treaty, if they accept this, that within a year's time, we have to sit down at the table and enter into these negotiations on tacticals. It is not a heavy lift, it seems to me.

They will say we can't do this because the Russian Duma will not accept it. What does that say? If the Russian Duma, their legislature, will not accept an amendment—if the treaty is as it is now, as negotiated by the U.S.—and I have said before that I have concerns about what is there for verification and about missile defense. Putting that aside, if it goes the way it has been drafted and agreed to between the President and the leaders of Russia, with just this one amendment that says that the two sides will sit down within a year's time, will the Russian Parliament not approve that? And if they don't approve it, if they will not say they will sit down within a year's time and negotiate about the 3,000 tactical nuclear weapons they have, about the security of those weapons, about our ability to verify where they are and about a reduction of them, because of the disparity in the 3,000 they have and the 300 we have, what does that say about the Russians?

What it says to me is that they are not, in good faith, really trying to come to an agreement about nuclear weapons. Would we want this treaty if the Russian Duma said they are not going to agree to sit down within a year's time to talk about tactical nuclear weapons?

I think this is a very important amendment. I have great respect for the people who have stood up and supported this treaty. I think there are problems with it, but I don't see any reason why a fair-minded person could not agree that within a year's time the two parties should sit down and talk about what, to me, is the most dangerous part of our nuclear challenge with Russia, which is tactical nuclear weapons. We don't know where they are, what they are doing, we can't verify them, and there is a 10-to-1 advantage that the Russians have over us.

Mr. President, my amendment is at the desk and has been called up. I hope we will have the opportunity to debate this amendment in the coming hours and days as we wrap up our consideration of this treaty.

With that, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mrs. HAGAN. Mr. President, today I rise in support of Senate ratification of the New Strategic Arms Reduction Treaty. The Secretary of State, Secretary of Defense, Secretary of Energy, and the entire uniformed leadership of our military believe it is in our national interest. Former Secretaries of State from previous administrations of both political parties have also endorsed the New START Treaty.

Relations between the United States and Russia have evolved beyond what they were during the Cold War. Within this context, and in the face of aging nuclear stockpiles, strategic arms reduction is in the best interest of both nations.

New START will strengthen strategic nuclear weapons stability, enable us to modernize our nuclear triad of strategic weapons and delivery systems, and ensure our flexibility to develop and deploy effective missile defenses and conventional global strike capabilities.

It will also promote stability, transparency, and predictability in the U.S.-Russia relationship.

The treaty limits strategic offensive nuclear weapons and delivery vehicles through effective verification and compliance measures. Our negotiators ensured that the United States would be able to protect our ability to field a flexible and effective strategic nuclear triad composed of land-based intercontinental ballistic missiles, submarine-launched ballistic missiles, and nuclear-capable heavy and strategic bombers. Our negotiators also ensured that the United States can enable modernization of our strategic delivery systems and the nuclear weapons they carry.

Simply put, our country is better off with New START as opposed to not having a treaty at all. There has been no formal verification system in place since the last treaty expired a year ago. New START reestablishes a strategic nuclear arms control verification regime that provides access to Russian strategic nuclear capabilities—specifically, nuclear warheads and delivery systems. It ensures a measure of predictability in Russian strategic force deployments over the life of the treaty. Access and predictability allow us to effectively plan and undergo strategic modernization efforts.

Failure to ratify the treaty will prevent us from obtaining information on Russian strategic nuclear weapons capabilities. Without the treaty going into effect, the United States will have no inspectors on the ground and no ability to verify Russian nuclear activities. This will result in our country losing insight into Russian strategic nuclear force deployments. It would also complicate our strategic force strategy and modernization planning efforts, as well as drive up costs in response to the need to conduct increased intelligence and analysis on Russian strategic force capabilities.

Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Secretary of Energy Steven Chu, and Chairman of the Joint Chiefs of Staff ADM Mike Mullen have expressed their support for Senate ratification of New START. All indicated that ratifying the treaty provides our country with an opportunity to negotiate with Russia on tactical nuclear weapons, of which Russia holds a sizable advantage. Tactical nuclear weapons are the most vulnerable to theft and the most likely to end up in the hands of rogue states and terrorist organizations. It is important to understand that we will not be able to obtain Russian cooperation on tactical nuclear weapons without ratifying New START.

The treaty will not affect our ability to improve our missile defenses either qualitatively or quantitatively, to defend our homeland against missile attacks, and to protect our deployed forces, allies, and partners from growing regional missile threats. Secretary of State Clinton and Secretary of Defense Gates have testified that our phased adaptive approach to overseas missile defense is not constrained by the treaty.

Senate ratification of New START will demonstrate that the United States is committed to reducing nuclear weapons, which is important as we advance our nonproliferation goals. This will assist us in obtaining international consensus regarding nuclear weapons proliferation challenges from rogue states, such as Iran and North Korea. It will also send a positive message in achieving consensus with other countries on nuclear issues.

It is important to keep in mind that the United States and Russia hold over 95 percent of the world's nuclear weapons. If the two nations that possess the most nuclear weapons agree on verification and compliance and are committed to nonproliferation, it will improve our ability to achieve consensus with other countries.

Failure to ratify the treaty will have a detrimental effect on our ability to influence other nations with regard to nonproliferation of weapons of mass destruction. It will also send conflicting messages about the administration's emphasis and commitment to the nonproliferation treaty.

Additionally, failure to ratify New START would send a negative signal to Russia that may cause them to not support our objectives with respect to dealing with the Iranian nuclear program. As Secretary of Defense Gates has said, without ratification, we put at risk the coalition and momentum we have built to pressure Iran.

The debate over New START has facilitated a consensus to modernize our nuclear deterrent. The Administrator of the National Nuclear Security Administration, Mr. Thomas D'Agostino, indicated that for the first time since the end of the Cold War, there is broad national consensus on the role nuclear weapons play in our defense and the requirements to maintain our nuclear deterrent. The NNSA and the three National Laboratories support Senate ratification of New START and congressional approval of the President's budget to invest in nuclear security and modernization. Our nuclear enterprise and stockpile have been neglected for too long.

Consistent with recommendations in the Nuclear Posture Review, we need to move forward with a number of nuclear enterprise sustainment projects, including strengthening our nuclear command and control structure, continuing development and deployment of our triad of delivery systems, maintaining a safe, secure, and effective stockpile, and revitalizing our aging infrastructure.

On December 1, the Directors of the three nuclear national laboratories signed a letter to the Senate emphasizing that they were very pleased with the administration's plan to spend $85 billion over the next decade to upgrade the nuclear weapons complex. They believe the requested amount will further a balanced program that sustains the science, technology, and engineering base. They also believe that the proposed budget will support the ability to sustain the safety, security, reliability, and effectiveness of our nuclear deterrent within the limit of 1,550 deployed strategic warheads established by New START.

The Nuclear Posture Review also recognizes the importance of supporting a highly capable workforce with specialized skills to sustain the nuclear deterrent. It emphasizes three key elements of stockpile stewardship: hands-on work on the stockpile; the science, technology, and engineering base; and the infrastructure at the laboratories and plants.

I share the concerns expressed by Secretary Chu regarding our ability to recruit the best and brightest nuclear scientists and engineers. We need to infuse a sense of importance and financial stability to the stockpile stewardship and life extension programs. Nuclear scientists and engineers need to believe the U.S. Government cares about nuclear life extension. An effective science, technology, and engineering human capital base is needed to conduct effective nuclear weapons system lifetime extension programs, increase nuclear weapons reliability, certify nuclear weapons without the need to undergo nuclear testing, and provide annual stockpile assessments through weapons surveillance.

I hope my colleagues on both sides of the aisle will join me in voting to ratify New START.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I rise for a few moments to comment on the amendment our colleague from Florida spoke about a few moments ago. Tactical nuclear weapons and how that is addressed was the subject of a long debate yesterday. I wish to reiterate some of those arguments because we had this debate yesterday. It is an important debate.

First of all, if we listen to a couple of folks who have not only experience but have a real interest in our urgent priority of addressing tactical nuclear weapons, it becomes clear that the best way to address that issue is, in fact, to ratify this treaty. By way of example, if you want to highlight a country that has much at stake when the question is raised about Russian tactical nuclear weapons, you can point to few if any countries that have more at stake than Poland.

The Polish Foreign Minister, Mr. Sikorski, said:

> Without a [New START] treaty in place, holes will soon appear in the nuclear umbrella that the United States 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 the successful revival of the Treaty on Conventional Forces in Europe.

That is not a commentator in Washington; that is the Foreign Minister of Poland, whose country has a lot at stake in this debate.

Also, we have had a lot of discussions about the treaty and what is in the treaty or what would come about as a result of the treaty. It is not as if these arguments just landed here when the bill landed on the floor. We had months and months of hearings in the Senate Foreign Relations Committee. Our ranking member, Senator LUGAR, was not just there for those hearings but played a leading role in helping us reach the point where we are now. We have a treaty on the floor because of his good work over many months and, I would argue in his case, many years on this issue. The same is true with the Presiding Officer sitting in on those hearings and asking questions of the relevant parties, many of them military leaders.

I note for the record—and I will close with this—that the vote by the Senate Foreign Relations Committee included a resolution of advice and consent to ratification. Subsection 11 on tactical nuclear weapons says:

> 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.

It is right in the resolution, and I argue that addresses squarely this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

FLOOR PRIVILEGES—CLOSED SESSION

Mr. REID. Mr. President, I ask unanimous consent that the following individuals, in addition to those officers and employees referred to in Standing rule XXIX, be granted the privilege of the floor during today's closed session and that the list be printed in the RECORD.

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

The list is as follows:

Randy Devalk, Jessica Lewis, Tommy Ross, David Grannis, Lorenzo Goco, Andrew Grotto, Mike Davidson, Jim Wolfe, Rick DeBobes, Madelyn Creedon, Richard Fieldhouse, Hannah Lloyd, Frank Lowenstein, Anthony Wier, Ed Levine, Charlie Houy, Gary Reese, Betsy Schmid, Mike DiSilvestro, Pamela Garland, Mark Stuart, Jaqui Russell.

Thomas Hawkins, Louis Tucker, Jack Livingston, Bryan Smith, Tom Corcoran, Jennifer Wagner, Christian Brose, Daniel Lerner, Brian Wilson, Stewart Holmes, Bruce Evans, Carolyn Apostolou, Kenneth Myers, Jr., Thomas Moore, James Smythers, Michael Stransky, Timothy Morrison, Robert

Soofer, Joel Breitner, Barry Walker, Deborah Chiarello.

SHARK CONSERVATION ACT OF 2009

Mr. REID. Mr. President, as in legislative session and in morning business, I ask unanimous consent that the Committee on Commerce be discharged from further consideration of H.R. 81 and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 81) to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the Kerry-Snowe amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to this bill be printed in the RECORD.

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

The amendment (No. 4914) 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 (H.R. 81), as amended, was read the third time and passed.

Mr. REID. Mr. President, it is my understanding that, the hour of 1:30 having arrived or shortly will arrive, we will recess pending the call of the Chair, is that right, until the closed session is completed?

The PRESIDING OFFICER. The Senator is correct.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess.

Thereupon, at 1:28 p.m., the Senate recessed subject to the call of the Chair and reassembled at 5 p.m., when called to order by the Presiding Officer (Mr. MANCHIN).

EXECUTIVE SESSION

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

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I rise in opposition to the New Strategic Arms Reduction Treaty that we call New START. I believe New START is deeply flawed and is a dangerous step toward undermining our national security. I believe it does not strengthen verification or transparency of Russia's nuclear arsenal. We negotiated this treaty with Russia when our time may have been better spent focusing on nuclear threats posed by other nations. I believe the treaty is virtually unverifiable. Simply put, it is the wrong approach to both reducing the arms race and reaching the ideal of living in a nuclear-free world.

Many people have expressed the numerous shortcomings of this treaty. This evening I would like to touch on three.

First, New START restricts the future of our missile defense. President Obama campaigned against missile defense and has systematically cut funding for it. It should not be a surprise to anyone in America that the administration lacks commitment to a robust missile defense system, but that does not mean the Senate needs to support it. New START links offensive reductions with missile defense. I believe these must be decoupled. Why? The treaty limits launch vehicles and restricts the conversion of intercontinental ballistic missiles for missile defense purposes. Converting nuclear intercontinental ballistic missiles to conventional missiles is also restricted in the proposed treaty. Most egregiously, statements made by senior Russian officials insist that the treaty's language prohibits the United States from developing an antiballistic missile defense system without Russian consent. This is completely unacceptable.

Unfortunately, Russia is not the only threat the United States faces in this world. It is inconceivable that the administration would agree to a treaty that imposes such restrictions on our national security.

Secondly, we have reached the point where we cannot make reductions in our nuclear arsenal without viable plans for a strong, long-term strategy for modernization. Again, Russia is not our Nation's only threat. Without modernizing our nuclear arsenal, the cuts necessitated by the New START treaty would likely encourage Iran and other proliferators to build up their own arsenals rather than discouraging them as we would like.

The United States cannot maintain a credible deterrent or reduce the number of weapons in our nuclear stockpile without ensuring that we have reliable warning, command, and control systems, and that we put an emphasis on the land and sea-based delivery vehicles that give us the confidence we need for protecting ourselves should the worst occur. The reduction of our nuclear-capable bombers and land or submarine-based missiles from 1,600 to 700 gives the Russians an immense advantage. Delivery vehicles are just one aspect of our nuclear triad, but they are a critical component to being able to deter adversaries and should not be restricted under the New START treaty.

By some estimates, Russia maintains thousands more small tactical nuclear warheads that can be delivered by way of artillery shells, cruise missiles, and aircraft. Yet the treaty before us, which freezes missiles at 700 for each side, willfully ignores the massive Russian advantage in tactical weapons.

Finally, the most serious and immediate flaw is weakened verification requirements which are vastly less robust than those we had under START I. It is puzzling why they would do this. Under START I, 600 inspections were conducted. New START requires just 180 inspections over the life of the treaty, hardly enough to ensure Russian compliance. The Russians will be able to encript telemetry from missile tests. This makes it harder for us to know for certain what new capabilities the Russians are developing.

One might ask why did we agree to such. Under New START, there will no longer be onsite monitoring of mobile missile final assembly facilities. Before the expiration of START I, the United States used this monitoring or verification because satellites do not provide the exact information on mobile weapons systems. Verification requirements are too weak to reliably verify the treaty's 1,550 limit on deployed warheads. These measures will neither give us confidence in the process nor the assurances we need to assess the integrity of it.

Russia has a long history of nuclear duplicity or cheating. Yet New START has substantially weaker verification mechanisms than START I.

Perhaps the clearest reason to suspect the true motivations behind the treaty is the inexplicable rush to ratify it now. The shortcomings of New START are numerous, substantial, and serious. The Senate should have the time to examine the treaty's compliance provisions and ensure that loopholes are closed and deficiencies amended.

I believe the Senate has a responsibility to the American people to ensure that first and foremost our country's negotiations have not unilaterally hampered in any way our national security. I will not support subordinating U.S. national security to an untrustworthy partner, and neither should the Senate as a whole.

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

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

AMENDMENT NO. 4833

Mr. INHOFE. Mr. President, it is my understanding in 45 minutes we are going to be having a couple votes, one on amendment No. 4833 and one on the Thune amendment No. 4841, having to do with delivery systems; mine having

to do with verification. That would mean we would have 45 minutes to talk about this.

We have already covered it pretty thoroughly. I think we need to have an understanding of what we are talking about in terms of verification.

There are only 180 inspections that are authorized by the New START treaty, and that is over a 10-year period. So we are talking about 18 per year versus the 600 inspections over 15 years in START I. If you do your math, that would be 40 a year in START I, and down to 18 a year in New START.

One of the arguments for that is that we have fewer sites to inspect, and for that reason we do not need to have as many inspections. I would disagree with that pretty strongly. One thing all the experts seem to have in common and agreeing to is that once you get down to fewer sites, the verification becomes more important.

John Bolton, on the 3rd of May, said: ''while [verification is] important in any arms-control treaty, verification becomes even more important at lower warhead levels.'' I think they all agree. Brent Scowcroft said the same thing. He said: ''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''—''to cheating''—''on arms control limits, concerns about 'hidden' missiles, and the actions of nuclear third parties.''

So he is saying the same thing. James Baker said the same thing. He said, when testifying recently, that the New START verification program ''does not appear as rigorous or extensive as the one that verified the numerous and diverse treaty obligations and prohibitions 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.''

Do your math, and it figures out. If you have 10 warheads that you are going to be inspecting, and they hide 1, that is just 10 percent of them. If it gets down to 2, and they hide 1, that is 50 percent of them. That is what they are saying, that we need to have more, not less. Of course, this is less. In fact, if you do the math a little bit further, as was said by the Senator from Massachusetts—he said: So I think it is one thing to ask our strategic 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. Again quoting him: We have two submarine bases, three bomber bases, and three ICBM bases. On the other hand, Russia has 3, 3, and 12. So they actually have 18, and we would have 8, which means, if you do the math further, they would be able to inspect one site every 2 years, while we would only be able to inspect every 2 years. They would be inspecting it every 1 year.

That is the reason we should be doing this. The other thing is—and people keep forgetting about it because it is not fun to talk about it—but the fact is, they cheat and we do not. Everyone has talked about this. We have something that was set up to try to measure who is cheating, who is not cheating.

We had the START treaty's Joint Compliance and Inspection Commission. That commission reported—they actually had two reports. One report was in 2005; one in 2010. In the report in 2005 that was on the Biological Weapons Convention, the State Department concluded—and I am quoting from the report of 2005—''Russia maintains a mature offensive biological weapons program and that its nature and status have not changed.'' That was after it had been in force for 5 years. That was in 2005.

In 2010, that same Commission comes back, and the report states: Russia confidence-building measure declarations since 1992 have not satisfactorily documented whether its biological weapons program was terminated.

Again we have the Biological Weapons Convention reports in 2005 and 2010, saying they are not complying. In other words, they are cheating. If you sign an agreement and do not do it, then you are cheating. That makes sense. On the Chemical Weapons Convention, the same thing. In 2005, the State Department assessed that ''Russia is in violation of its Chemical Weapons Convention obligations because its declaration was incomplete with respect to declaration of production and development facilities.'' So that is what they said in 2005, that they are cheating on the Chemical Weapons Convention obligations they made, their treaty obligations.

In 2010, still talking about the Chemical Weapons Convention, the State Department again stated: 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.

Again, they stated in 2010 that they are still cheating. So it is always difficult, when you look at these. The Senator from Massachusetts said: Well, wait a minute now. We have to do the same thing they have to do, and in your amendment, if we are going to have three times as many inspections, then we have to do three times as many and they have to do three times as many. We have to prepare for them here. I said: Yes, that is my point. We need to have more inspections. We want these inspections to take place. And we want to be sure that the Russians also adhere to their commitment for inspections, which they have never done in the past.

When you look at this, we see there are problems with this. When you talk about using the argument that we cannot change something because you are changing the treaty, I think that is what we are supposed to do. We are supposed to be involved in the treaty. The Senator from Massachusetts was talking about the number of people who were involved in this thing—the military and all these others in putting this thing together. Well, guess who was left out? Us. And that is what the Constitution, under article II, section 2 says, that we in the Senate are supposed to ratify—advice and consent. Well, we have been advised, but we have not consented yet. That is what this is all about. The process works this way.

If we do pass an amendment such as my amendment that will be voted on in a few minutes to triple the number of inspections, that will change the treaty, and I understand that. That means it will have to go back to the Duma in Russia, and they then would have to look at the treaty and decide whether they would agree with it, and, if not, have them make a change, and then it comes back to us. It goes back and forth, and this is what our forefathers had anticipated would happen. Because of all the people who they talk about, the Senator from Massachusetts talks about, who were drafting this, the thing they all have in common is, they are not answerable to the people. We are. I say to the Presiding Officer, we were both elected. I say to the Presiding Officer, he was elected and I was elected; and, therefore, we are the ears and the eyes in the confirmation process for the public, and I think that is our constitutional obligation. It is very clearly stated.

So we do have serious problems. One thing that is kind of in the weeds and is a little bit complicated is, when you talk about that my amendment triples the number of inspections under New START from the types under the START I treaty, we had two types of inspections. This is critical. Type one refers to inspections of the ICBM bases, submarine bases, air bases—these are the delivery systems—to demonstrate very clearly that we are going to be able to look at those sites and see if they are carrying out those obligations under the treaty.

But type two refers to inspections at formerly declared facilities. They say we have more inspections right now. That is because we did not even have type two facilities in the START I treaty, because when you talk about formerly declared facilities, we are talking about facilities that are closed down. So we want to inspect to make sure they are closed down. So the test they use to see whether they are closed down is—they talk about debris. That is how you satisfy to see whether type two sites have been treated properly. Well, they can have debris left over from closing one site, and then leave five open that are supposed to be closed and scatter the debris around to use it again. There has been testimony that is what they would do.

I would be glad to yield, since we are going to have two votes coming up at 6 o'clock on the Thune amendment as well as my amendment, if the Senator from South Dakota wishes to talk about his amendment, and then I would be glad to resume my discussion.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that the time until 6 p.m. today be for debate with respect to the pending Inhofe amendment No. 4833 and pending Thune amendment No. 4841, with the time divided between the leaders or their designees, with no amendments in order to either amendment; that at 6 p.m., the Senate then proceed to vote in relation to the Inhofe amendment; that upon its disposition, the Senate then proceed to vote in relation to the Thune amendment, with 2 minutes of debate, equally divided as provided above, prior to the second vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I thank the Senator from Oklahoma for yielding some time. We are going to vote on his amendment and on the amendment I have offered. Both address important subjects in the treaty. The Senator from Oklahoma is dealing with the issue of verification and pointing out the shortcomings in the treaty with regard to that very important issue. The amendment I will have voted on deals with the issue of delivery vehicles, which, in my judgment, is a critically important element in this treaty as well.

As I have said earlier today on the floor, what this amendment does—it is very straightforward and it is very simple—is it just increases the number of deployed delivery vehicles, which are the bombers, the submarines, and the ICBMs allowed for in the treaty from 700 to 720.

In terms of background about why that is important—and I want to inform my colleagues in the Senate about why it is important we get that number up to 720—I asked at an Armed Services Committee hearing at what point between the range of 500 and 1,100 delivery systems that GEN James Cartwright, the Vice Chairman of the Joint Chiefs of Staff, would be comfortable and where we would avoid making our triad into a dyad.

He said: ''I would be very concerned if we got down below those levels about midpoint,'' meaning that he would be concerned if the negotiated number fell below about 800 delivery vehicles. They have made a distinction—the administration has—between deployed and nondeployed, that there are 800 there. And he has subsequently said he could live with a 700 deployed number. But the fact of the matter is that the concern that was voiced initially about dropping down below that midpoint level suggests that we need to at least increase up to where the administration's I guess you would call it their nuclear force structure plan settled, and that was 720 delivery vehicles.

So the amendment raises from 700 to 720 the number of delivery vehicles. As I said earlier in my remarks, if you look at what the 1251 report says, it says up to 60 nuclear-capable bombers, up to 420 deployed ICBMs, and 240 deployed submarine-launched ballistic missiles on 14 submarines.

If you add up, up to 60 bombers, up to 420 ICBMs and 240 deployed SLBMs, you get a number of 720 delivery vehicles. That is what the nuclear force structure plan calls for. Yet the treaty specifies 700 delivery vehicles. So there is a 20-delivery vehicle cap there, which I think is important.

Frankly, if you ask the question about where would those reductions come from, obviously it would come from either ICBMs or bombers. People have suggested it doesn't have to come out of the bombers, but if you did take it out of the bombers, if you reduce the number of bombers from the 60 that is specified in the nuclear force structure plan to get down under 700, you would have to take the bombers from 60 down to 40.

As I said earlier today, we have about 96 B–52 nuclear bombers, about 20 B–2 nuclear bombers, and those are total deployed and nondeployed, the number we have in our inventory arsenal. We have about 94, I think, that are combat ready. But in any case, we are talking about a significant reduction in the number of bombers we could deploy at any given time under the treaty if you get it down to the 700 number.

The question as to whether that would come out of ICBMs or whether it would come out of bombers to get from 720 down to 700, it could be some combination of both. But the thing that concerns me about this is we have a bomber fleet that is aging. Most of our bombers today are pre-Cuban missile crisis-era vintage bombers—about 47 percent of them are. We need a follow-on, a next-generation bomber that will fill that role, that will be survivable in the types of modern-era defenses we are going to encounter, sophisticated air defense systems that are being employed by some of our potential adversaries around the world. So if you think about what we need in terms of a next-generation bomber, we need a field bomber and we need to do it sooner rather than later and it needs to be nuclear.

But when asked the question about whether the next bomber would be a nuclear bomber, the military and the administration have been very ambiguous on that point. They haven't been able to answer clearly, with any degree of certainty, about whether the next bomber, the follow-on bomber, would, in fact, be a nuclear bomber, which would suggest to me the commitment to the bomber wing of the triad is a lot less than it is to perhaps the other two legs of the triad.

That being said, let's assume for the moment that if we have up to 60 bombers, we have up to 420 ICBMs, and we have 240 submarine launchable ballistic missiles, we are talking about a 720 number, not a 700 number. So that is why I think this debate is important and why we are trying to be insistent in getting those two numbers to match.

The other point I wish to make is with regard to delivery vehicles in the treaty. We start out right now with about 856 delivery vehicles, if you add up ICBMs, submarine launchable ballistic missiles, and heavy bombers. We will end up down at 700. So we are going to take about 156 of our delivery vehicles, reduce that, retire those, and get down to that 700 number. The Russians, on the other hand, start at about 620. So they are already well below the 700 number called for in the treaty. It has been suggested that through attrition they will probably get down to somewhere in the 400s in delivery vehicles. So this particular provision in the treaty costs them nothing. We give up 156 delivery vehicles. They give up nothing. In fact, they can come up to the 700 number. They could increase the number of delivery vehicles they currently have to come up to that 700 number.

So I think it is important to point out the difference that exists today and the disparity that exists between the Russian number of delivery vehicles and the number the United States has at our disposal and the number called for in the treaty and why that disparity is so important.

Just one final point, if I might, with regard to the nuclear posture of the country. We also have to defend not only the United States but about 30 other countries around the world that fall under the nuclear umbrella, under our deterrence. The Russians have none. So these delivery vehicle numbers become even more important, given the geographic realities the United States has to deal with in terms of our strategic nuclear forces and what they are expected to do in terms of providing extended deterrence not only to the United States but to many of our allies around the world.

So I think it is important in this treaty debate—this particular part of it—that we get a vote on this amendment. It has been suggested that if this amendment gets adopted, we will have to go back to the Russians. That is part of our goal of advice and consent in the Senate. If it were just consent, we would be nothing more than a rubberstamp. I think we have an important role; that is, to look at these critical issues, and where there are areas of disagreement, to provide our advice. I think, in a very straightforward way, we can vote on an amendment that would increase from 700 to 720 the number of delivery vehicles specified in the treaty. It is a very straightforward amendment and one that would then go back, obviously, to

the Russians, but it is certainly consistent with the Senate's traditional and historic role of advice and consent.

Former Defense Secretary Schlesinger testified to the Senate Foreign Relations Committee on April 29, 2010, that: ''As to the stated context of the strategic nuclear weapons, the numbers specified are adequate, though barely so.''

Well, ''barely so'' does not seem to be good enough for me when we are talking about the important obligations we have in defending America's vital national security interests as well as those of many of our allies around the world. I don't think settling for barely enough or barely so is sufficient.

So I hope my colleagues will support this amendment. I think, as I said earlier, the triad is critical to our nuclear deterrence and maintaining both ICBMs and SLBMs, but then also having a very robust bomber component of that is critical. That is why investing in a next-generation, follow-on bomber that is nuclear is important. I think the ambiguity that surrounds the question, the uncertainty that surrounds the question about whether a follow-on bomber would be nuclear speaks volumes about the commitment to that leg of the triad, but it is also important to remember bombers are the best form of extended deterrence.

If you want to make those who would proliferate nuclear weapons pay attention, you send a bomber in. A bomber is very visible, it is recallable, it is survivable, and it brings great psychological and political advantage to our country when it comes to trying to discourage proliferation by other countries around the world.

So I hope my colleagues will support this amendment. It is an important amendment. The delivery vehicle issue is, to me, critical to this debate not only in terms of the numbers but also the modernization of those various elements of the triad. The triad, over time, has given us great survivability, great flexibility, and if ever called upon, we want to be as prepared as we possibly can be to encounter any nuclear threat that might exist to the United States. I hope my colleagues will support this amendment.

I will reserve my time and yield back now to the Senator from Oklahoma, who I think probably wants to continue to talk about the verification issues.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first of all, I concur in everything the Senator from South Dakota said, and I join him in encouraging people to vote favorably on his amendment. It seems as though the other side has had the opportunity to do a lot more testing, a lot more modernization than we have, and I am very much concerned about that.

I wish to elaborate on one thing. The fact that there is—that the other side—and I read all the quotes from the previous Commissions that took place in 2005 and 2010 to demonstrate very clearly that the Russians would sign a treaty and then they will cheat. They would not comply with the treaty. We saw it with the chemical weapons treaty and the biological weapons treaty and START I. So there is no reason to believe they are going to do this. So in terms of verification, we have to try to do something where we are convinced, knowing full well in advance that they are going to cheat.

That brings up one issue that I haven't mentioned before in this treaty; that is, the length of time we have between notification and actually causing an inspection. Under the START I treaty it was 9 hours, and it has gone up to 24 hours in this treaty. In other words, if someone is going to cheat, if someone is going to hide something so we would not know where to look and we might not be able to find something, why give them three times as much time as we did under START I, when we know more today about the fact that they cheat than we knew before? The second issue is, it becomes more important—as you get closer to the inspections and as there are fewer facilities to inspect, each one becomes more important, and we have had an opportunity to see that everyone seems to agree with that.

Former Secretary Harold Brown explained this in his testimony before the Senate Foreign Relations Committee. That was way back in 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.

I think I used the example that if you had 10 and you cheat on 1, that is 10 percent, but if you have 2 and you cheat on 1, that is 50 percent.

That statement is agreed with by John Bolton, who said:

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

Again, he agrees.

Scowcroft, the same thing. He said:

> . . . 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.

So I think everyone does understand and does agree that as they decrease, then each one becomes more significant in terms of being inspected.

In this amendment, we are changing it from the 180 inspections over a 10-year period to what they would have under New START versus the old one, which was 600 inspections over 15 years. Do the math on that, and you come up with 18 inspections a year as opposed to 40 inspections a year.

They are trying to say there are only 36 sites, which means—if this is true—we would only get to inspect each site in Russia once every 2 years, while the math works out that they would be able to do our side once every year. So that is something that is very concerning to me.

We talked a lot about where we are in this process. We have talked about our constitutional obligations, about what we are supposed to do under the Constitution. We talked about what we are supposed to provide for the common defense in article II, section 2 of the Constitution, which gives the President the prime role, but we have to advise and consent. I saw something recently, just today I think it is, that came out—yes, it was just today. It came out from Foreign Minister Sergey Lavrov in his statement. He said:

> ''I can only underscore that the Strategic Nuclear Arms Treaty, worked out on the strictest basis of parity, in our view fully answers to the national interests of Russia and the United States,'' Interfax quoted Lavrov as saying in an interview.
>
> ''It cannot be opened up and become the subject of new negotiations,'' Lavrov said.

Who is this guy telling us what we can do under our Constitution? I find it almost laughable because it is just as if all he has to do is say that and we have to follow the course.

But he said Russian lawmakers would closely examine the U.S. ratification resolution and any declarations or notes accompanying it to ensure no significant changes were made.

If changes are made, then they have not kept up their responsibility.

I would only remind my colleagues that:

> As CRS has outlined in its study—

And this is a study they did not too long ago—

> on the role of the Senate in a treaty process: Amendments are proposed changes in the actual text of the treaty . . . [They] amount, therefore, to Senate counter offers that alter the original deal agreed to by the United States and the other country.

If the Senate gives its consent to New START with an amendment to the text, the treaty is sent back over to Russia and the Duma meets and they decide what they are going to do with it. Then, of course, they make changes and then it comes back over here. This is something that has been going on for 200 years.

All of a sudden, why are we in a position where we are not going to do it and we look at our constitutional responsibility as something that is in the past?

So I feel we have this obligation, and I know so far every amendment that would have amended the treaty has been defeated, and it has been defeated on party—well, not necessarily on party lines but, by and large, on party lines. This is something very concerning to me.

The other issue is, when we talk about tripling the number of inspections under the New START, we have heard it said several times: Well, there are fewer sites. But I would like to suggest that the type two—keep in mind type one refers to inspections of ICBM bases, air bases, those facilities that are active today.

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

Mr. KERRY. Mr. President, how much time remains?

The PRESIDING OFFICER. We have 14 minutes 45 seconds.

Mr. KERRY. Did my colleague need to finish up a thought? If so, I am happy to yield him a minute.

Mr. INHOFE. No.

Mr. KERRY. Mr. President, I thank the Senator from Oklahoma for the discussion we had yesterday and again today about verification. I know it is an issue he thinks is critical. I think every Senator here is absolutely convinced we need to have the strongest verification regime possible. The fact is that this treaty, the New START treaty, has exactly that. It has an effective verification system. Does it have a perfect system? No treaty that has ever been passed or been negotiated would be that one-sided and be able to achieve that. It is an effective verification system, which is the standard we have used ever since President Reagan negotiated those treaties, and Paul Nitze, one of our great arms control statesmen, really defined that concept of effective verification.

I wish to quote what Secretary Gates said about this. I don't need to remind colleagues, but I guess people in the public who don't necessarily focus on it might be impacted to know that Secretary Gates was appointed by President George Bush, and he was held over as Secretary of Defense by President Obama. By everybody's judgment here in the Senate, he is a man of great credibility and distinction who has worked through many different layers of American government. He is one of the people for whom we have great respect. In a letter he wrote to Senator ISAKSON this summer, he said:

> I believe that the number of inspections provided for by the New START Treaty, along with other verification mechanisms, provides a firm basis for verifying Russia's compliance with its Treaty obligations while also providing important insights into the size and composition of Russian strategic forces.

I know the Senator from Oklahoma is concerned about the number of inspections. He has several times raised the question of cutting the inspections from the original START to the New START. I want to walk through it again so we are absolutely clear.

Comparing the number of inspections under START I to the number of inspections under New START is literally an apples-to-oranges comparison for three reasons—one, today we are only conducting inspections in one country instead of four. Under START I, we had Belarus, Kazakhstan, Ukraine, and Russia.

Mr. INHOFE. Will the Senator yield for a unanimous consent request?

Mr. KERRY. Yes, as long as I don't lose my right to the floor.

Mr. INHOFE. Mr. President, I ask unanimous consent that the time be extended by 10 minutes—5 minutes for the Senator from Massachusetts and 5 additional minutes for the Senator from South Dakota.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Reserving the right to object, I want to make sure because people were planning schedules around it.

We have no objection, Mr. President.

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

Mr. KERRY. Mr. President, Secretary Gates said this about the—well, let me finish that thought about the difference. So when we had those 4 countries, we had 70 sites that were subject to inspection. Under this treaty, there were 35 sites subject to inspection, but they are all in one country—Russia—because all of the weapons were moved to Russia after the fall of the Soviet Union.

Secondly, we are inspecting half as many facilities, and when we inspect those facilities, we, thirdly, have a type one inspection and a type two inspection, which allows us to be able to go in and look at the missile but to also do an update inspection, which is sort of a general inspection of the up-to-date status of the various things we look at in the course of an inspection, which, in effect, really doubles the amount of inspections we have because under START I, if you went in and did an update inspection, that was it. You didn't get to do the missile inspection or vice versa. We really have a two-for-one here. It is disingenuous to reflect that in the comments about how we count here. We are talking about a completely comparable inspection regime under New START as under START I.

Finally, we addressed this question of verification 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 of the United States has to certify to the Senate that our national technical means, in conjunction with New START's verification activities, are sufficient to ensure adequate and effective monitoring of Russian compliance. So we are going to remain right in the center of this issue of verification every year this treaty is in force, and the Senate is going to be part of that process.

Let me briefly turn back to something Senator THUNE said earlier. He said this treaty was negotiated with the assumption that the Russians weren't going to cheat. No, Mr. President, it is not accurate that there was any such assumption whatsoever, and that is precisely why we have a verification structure here. It is why we are taking this discussion so seriously, because we don't take people at their word. We have to verify. That is what the verification regime is for.

Let me also be clear on what Secretary Gates said here. Senator INHOFE quoted the Secretary saying that the Russians would not be able to achieve any militarily significant cheating under this verification regime. That is the judgment of our intelligence community, but it doesn't mean that they think or that we think they might not try to cheat. It means that if they do, it is going—if it is militarily significant, we will see it, we will know it, and we will understand exactly what they are doing. So we can respond, as Secretary Gates has, by increasing the size of our force, by increasing the alert level of SSBNs and bombers, and by uploading warheads on bombers, SSBNs, and on ICBMs. There are all kinds of things we can do to respond the minute we notice that kind of militarily significant event.

It is my judgment that this amendment does not give us anything in the way of additional confidence, but it certainly will give us months of unnecessary and even counterproductive renegotiation of the treaty. That means that by reaching for three times the number of inspections, we would guarantee that for months and months we will have zero, absolutely none. That is the tradeoff.

I think we need to get our verification team back in place, and I think that is what is most imperative in terms of the national security interests of the country.

I thank Senator THUNE for his amendment. I thank him also for the constructive discussion we have had about these numbers with respect to missiles and bombers in order to maintain our nuclear deterrent.

I think this is another place where it is pretty important for all of us to listen to our military. They have made the judgments here, and they have been very transparent about how they have made those judgments. We have been able to query them in the Armed Services Committee, the Intelligence Committee, the Foreign Relations Committee, and the National Security Working Group. They have arrived at the judgment—not a political judgment but a military judgment—that the treaty's limit of 700 delivery vehicles is perfectly adequate to defend our Nation and our allies at the same time.

As the Vice Chairman of the Joint Chiefs, GEN James Cartwright, who was a former strategic commander, said:

> I think we have more than enough capacity and capability for any threat that we see today or that might emerge in the foreseeable future.

This amendment seeks to insert sort of our arbitrary judgment that, oh, we ought to have 20 additional. I remind the Senators what LTG Frank Klotz, the commander of the Air Force Global Strike Command, said. That is the command that oversees ICBMs and bombers. Just last Friday, he said:

> I think the START Treaty ought to be ratified, and it ought to be ratified now, this week.

The military came to this conclusion after the Department of Defense conducted a very thorough review of our

nuclear posture, including detailed force-on-force analyses. We shared some of that discussion in the classified session earlier. Our nuclear commanders have done the math, run the scenarios, and they have concluded that we only need 700 delivery vehicles.

General Chilton, head of the Strategic Command, said:

> The options we provided in this process focused on ensuring America's ability to continue to deter potential adversaries, assure our allies, and sustain strategic stability for as long as nuclear weapons exist. This rigorous approach, rooted in deterrent strategy and assessment of potential adversary capabilities, supports both the agreed-upon limits in New START and recommendations in the Nuclear Posture Review.

I do know the Senator expressed some concern about our ability to field Prompt Global Strike systems. It is true that conventionally armed ICBMs will count toward the treaty's limits, but again, let's listen to what the military says.

Secretary Gates stated for the record that:

> Should we decide to deploy them, counting this small number of conventional strategic systems and their warheads towards the treaty limits will not prevent the United States from maintaining a robust nuclear deterrent.

Admiral Mullen said as far back as March that the treaty protects our ability to develop a conventional global strike capability should that be required.

I also point to our resolution of ratification, condition 6, understanding 3, and declaration 3, all of which go toward preserving our ability to deploy conventional Prompt Global Strike forces.

Finally, the Senator raised the possibility that we are moving from a triad to a dyad. I wish to be especially clear on this point. The administration has stated forcefully and again today reiterated in a letter sent to us by the Chairman of the Joint Chiefs of Staff, Admiral Mullen, in which he reiterates the administration's commitment to the triad. As it said in the ''update'' section of the 1251 report:

> The administration remains committed to the sustainment and modernization of U.S. strategic delivery systems.

Regarding heavy bombers, that same report says:

> DOD plans to sustain a heavy bomber leg of the strategic triad for the indefinite future and is committed to the modernization of the heavy bomber force.

To be clear, our existing nuclear bombers will be in operation at least for the next 20 years, and probably at most this treaty could be a 10- to 15-year treaty. Our existing bombers will outlive this treaty.

The administration has also made clear that we are committed to the triad in the resolution of ratification, including our nuclear bombers. I might add that they have also said they are not going to close bases, and they are not going to reduce the total number of bombers.

I believe there should not be concern on these points.

This amendment, once again, is one of those that would force renegotiation of the entire treaty. I might mention for my colleagues that one of the reasons that is so important to all of us—we can all remember negotiating around here many times on different bills and pieces of legislation. We always begin that negotiation—I can remember Senator George Mitchell, when he was majority leader and we did the complicated Clean Air Act reauthorization in 1990, he would begin every session by reminding people that nothing is agreed upon until everything is agreed upon. We negotiate that way here all the time.

So if all of a sudden nothing is agreed upon and that is the way this treaty was negotiated—if nothing is agreed upon until everything is agreed upon, when you take one piece out of there and change it unilaterally, nothing is agreed upon. At that point, you reopen all of the other issues, and some of them are contentious, which are difficult, which people may have a different view on, and which will affect our relationship.

If this weren't so substantive and I thought we were buying a pig in a poke, I would say I understand why we have to do that.

But the military, our national security people, our national intelligence community—there is not anybody who works at this day to day—our Strategic Command, our National Defense Missile Command—all of them say: Ratify this treaty. And that is what I believe we ought to do as soon as possible.

I reserve the remainder of our time.

Mr. KYL. Madam President, I wonder if I might engage in a colloquy briefly with my colleague from Massachusetts and then propound a unanimous consent agreement.

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

Mr. KYL. Madam President, there are two votes scheduled on the Thune amendment and the Inhofe amendment. Have we locked in the LeMieux amendment yet?

Mr. KERRY. I do not believe so.

The PRESIDING OFFICER. No.

Mr. KYL. Madam President, does my colleague anticipate that it is possible there would be a third vote tonight, depending upon whether Senator LEMIEUX is ready to have that vote?

Mr. KERRY. I suspect the majority leader would be delighted to have another vote if we can. I am speaking without authorization.

Mr. KYL. At some point, just for the benefit of Members, there could theoretically be a third amendment tonight if Senator LEMIEUX is ready to have that vote and if there is no objection by any other Member.

The other point, I inform my colleague, is I have the exact numbers of the five amendments I would like to get pending. Let me make that request at this time. They are amendments Nos. 4900, McCain amendment; 4893, Kyl amendment; 4892, Kyl amendment; 4867, Kyl amendment; and No. 4860, Kyl amendment. These are all proposed amendments to the resolution of ratification.

I ask unanimous consent that it be in order to call up five amendments to the resolution of ratification; provided further that these be the only amendments in order to the resolution of ratification at this time; and I ask unanimous consent that following the disposition of the amendments solicited, the Senate then resume consideration of the treaty.

Before my colleague responds, I will also say this: I believe there are only four other amendments pending, and one of them is mine. I will agree to waive my right to bring that up. I cannot say for the others, and I need to talk with those Members during the vote. I do not know whether they would want votes on their amendments. In any event, there are no more than three of them. So it is a locked-in number.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, reserving the right to object, I want to make clear that as we move to these amendments with respect to the resolution of ratification, we are going to preserve the right, then, to go back only to those three that are pending. And the Senator has agreed to make a good-faith effort to see if that could be reduced to simply one; is that accurate?

Mr. KYL. No. I am saying one is mine, and I would eliminate it now.

Mr. KERRY. I understand that the Senator, in our conversation earlier, was going to try to see if the other two could also make the same decision he has made so we, in effect, have one on the treaty itself.

Mr. KYL. If that was the impression, I do not think I can do that. But in any event, I did not try to do that. There are four all told. I would eliminate my one, and there would be a fixed number—only three possibilities after that.

Mr. KERRY. Could we then say for the record which amendment is being withdrawn at this point?

Mr. KYL. It would be the only Kyl amendment remaining pending to the treaty.

The PRESIDING OFFICER. If the Senator will withhold. There is no Kyl amendment pending.

Mr. KERRY. Madam President, if I may say to my colleague, the majority leader would like to work with us in this process. I think what we should do, if I may ask my colleague to do this, I would like to take a moment, if we can, to work through this with the majority leader. We can do it during the votes, and then at the end of the votes we can hopefully propound something that has his engagement.

Mr. KYL. I can tell my colleague that the amendment I would be agreeing not to bring up is amendment No.

4854. I misspoke when I said it is pending. It is filed to the treaty.

Mr. KERRY. I thank the Senator. That helps us a lot. That clarifies it. What I would like to do is work with the majority leader and the Senator from Arizona, and I am sure we can come together, and at the end of the vote we can propound an appropriate UC.

Mr. KYL. I am not willing to withdraw my request. What I am afraid of, quite frankly, is that we are not going to be able to get unanimous consent before a cloture vote on the treaty and we are going to be iced out here.

I have propounded a unanimous consent request. I will be happy to read it again. If there is an objection, fine. I want to get agreement on this, if at all possible.

The PRESIDING OFFICER. If the Senator from Arizona could repeat his request, that would be helpful.

Mr. KYL. I would be happy to. Madam President, I ask unanimous consent that it be in order to call up five amendments to the resolution of ratification; provided further that these be the only amendments in order to the resolution of ratification at this time; and I ask unanimous consent that following the disposition of the amendments solicited, the Senate then resume consideration of the treaty.

Mr. KERRY. Reserving the right to object, I personally am supportive of our trying to do that. I have said to the Senator in good faith that we need to have some amendments to the resolution of ratification. We are working on them. I am confident that we will be able to accommodate his request, but I am in a position where I need to have the input of the majority leader to do that. I will personally advocate we do it.

At this moment only, I must object to that request, but I look forward to trying to propound it after the votes.

The PRESIDING OFFICER. Objection is heard.

Mr. KYL. Madam President, I appreciate the explanation. That ordinarily would be information given to the two leaders, and we did not do that in this case. I do appreciate this.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Madam President, it is my understanding that I have a minute in which to wrap up debate on this amendment; is that correct?

The PRESIDING OFFICER. All of the time has been used.

Mr. THUNE. I ask unanimous consent to have a couple minutes to summarize a couple points. I had 5 minutes which I think just got burned.

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

Mr. THUNE. Madam President, I will make a couple quick points before we vote on the delivery vehicle amendment, and the first one is this because it has been observed that this would impact Prompt Global Strike. The supporters of the treaty have said it will not impact Prompt Global Strike. The fact is that the 700 number of delivery vehicles—if, for example, we were to mount a conventional warhead on an ICBM to strike a target in some geographic area that is hard to hit and we need to get there in short order, the ICBM currently is the best way to do that. If we do that, it reduces the number of nuclear delivery vehicles we have one for one. If we were to do that on 20 ICBMs, we would mount conventional warheads on those, and it would reduce by 20 the number of nuclear delivery vehicles we would have. That is a fact in the treaty.

The final point I will make about the number 700, because it has been pointed out that military personnel in the country support that number, but I also want to mention that it is important to recall that General Chilton's support for New START levels was predicated on no Russian cheating. He testified before the Senate Armed Services Committee on April 22, 2010, that one of the assumptions made was an assumption that the Russians in the postnegotiation time period would be compliant with the treaty. We all know it has been pointed out many times on the floor how Russia is a serial violator of arms control commitments. I think it is important, as we discuss the 700 number, that people bear in mind that number was agreed upon by our military commanders assuming there would be no cheating by the Russians.

There still is a conflict between the 720 called for in the nuclear force structure plan and the 700 in the treaty. All I am simply saying is, let's make those two numbers consistent. Let's get the 700 number up to 720.

With that, I yield back my time and ask for the yeas and nays.

Mr. KERRY. I yield back the remainder of our time.

The PRESIDING OFFICER. Is there an objection to asking for the yeas and nays? Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Inhofe amendment.

Mr. KERRY. Does Senator INHOFE want to ask for the yeas and nays?

Mr. THUNE. I also request the yeas and nays on the Inhofe amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk call the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 33, nays 64, as follows:

[Rollcall Vote No. 285 Ex.]

YEAS—33

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

NAYS—64

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

NOT VOTING—3

Bayh	Brownback	Wyden

The amendment (No. 4833) was rejected.

The PRESIDING OFFICER. There is now 2 minutes, equally divided—

The majority leader.

Mr. REID. Madam President, first of all, I ask unanimous consent that the vote on the Thune amendment be 10 minutes in duration.

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

Mr. REID. No. 2, Senator LEMIEUX has an amendment that is pending. I ask unanimous consent that vote follow the Thune amendment and that vote also be 10 minutes in duration.

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

Mr. REID. Madam President, I ask unanimous consent that there be no amendments—

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. REID. Let me finish my unanimous consent request, and if someone does not like it, we can worry about that. I ask unanimous consent that—we are going to vote on the Thune amendment; that will be a 10-minute vote; that is amendment No. 4841—following that vote, we consider the LeMieux amendment No. 4847; that prior to the vote, there be 4 minutes of debate, equally divided and controlled in the usual form; that is, of course, with the Thune amendment and the LeMieux amendment; that upon the use or yielding back of the time, the Senate then proceed to vote in relation to the LeMieux amendment, with no amendment in order to the amendment prior to the vote.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I would also say, Madam President, that will very likely be the last vote tonight. I have had a conversation with Senator KYL and Senator KERRY. They are going to meet early in the morning to see if there is a way we can work through some of these issues that are still outstanding.

The one message I wish to make sure everyone gets—I know everyone has lots to do this week—but on this most important treaty, no one needs to feel they are being jammed on time, as busy as we all are and as many things as we want to do in the next few days. So if anyone has any issues they still want to deal with, talk to Senator KERRY or Senator KYL or Senator LUGAR, who is the comanager on the other side.

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

Who yields time?

AMENDMENT NO. 4841

Mr. REID. Madam President, we yield back the 2 minutes on our side.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the Thune amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 33, nays 64, as follows:

[Rollcall Vote No. 286 Ex.]

YEAS—33

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

NAYS—64

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

NOT VOTING—3

Bayh	Brownback	Wyden

The amendment (No. 4841) was rejected.

AMENDMENT NO. 4847

The PRESIDING OFFICER. There is now 4 minutes equally divided prior to a vote on the LeMieux amendment.

The Senator from Florida.

Mr. LEMIEUX. Madam President, this amendment says simply one thing: that within 1 year's time of the ratification of this treaty, the United States and Russia would sit down and negotiate a tactical nuclear weapons treaty. Why do I bring this forward? Because we know—and we heard a lot about it today in our closed session—that there is a tremendous disparity between the number of tactical nuclear weapons our country has at 300 and the Russians have at 3,000—10 to 1. If this treaty is ratified, the Russians will have 4,500 nuclear weapons. We will have 1,800.

This is not a poison pill. You will hear that; it is not. It does not change a material term of this agreement. It just says within a year's time, we will sit down and enter into these negotiations. We need to put it into the treaty because that is the only way we can make sure it will happen.

If we send this treaty with this amendment back to the Russian Duma and they don't approve it, what does that say? It says they know they have a significant advantage over us. It is the right thing to do. It is something I think all of our colleagues should be able to agree to. It is not a poison pill. Let's approve it. Thank you.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I will be very brief.

I completely agree with the intention of the Senator. I think all of us agree we have to negotiate a tactical nuclear weapons treaty with Russia. Unfortunately, this, according to our NATO allies, according to our national security representatives, will actually prevent us from getting to the place where we negotiate that because the first thing we have to do to get the Russians to the table is pass the START treaty.

If we pass the New START treaty, we can engage in these discussions. If we don't pass it, they have no confidence. We simply go back to ground zero and begin negotiating all the pre-START items again before we can ever get there. We cannot just pass this unilaterally and order them to get there. We have to get them to enter into those negotiations. The way to do that is to preserve the integrity of the START treaty and then get to those agreements. We have that in the resolution of ratification.

There is language that urges the President and embraces this notion of the Senator from Florida. I congratulate him for wanting to target it. It is important to target it, and we will do it in the resolution of ratification.

I yield back any time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4847.

Mr. BOND. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 35, nays 62, as follows:

[Rollcall Vote No. 287 Ex.]

YEAS—35

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

NAYS—62

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

NOT VOTING—3

Bayh	Brownback	Wyden

The amendment (No. 4847) was rejected.

Mr. KERRY. Mr. President, I move to reconsider the vote.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to reconsider was laid on the table.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for about 7 minutes as in morning business.

The PRESIDING OFFICER (Mr. MERKLEY). Is there objection?

Without objection, it is so ordered.

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

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 4904, AS MODIFIED

Mr. CORKER. Mr. President, I ask unanimous consent that amendment

No. 4904 to the resolution of ratification be brought up as pending.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Reserving the right to object, I apologize. Did Senator CORKER ask a unanimous consent request?

The PRESIDING OFFICER. Yes, to call up an amendment.

Mr. KYL. But to return to the treaty upon its disposition; is that correct?

Mr. CORKER. That is what I was just getting ready to say.

Mr. KYL. Might I ask the Senator from Tennessee whether he talked with one of the Senators from South Carolina about this?

Mr. CORKER. I have not. I attempted to do so. He was off the floor by the time——

Mr. KYL. I do not have any objections as long as we return to the treaty so those who have amendments to the treaty will at least have their rights protected.

The PRESIDING OFFICER. Is there an objection?

Mr. KYL. I will not object. I simply note that I think we will need an understanding that we will work with our other interested colleagues on a way forward on all of these issues. Having expressed that as a matter of good faith, I suspect we can do that.

Mr. CORKER. Absolutely.

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

The clerk will report.

Mr. CORKER. Mr. President, I also ask unanimous consent to accept the modification. It is modified slightly. I want to make sure that is acceptable.

Mr. KERRY. Mr. President, reserving the right to object.

Mr. CORKER. It was a modification that the staff of the chairman suggested.

Mr. KERRY. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. CORKER] proposes an amendment numbered 4904, as modified.

The amendment is as follows:

(Purpose: To provide a condition and a additional element of the understanding regarding the effectiveness and viability of the New START Treaty and United States missile defenses)

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) EFFECTIVENESS AND VIABILITY OF NEW START TREATY AND UNITED STATES MISSILE DEFENSES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate, and shall communicate to the Russian Federation, that it shall be the policy of the United States that the continued development and deployment of United States missile defense systems, including qualitative and quantitative improvements to such systems, including all phases of the Phased Adaptive Approach to missile defenses in Europe maintaining the option to use Ground-Based Interceptors, do not and will not threaten the strategic balance with the Russian Federation. Consequently, while the United States cannot circumscribe the sovereign rights of the Russian Federation under paragraph 3 of Article XIV of the Treaty, the continued improvement and deployment of United States missile defense systems do not constitute a basis for questioning the effectiveness and viability of the Treaty, and therefore would not give rise to circumstances justifying the withdrawal of the Russian Federation from the Treaty.

At the end of subsection (b)(1)(C), strike ''United States.'' and insert the following: ''United States; and

(D) the preamble of the New START Treaty does not impose a legal obligation on the United States.

Mr. CORKER. Mr. President, I also ask unanimous consent that we now return to the treaty.

The PRESIDING OFFICER. The Senate is on the treaty.

Ms. COLLINS. Mr. President, I rise today to discuss the New START treaty. Before I begin, I would like to thank Senator KERRY and Senator LUGAR for their leadership on this important arms control agreement.

When I first began to consider this treaty, I considered the fundamental question of whether we are better off with it or without it since the previous START treaty expired a year ago. By reducing the number of deployed nuclear weapons in a mutual and verifiable way, I believe that this treaty does enhance our security, but it is not without flaws.

Our choice is not, however, between some ideal treaty and the New START treaty. It is between this treaty and having no inspection regime in place at all since the previous START treaty expired in December of 2009.

In evaluating this treaty, I scrutinized several issues including the effect on our Nation's security, the need to modernize our nuclear deterrent, the effectiveness of verification and inspection regimes, and the impact on missile defense.

These and other issues were fully covered in classified briefings as well as in the seven Senate Armed Services Committee hearings that I attended that included testimony from Secretary of Defense Gates, Secretary of State Clinton, Admiral Mullen, the Chairman of the Joint Chiefs of Staff, and General Chilton, the commander of our nuclear forces. We also heard testimony from the three current directors of our national nuclear laboratories and a number of former government officials and national security experts.

I met personally with Rose Gottemoeller, the top U.S. treaty negotiator, and sought counsel from GEN Brent Scowcroft, who has served as an adviser to four Republican Presidents and was the National Security Adviser to President George H. W. Bush.

I also have met with a wide range of Mainers—foreign policy experts, religious leaders, and former members of the military—who expressed their views on the treaty to me.

Clearly, the New START treaty enjoys broad bipartisan support. Secretaries of State for the past five Republican Presidents, including GEN Colin Powell, support its ratification, as does former Maine Senator and former Secretary of Defense Bill Cohen.

No Member of this body should support a treaty simply because it has strong bipartisan support. But neither should we withhold our support for a treaty simply because it was negotiated and signed by a President from a different political party.

The fact is that the New START treaty is a modest arms control agreement. The treaty does not require the destruction of a single nuclear weapon. Under the New START framework, a 30-percent reduction in the number of deployed warheads in the arsenals of the United States and Russia will be required.

As such, the New START treaty places the United States and the Russian Federation on a path to achieve mutual and verifiable reductions over the next 7 years. Failure to ratify a treaty that makes modest reductions in the deployment of nuclear weapons would represent a giant step backwards in the commitment of the United States to arms control. If we cannot reduce the deployed nuclear stockpiles of the two countries that hold 9 of every 10 nuclear weapons in the world, how can we expect other countries not to seek any nuclear weapons?

Yet the New START treaty has significance beyond its function as an arms control agreement. New START is one component of our bilateral relationship with the Russian Federation. In April 2009, I traveled to Moscow with the chairman of the Armed Services Committee, Senator CARL LEVIN. At that time, I indicated that while I supported the President's commitment to reset the U.S.-Russian relationship, it was ultimately up to the Russians to see if they wanted to have a stronger relationship.

Since then, Russia has expanded the use of northern supply routes for our military forces in Afghanistan and has cancelled the sale of advanced surface to air missiles to Iran. These are positive steps.

During that same trip to Moscow, Chairman LEVIN and I sought to encourage Russian officials to cooperate on missile defense in Europe. And this issue of missile defense raises an important point about the U.S.-Russian relationship. Just because our relationship with the Russians is important does not mean that we must compromise on an issue vital to our national security. One of those issues is missile defense.

I was troubled when I read the unilateral statements made by Russian leaders who sought to make a binding tie between missile defense and the New START agreement.

The Kerry-Lugar resolution of ratification eliminates any doubt that the United States will continue to develop missile defense systems. The proposed resolution of ratification clarifies that the treaty places no limitation on the

deployment of U.S. missile defense systems except for those contained in article 5. It further clarifies that the Russian unilateral statement regarding missile defense ''does not impose a legal obligation on the United States.''

The resolution of ratification goes beyond expressing the position that the United States will deploy an effective national missile defense system. It declares that the United States is committed to improving its strategic defensive capabilities, both quantitatively and qualitatively, during the lifetime of the treaty.

In addition to developing a robust missile defense capability, it is equally imperative that the United States maintain a modernized nuclear weapons program as we consider further reductions in nuclear arms.

In March, I traveled with my good friend from Arizona, Senator KYL, to discuss nuclear modernization with our allies. I learned a great deal from an in-depth briefing with French physicists about our need to modernize our own nuclear arsenal.

As Secretary of Defense Gates has noted, ''The United States is the only declared nuclear power that is neither modernizing its nuclear arsenal nor has the capability to produce a new nuclear warhead.'' The Perry-Schlesinger Strategic Posture Commission noted that the nuclear weapons complex ''physical infrastructure is in serious need of transformation.''

In response, the administration has made a commitment to invest $14 billion in new funding over the next 10 years for the nuclear weapons complex. As a result, the safety, stability, and reliability of our nuclear deterrent can be improved. The new investments will double the surveillance within the nuclear stockpile from fiscal year 2009 to fiscal year 2011. Finally, the Administration has proposed nearly $9 billion for our plutonium and uranium facilities, and it has made a commitment to request additional funding necessary for those facilities once the designs are completed.

While the New START treaty contributes to reducing the threat of nuclear war and strengthens nuclear nonproliferation efforts, it is disappointing to me that the treaty reflects an outdated view of one of the primary threats to our national security. This treaty does not address the significant disparity between the number of nonstrategic nuclear weapons in Russia's stockpile compared to our own.

The Perry-Schlesinger Strategic Posture Commission reported that Russia had an estimated 3,800 tactical nuclear weapons compared to fewer than 500 in our own stockpile. By maintaining a distinction between the threats of nuclear attack that warrant the ratification of a treaty from those nuclear threats that do not simply based upon the distance from which a nuclear weapon is launched or the method by which such a weapon is launched, we preserve a Cold War mentality regarding the nuclear threats facing our country.

The large numerical disparity in the number of warheads each country maintains is not the only reason they warrant a higher priority than they were given by either country in this treaty.

As the ranking member of the Homeland Security and Governmental Affairs Committee, I believe that the characteristics of tactical nuclear weapons, particularly their vulnerability for theft and potential for nuclear terrorism, make reducing their numbers essential to our national security.

President Obama correctly described the greatest threat facing our Nation in the 2010 Nuclear Posture Review when he said that ''the threat of global nuclear war has become remote, but the risk of nuclear attack has increased . . . today's most immediate and extreme danger is nuclear terrorism.''

Several arms control groups, including the Stimson Center, the Center for Nonproliferation Studies, and the Union of Concerned Scientists, have each stated that the danger of these weapons rests not only in the destructive power of each weapon but also because they are vulnerable to theft by rogue nations and terrorist groups.

Earlier this month, I wrote to Secretary Gates and Secretary Clinton about my concerns regarding this issue and requested a commitment from them to seek reductions in the number of Russian tactical nuclear weapons.

I would like to read a portion of their response for those of my colleagues who share my concern regarding this disparity:

> The Administration is committed to seeking improved security of, and reductions in, Russian tactical nuclear weapons. 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. These negotiations offer our best chance to constrain Russian tactical nuclear weapons, but we believe Russia will be unlikely to begin such negotiations if the New START treaty does not enter into force.

The letter further states that:

> With regard to future agreements, we strongly agree with you that the characteristics of tactical nuclear weapons—particularly their vulnerability to theft, misuse, or acquisition by terrorists—make reducing their numbers and enhancing their safety and security extremely important.

I ask unanimous consent that my letter to the Secretaries and their response be printed in the RECORD at the end of my statement.

So where does that leave us? Does the New START treaty lead to mutual and verifiable reductions in nuclear arms? Does the New START treaty renew our Nation's commitment to arms control? Given the commitments by the administration, will it reinvigorate our nuclear nonproliferation efforts?

The answers to these questions were most succinctly addressed in a statement by the leader who negotiated and signed the first START treaty, former President George H.W. Bush. I will conclude by associating myself with his comments on the issue, which I will read in full: ''I urge the United States Senate to ratify the [New] START treaty.''

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

U.S. SENATE,
Washington, DC, December 3, 2010.

Hon. HILLARY RODHAM CLINTON,
Secretary of State,
Washington, DC.

DEAR SECRETARY CLINTON: I want to thank the Administration for making its experts available to discuss the proposed New START and its associated issues, including the importance of modernizing the nuclear weapons complex in light of proposed reductions in our deployed nuclear forces. I support the recent commitment President Obama made to increase the investments for nuclear modernization by $4.1 billion and to fully fund the costs associated with new facilities as the design for these facilities are completed. The Administration has also answered many of my concerns about verification and inspections. Although I believe the verification and inspection requirements of the now expired START treaty were preferable, the explanations regarding the new verification methods have helped to assuage my concerns.

There is, however, a remaining issue that must be resolved before I can conclude that the treaty warrants my support. The New START treaty does not address the significant disparity between the number of nonstrategic nuclear weapons in the stockpiles of the Russian Federation and the United States. By maintaining a distinction between the threats of nuclear attack that warrant the ratification of a treaty from those nuclear threats that do not simply based upon the distance from which a nuclear weapon is launched or the method by which such a weapon is delivered, we preserve an outdated model regarding the nuclear threats facing our country. Any nuclear attack on our country or one of our allies, not just those that are launched quickly from a great distance, would be devastating.

The characteristics of tactical nuclear weapons, particularly their vulnerability for theft and misuse for nuclear terrorism, make reducing their numbers important now. Several arms control groups, including the Stimson Center, the Center for Nonproliferation Studies, and the Union of Concerned Scientists, have stated that the danger of tactical nuclear weapons rests not only in the destructive power of each weapon, but also because they are vulnerable to theft by terrorist groups. President Obama's 2010 Nuclear Posture Review echoes the concern of nuclear terrorism: ''The threat of global nuclear war has become remote, but the risk of nuclear attack has increased . . . today's most immediate and extreme danger is nuclear terrorism. Al Qaeda and their extremist allies are seeking nuclear weapons.''

Non-strategic delivery systems are also as capable as some of the strategic delivery vehicles covered under New START of delivering a swift nuclear attack. For example, the Russian Federation is capable of deploying submarine-launched cruise missiles armed with nuclear warheads. According to press reports, a new type of Russian attack submarine capable of launching nuclear-armed cruise missiles is expected to enter service in late 2010. My understanding is that, unlike submarine launched ballistic

missiles, these nuclear-tipped cruise missiles would not be counted under New START. In addition, I was troubled to learn of reports in the New York Times that the Russian Federation moved short-range tactical nuclear weapons closer to the territory of our NATO allies and U.S. deployed forces in Europe earlier this year, apparently in response to the deployment of missile defense capabilities there.

Insufficiently addressing these weapons may make it more difficult to achieve future nuclear arms control agreements. According to the independent Perry-Schlesinger Strategic Posture Commission report, the Russian Federation has about 3,800 tactical nuclear weapons and the United States has less than 500 tactical nuclear weapons. If the New START treaty is ratified, the number of deployed strategic nuclear weapons by both countries will be evenly balanced. Absent a significant unilateral reduction in tactical nuclear warheads by the Russian Federation, any effort to reduce the disparity in these weapons may lead to unacceptable concessions regarding U.S. capabilities that are not tied to the size of the nuclear stockpiles maintained by each country, such as concessions regarding missile defense or conventional prompt global strike.

Including non-strategic weapons in strategic arms negotiations is not unprecedented. On July 31, 1991, the day START I was signed by President George H.W. Bush and Mikhail Gorbachev, the U.S.S.R. publicly committed to providing the United States with annual declarations regarding the deployments of nuclear sea-launched cruise missiles for the duration of START I. In addition, the Soviet Union committed to deploying no more than a single warhead on each cruise missile and to not exceed the deployment of more than 880 nuclear sea-launched cruise missiles in any one year.

On July 27, 2010, Dr. Keith Payne, former Deputy Assistant Secretary of Defense for foreign policy and a member of the Perry-Schlesinger Commission, testified before the Senate Armed Services Committee that the reason he believed tactical nuclear weapons were not included in the New START treaty was because, ''the Russians did not want to engage in negotiations on their tactical nuclear weapons.'' I think they will be very wary about ever engaging in serious negotiations on their tactical nuclear weapons. I also understand, and would expect, that any reductions of non-strategic nuclear weapons in Europe would rest, in part, upon the position of our NATO allies.

Nonetheless, the concerns I have regarding non-strategic weapons remain outstanding as I consider whether or not the New START treaty warrants my support. As such, I request that you provide, in writing, the Administration's plan to address the disparity between the numbers of non-strategic warheads of the Russian Federation compared to the United States, in order that I may consider this information prior to a vote on the ratification of the New START treaty.

Thank you for your attention to this matter, and for your service to our nation.

Sincerely,

SUSAN M. COLLINS,
United States Senator.

Hon. SUSAN M. COLLINS,
U.S. Senate,
Washington, DC.

DEAR SENATOR COLLINS: Thank you for your letter of December 3, 2010, regarding the New START Treaty. We believe ratification of the Treaty is essential to preserving core U.S. national security interests.The Treaty will establish equal limits on U.S. and Russian deployed strategic warheads and strategic delivery systems, and will provide the U.S. with essential visibility into Russian strategic forces through on-site inspections, data exchanges, and other verification provisions.

As you note, the Strategic Posture Commission expressed concern regarding Russian tactical nuclear weapons. At the same time, the Commission recommended moving forward quickly with a new treaty focused on strategic weapons. With the expiration of the START Treaty in early December 2009, for the past year the U.S. has had no inspectors with ''boots on the ground'' to verify Russian strategic forces.

The Administration is committed to seeking improved security of, and reductions in, Russian tactical (also known as non-strategic) nuclear weapons. 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. These negotiations offer our best chance to constrain Russian tactical nuclear weapons, but we believe Russia will likely be unwilling to begin such negotiations if the New START Treaty does not enter into force. We will consult closely with Congress and our Allies in planning and conducting any follow-on negotiations.

At the NATO summit in Lisbon in November 2010, Allied leaders expressed their strong support for ratifying the New START Treaty now, and welcomed the principle of including tactical nuclear weapons in future U.S.-Russian arms control talks. The U.S. remains committed to retaining the capability to forward-deploy tactical nuclear weapons in support of its Alliance commitments. As such, we will replace our nuclear-capable F–16s with the dual-capable F–35 Joint Strike Fighter, and conduct a full scope Life Extension Program for the B–61 nuclear bomb to ensure its functionality with the F–35 and enhance warhead surety.

Your letter notes recent press reports alleging that Russia has moved tactical nuclear warheads and missiles closer to Europe. We note that a short-range ballistic missile unit has long been deployed near Russia's border with Estonia, and earlier this year the Russians publicly announced that some SS–26 short-range ballistic missiles would be located there. Although this deployment does not alter either the balance in Europe or the U.S.-Russia strategic balance, the U.S. has made clear that we believe Russia should further consolidate its tactical nuclear weapons in a small number of secure facilities deep within Russia.

With regard to future agreements, we strongly agree with you that the characteristics of tactical nuclear weapons—particularly their vulnerability to theft, misuse, or acquisition by terrorists—make reducing their numbers and enhancing their safety and security extremely important. That is why when President Obama signed the New START Treaty in April, he made clear that ''going forward, we hope to pursue discussions with Russia on reducing both our strategic and tactical weapons, including non-deployed weapons.''

Thank you for the opportunity to address the important matters you have raised in connection with the new START Treaty. We look forward to continuing to work with you on this and other issues of mutual interest, and urge your support of New START.

Sincerely,

HILLARY RODHAM CLINTON,
Secretary of State.
ROBERT M. GATES,
Secretary of Defense.

ORDER OF PROCEDURE

Mr. KERRY. Mr. President, I ask unanimous consent to proceed as in legislative session and as in morning business in order to process some cleared legislative items.

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

NORTHERN BORDER COUNTERNARCOTICS STRATEGY ACT OF 2010

Mr. KERRY. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 4748 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4748) to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I ask unanimous consent that a Schumer substitute amendment, which is at the desk, be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4915) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Northern Border Counternarcotics Strategy Act of 2010''.

SEC. 2. NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

The Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469; 120 Stat. 3502) is amended by inserting after section 1110 the following:

''SEC. 1110A. REQUIREMENT FOR NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

''(a) DEFINITIONS.—In this section, the terms 'appropriate congressional committees', 'Director', and 'National Drug Control Program agency' have the meanings given those terms in section 702 of the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701)).

''(b) STRATEGY.—Not later than 180 days after the date of enactment of this section, and every 2 years thereafter, the Director, in consultation with the head of each relevant National Drug Control Program agency and relevant officials of States, local governments, tribal governments, and the governments of other countries, shall develop a Northern Border Counternarcotics Strategy and submit the strategy to—

''(1) the appropriate congressional committees (including the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives);

''(2) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Indian Affairs of the Senate; and

''(3) the Committee on Armed Services, the Committee on Homeland Security, and the

Committee on Natural Resources of the House of Representatives.

''(c) PURPOSES.—The Northern Border Counternarcotics Strategy shall—

''(1) set forth the strategy of the Federal Government for preventing the illegal trafficking of drugs across the international border between the United States and Canada, including through ports of entry and between ports of entry on the border;

''(2) state the specific roles and responsibilities of each relevant National Drug Control Program agency for implementing the strategy;

''(3) identify the specific resources required to enable the relevant National Drug Control Program agencies to implement the strategy; and

''(4) reflect the unique nature of small communities along the international border between the United States and Canada, ongoing cooperation and coordination with Canadian law enforcement authorities, and variations in the volumes of vehicles and pedestrians crossing through ports of entry along the international border between the United States and Canada.

''(d) SPECIFIC CONTENT RELATED TO CROSS-BORDER INDIAN RESERVATIONS.—The Northern Border Counternarcotics Strategy shall include—

''(1) a strategy to end the illegal trafficking of drugs to or through Indian reservations on or near the international border between the United States and Canada; and

''(2) recommendations for additional assistance, if any, needed by tribal law enforcement agencies relating to the strategy, including an evaluation of Federal technical and financial assistance, infrastructure capacity building, and interoperability deficiencies.

''(e) LIMITATION.—

''(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall not change the existing agency authorities and this section shall not be construed to amend or modify any law governing interagency relationships.

''(2) LEGITIMATE TRADE AND TRAVEL.—The Northern Border Counternarcotics Strategy shall be designed to promote, and not hinder, legitimate trade and travel.

''(f) TREATMENT OF CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—

''(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall be submitted in unclassified form and shall be available to the public.

''(2) ANNEX.—The Northern Border Counternarcotics Strategy may include an annex containing any classified information or information the public disclosure of which, as determined by the Director or the head of any relevant National Drug Control Program agency, would be detrimental to the law enforcement or national security activities of any Federal, State, local, or tribal agency.''.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 4748), as amended, was passed.

PRE-DISASTER MITIGATION ACT OF 2009

Mr. KERRY. Mr. President, I ask unanimous consent that the Homeland Security and Governmental Affairs Committee be discharged from further consideration of H.R. 1746 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1746) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I ask unanimous consent that the Lieberman substitute amendment, which is at the desk, be agreed to; the bill, as amended, be read three times and passed; the motions to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4916) was agreed to, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Predisaster Hazard Mitigation Act of 2010''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The predisaster hazard mitigation program has been successful and cost-effective. Funding from the predisaster hazard mitigation program has successfully reduced loss of life, personal injuries, damage to and destruction of property, and disruption of communities from disasters.

(2) The predisaster hazard mitigation program has saved Federal taxpayers from spending significant sums on disaster recovery and relief that would have been otherwise incurred had communities not successfully applied mitigation techniques.

(3) A 2007 Congressional Budget Office report found that the predisaster hazard mitigation program reduced losses by roughly $3 (measured in 2007 dollars) for each dollar invested in mitigation efforts funded under the predisaster hazard mitigation program. Moreover, the Congressional Budget Office found that projects funded under the predisaster hazard mitigation program could lower the need for post-disaster assistance from the Federal Government so that the predisaster hazard mitigation investment by the Federal Government would actually save taxpayer funds.

(4) A 2005 report by the Multihazard Mitigation Council showed substantial benefits and cost savings from the hazard mitigation programs of the Federal Emergency Management Agency generally. Looking at a range of hazard mitigation programs of the Federal Emergency Management Agency, the study found that, on average, $1 invested by the Federal Emergency Management Agency in hazard mitigation provided the Nation with roughly $4 in benefits. Moreover, the report projected that the mitigation grants awarded between 1993 and 2003 would save more than 220 lives and prevent nearly 4,700 injuries over approximately 50 years.

(5) Given the substantial savings generated from the predisaster hazard mitigation program in the years following the provision of assistance under the program, increasing funds appropriated for the program would be a wise investment.

SEC. 3. PREDISASTER HAZARD MITIGATION.

(a) ALLOCATION OF FUNDS.—Section 203(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(f)) is amended to read as follows:

''(f) ALLOCATION OF FUNDS.—

''(1) IN GENERAL.—The President shall award financial assistance under this section on a competitive basis and in accordance with the criteria in subsection (g).

''(2) MINIMUM AND MAXIMUM AMOUNTS.—In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—

''(A) is not less than the lesser of—

''(i) $575,000; or

''(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

''(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended to read as follows:

''(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $180,000,000 for fiscal year 2011;

''(2) $200,000,000 for fiscal year 2012; and

''(3) $200,000,000 for fiscal year 2013.''.

(c) TECHNICAL CORRECTIONS TO REFERENCES.—The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended—

(1) in section 602(a) (42 U.S.C. 5195a(a)), by striking paragraph (7) and inserting the following:

''(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Emergency Management Agency.''; and

(2) by striking ''Director'' each place it appears and inserting ''Administrator'', except—

(A) in section 622 (42 U.S.C. 5197a)—

(i) in the second and fourth places it appears in subsection (c); and

(ii) in subsection (d); and

(B) in section 626(b) (42 U.S.C. 5197e(b)).

SEC. 4. PROHIBITION ON EARMARKS.

Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133) is amended by adding at the end the following:

''(n) PROHIBITION ON EARMARKS.—

''(1) DEFINITION.—In this subsection, the term 'congressionally directed spending' means a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

''(2) PROHIBITION.—None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.

''(3) CERTIFICATION TO CONGRESS.—The Administrator of the Federal Emergency Management Agency shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.''.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 1746), as amended, was passed.

ACCESS TO CRIMINAL HISTORY RECORDS FOR STATE SENTENCING COMMISSIONS ACT OF 2010

Mr. KERRY. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 6412 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6412) to amend title 28, United States Code, to require the Attorney General to share criminal records with State sentencing commissions, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, today the Senate will pass a measure to help State sentencing commissions make responsible decisions. The legislation we pass today will give State sentencing commissions, like that in Vermont, access to criminal history data in the possession of the Attorney General. This will facilitate the study of recidivism rates and other important factors affecting public safety.

We all want to reduce crime and keep our neighborhoods safe, and, in these hard fiscal times, we must do so effectively and efficiently. It is important for State sentencing commissions to have access to data so they can properly study aggravating and mitigating factors in criminal cases and in return, better inform policy makers. This bill will help ensure that sentencing decisions are data-driven, using the best possible universe of information.

Mr. KERRY. Mr. President, I ask unanimous consent that the bill be read a third time and passed; the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 6412) was ordered to a third reading, was read the third time, and passed.

Mr. KERRY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATIONS DISCHARGED

Mr. KERRY. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged en bloc of the following nominations: PN2353 and PN2349; that the Senate then proceed en bloc to the consideration of 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, 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:

DEPARTMENT OF JUSTICE

William Benedict Berger, Sr., of Florida, to be United States Marshal for the Middle District of Florida for the term of four years.

Joseph Campbell Moore, of Wyoming, to be United States Marshal for the District of Wyoming for the term of four years.

NOMINATION OF JOSEPH MOORE

Mr. ENZI. Mr. President, I rise today to speak on the nomination of Joe Moore to serve as the U.S. marshal for the district of Wyoming. I was pleased to see that the Senate has given this nomination full and fair consideration. I support Joe Moore's nomination for this important position for Wyoming and am confident that he will do a great service in his capacities as U.S. marshal.

Joe Moore is currently the director of the Wyoming Office of Homeland Security—a position he has served in since it was created in 2003. During his time with the Wyoming Office of Homeland Security, he worked closely with State, local, and Federal officials to respond to and coordinate responses to several major natural disasters. Director Moore has also bolstered Wyoming's homeland security efforts and improved State and local law enforcement activities statewide. Director Moore is a graduate of Elizabethtown College in Pennsylvania, and prior to his service with the State of Wyoming, he spent 32 years serving in Federal law enforcement.

I would like to thank my colleagues on the Senate Judiciary Committee for advancing this nomination. The U.S. Marshals Service has a long, distinguished history in our State, and I applaud Director Moore's confirmation to head this agency in Wyoming.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

TRIBUTE TO MARY DAY

Mr. GRASSLEY. Mr. President, today, I rise to thank a longtime member of my staff who is retiring from the Senate. Mary Day began working in my Cedar Rapids office in 1987 as a constituent services specialist, and in 1996 rose to become the regional director based in the same office.

You would be hard pressed to find somebody in the region who doesn't know Mary. It is no wonder. She is a tireless worker for the 14-county area in eastern Iowa, and her infectious sense of humor, genuine demeanor, and kindness was sought by those she came across in her daily travels around the region.

There isn't anybody who knows the pulse of the community like Mary. She has been through the good, the bad, and the ugly. She has seen historic floods and business downturns. Through it all, Mary has remained a good-hearted, conscientious and effective staff member.

We spent many hours over the years traveling from county to county in her region. Mary wasn't always the most spirited or active person in the early hours of the day, but she was forever reliable and dependable no matter what hour of the day.

Not only has Mary been dedicated to the people of Iowa, but she also served as a mentor, confidant, and friend to others on my staff. Her colleagues say that Mary was their ''go-to'' person. She knew the bureaucracy inside and out and had sound advice on how to handle just about any situation.

The people of Iowa have been fortunate to have somebody like Mary Day working on their behalf for the last 23 years. I have been privileged to have her represent me in such a well-respected and honest manner.

Thank you, Mary, for everything you have done for me and the people of Iowa.

TRIBUTE TO WYTHE WILLEY

Mr. GRASSLEY. Mr. President, I rise today to pay tribute to a friend and a trusted adviser, Wythe Willey, who lost a 2-year battle with cancer on Saturday. Wythe Willey was a person who left a mark. If you ever met him, you would be hard pressed to forget him. He was an Iowa farm boy through and through. Whether he was living in Des Moines or Cedar Rapids, he valued his friendships and he valued everybody he met along his life's journey.

Wythe had a passion for agriculture, and particularly for the cattle business, but also for politics. He had one of the most astute political minds I have ever come across. To sit and talk politics with Wythe was an invigorating endeavor. His political sense and understanding of the issues at the State and Federal level never failed to bring additional insight to anybody who would listen.

There is a saying among my former and current staff, ''once a Grassley staffer, always a Grassley staffer.'' Wythe was the epitome of that motto. He worked on my Iowa staff from 1981–1987. When he left, he had already left his mark, but he was far from being done helping the people of Iowa. During the time on my staff, and the years since then, Wythe helped me by heading a committee to vet Federal judicial, U.S. attorney, and U.S. marshal nominees.

Even when he was involved in government and politics, Wythe's heart was always with his family farm. No matter where his professional career

took him, he continued to run the century-old farm near Maquoketa. Cattlemen across Iowa and the country knew few supporters who fought for their interests more than Wythe. As president of both the Iowa Cattlemen's Association and the National Cattlemen's Beef Association he was, in that position, tireless in his advocacy to give Iowa beef producers an opportunity to benefit from the market.

I have a lot of good memories of Wythe, including how he stole the tax counsel from my Washington office and ended up marrying her. They did not think I knew much about it, but I remember when Susan started spending more and more time in Iowa. Wythe and Susan were one of the first of several Grassley office romances and set a precedent for years to come.

One last memory I will never forget is when I learned he was supporting my candidacy for the U.S. Senate in 1980. At that time, Wythe worked for the Governor who had backed my opponent in the primary. I can never thank him enough for his trust in me, especially when it was not an easy thing to do because of his closeness to the Governor at that time.

Wythe remained a loyal friend and trusted adviser up to his death, and for that I am forever thankful.

TRIBUTES OF RETIRING SENATORS

BOB BENNETT

Mr. BUNNING. Mr. President, today I pay tribute to my distinguished colleague from Utah, Senator ROBERT BENNETT, who will be retiring from the Senate at the end of the 111th Congress.

I have worked with BOB since coming over to the Senate in 1998. I have also had the privilege of serving on the Senate Energy and Banking Committees with BOB. In fact, we sat next to each other for years in the Banking Committee.

He is a man of integrity and devotion. As a young man, he worked as a staffer on Capitol Hill and moved on to become a successful entrepreneur in Washington, DC. In 1992, he followed in his father's footsteps and was elected to the U.S. Senate. Over the course of his three consecutive terms in the Senate, BOB has fought hard for our shared conservative values of fiscal discipline, securing our borders, and energy independence.

BOB has served the people of Utah proudly as their Senator. His leadership on the Banking Committee and in the Senate will be missed.

I am honored to know him and to have worked with him. I would like to thank BOB for his contributions to the Senate and to the country we both love. I wish him and his family the best in all of their future endeavors.

KIT BOND

Mr. President, I wish to join my fellow Senators to honor a colleague and a friend, Senator CHRISTOPHER SAMUEL ''KIT'' BOND, who, like me, will be retiring from the Senate at the close of this Congress.

I have had the privilege of working with Senator BOND on a variety of issues in the Senate for over a decade. He is an advocate of our Nation's military, infrastructure and energy needs, and intelligence community. The two of us have stood together on numerous issues—most notably advancing coal technology and maintaining a strong national defense.

Representing Missouri, home to major military bases and installations, Senator BOND has been instrumental to ensure that all citizens who are a part of our armed services—including servicemembers, family members, and survivors of veterans—are provided the world-class care and benefits they have earned. Additionally, whether the items of the day were funding for our Armed Forces and intelligence communities or improving U.S. relations among the international community, Senator BOND brought a voice of wisdom and reason to the Senate and governing bodies worldwide.

The Senate will not be the same without Senator KIT BOND. In a time when America has needed leadership in the Senate to address threats from conventional and unconventional means, Senator KIT BOND has continued to rise to the occasion by giving those who defend us the critical tools needed to prepare and protect our nation. I will miss my friend KIT BOND.

SAM BROWNBACK

Mr. President, I rise today to honor my friend from Kansas, Senator SAM BROWNBACK.

Born in Parker, KS, SAM has dedicated his time to serving the great people of Kansas. Beginning his service as the secretary of agriculture in Kansas, SAM has represented Kansas with dignity and honor.

Following his election in 1994, I have had the opportunity to work with Senator BROWNBACK in both the House of Representatives and the Senate. While in the Senate, SAM and I worked tirelessly on the Senate Committee on Energy and Natural Resources to utilize the energy resources we have in this great country.

SAM has created a long list of accomplishments on a wide range of issues for the people of Kansas and this Nation. I know his family and the people of Kansas are proud to call him one of their own. His leadership in the Senate will be missed, but our loss is a gain for the State of Kansas as SAM prepares for his new role as Governor. It has truly been an honor serving with him during these many years.

I would like to thank SAM for his contributions to the Senate and wish him and his family well as they embark on this new chapter in their lives.

JUDD GREGG

Mr. President, I wish to honor my colleague from New Hampshire, Senator GREGG, who is retiring from the U.S. Senate after serving 18 years in this Chamber and serving 8 years in the U.S. House of Representatives.

Born and bred in New Hampshire, JUDD has dedicated his life to public service. JUDD served on the Executive Council of New Hampshire in 1978 before running for national office. In 1980, he was elected to the U.S. House of Representatives and was elected to three additional terms before returning to New Hampshire. In 1988, JUDD became the Governor of New Hampshire, a seat formerly held by his father Hugh. During his two terms as Governor, JUDD managed to balance the State's budget and left Concord with a surplus. Following his tenure as Governor, JUDD returned to Washington in 1993 and has represented New Hampshire in the Senate ever since.

While working in the Senate, I have had the opportunity to serve with JUDD on the Banking Committee and the Budget Committee, where he currently serves as the ranking member. I have respect for the manner in which JUDD has conducted himself in the role of ranking member and the Republican leader on the Budget Committee. I also admire the fact that he always keeps our national deficit in mind when making touch decisions, whether or not these decisions are going to be popular.

JUDD has a long list of accomplishments to show for the people of New Hampshire and the United States. His leadership in the Senate will be missed, and it has truly been an honor serving with him.

I would like to thank JUDD for his contributions to the Senate and wish him well as he closes a chapter in his life and begins another.

GEORGE VOINOVICH

Mr. President, I rise to pay tribute to my friend and colleague, Senator GEORGE VOINOVICH. Over the past 12 years I have had the opportunity to work with Senator VOINOVICH on many issues that impact our adjoining States and this Nation. While working with Senator VOINOVICH, I gained respect for his firm commitment to his principles.

Prior to our time together in the Senate, I only knew of Senator VOINOVICH through his reputation as mayor of Cleveland and Governor of Ohio. In these positions, he cut spending, fought corruption, and created jobs. These experiences taught Senator VOINOVICH how to make tough decisions, and he never lost that quality here in the Senate.

Senator VOINOVICH also never forgot his roots. As a child of Yugoslavian parents, the Senator never lost interest in the Balkans, and through his work on the Senate Foreign Relations Committee, he made sure that this region was not forgotten by the U.S. Government. I also worked closely with him on Department of Energy issues because Ohio and Kentucky have neighboring DOE uranium sites.

Although Senator VOINOVICH accomplished many things in his life, his greatest achievement has been as a father and husband. GEORGE and his wife

Janet have been married for over 47 years. I wish him nothing but the best as he embarks on a new chapter in his life.

GEORGE LEMIEUX

Mr. President, today I would like to honor my distinguished colleague from Florida, Senator GEORGE LEMIEUX, who will be retiring from the Senate at the end of the 111th Congress.

GEORGE has humbly served the people of Florida for many years as deputy attorney general, chief of staff to the Governor, and most recently as a Member of the U.S. Senate. While his time in the Senate might have been short, his list of accomplishments is not. GEORGE has proven to be a principled leader that is unafraid to tackle the difficult issues facing our Nation. He has offered thoughtful and proactive solutions to problems that many would rather defer to a future Congress and a future generation. The people of Florida should be proud to have been represented by a man of such dedication and character.

I am honored to know GEORGE and to have worked with him. I would like to thank him for his contributions to the Senate and wish him and his family the best in all of their future endeavors.

EVAN BAYH

Mr. HATCH. Mr. President, I rise today to offer some remarks on the departure of my friend, the junior Senator from Indiana. Senator EVAN BAYH has served the good people of his State for two full terms and will be leaving the Senate at the end of this session. He will most certainly be missed.

Senator BAYH was born in Shirkieville, IN, in 1955. He is, of course, the son of the distinguished Senator Birch Bayh, who served in this Chamber for 18 years. EVAN attended college at Indiana University, where he graduated with honors. He received his law degree from the University of Virginia. After graduating from law school and serving a year as a clerk to a Federal judge, EVAN returned to Indiana to go into private law practice.

Senator BAYH's career in public service began in 1986, when he was elected to serve as Indiana's secretary of State. He held that position for 2 years before he was elected Governor of Indiana in 1988.

As Governor, Senator BAYH earned a reputation as a fiscal conservative and a voice of moderation. He was able to work with members of both parties to achieve the best results for the people of Indiana. During his tenure, taxes in Indiana remained low, while the State enjoyed multiple budget surpluses. He also had great successes in areas such as education, crime, and job creation. Indeed, he was a very effective Governor throughout his two terms in office.

Two years after completing his second term, EVAN was elected to serve in the same Senate seat held by his father. And, he brought with him the reputation and skills that had made him such a successful Governor.

As Indiana's Senator, Senator BAYH has demonstrated that one can be a proud member of their party and still find ways to work with the other side. No one can doubt that EVAN is a Democrat. He comes from a family of Democrats and I think his credentials as a supporter of his party's agenda are beyond dispute. However, he has often been looked to as a deal-maker here in the Senate. Senator BAYH has demonstrated sound judgment and strong leadership throughout his career in public service. That, coupled with his willingness to reach across the aisle and find common ground, has made his one of the most respected voices in the U.S. Senate.

Earlier this year, Senator BAYH announced his retirement. As he explained his decision not to run for reelection, said the following:

> For some time, I have had a growing conviction that Congress is not operating as it should. There is too much partisanship and not enough progress—too much narrow ideology and not enough practical problem-solving. Even at a time of enormous challenge, the peoples' business is not being done.

In a lot of ways, I agree with Senator BAYH's assessment of Congress. Too often, the peoples' business gets set aside in favor of politics and partisan agendas. While I think we all hope that things will get better in the future, one thing is certain: we need more people like EVAN BAYH in both parties.

I am certain that Senator BAYH will be successful in whatever endeavor he chooses. But, while I am sure he doesn't need it, I want to wish him and his family the very best of luck.

RUSS FEINGOLD

Mr. President, I rise today to offer some remarks on the departure of my friend, the junior Senator from Wisconsin. Senator RUSS FEINGOLD, the fierce and independent Democrat who has served the good people of his State for 18 years, will be departing at the end of this session. He will certainly be missed.

Senator FEINGOLD was born in 1953 in Janesville, WI. He received his bachelor's degree from the University of Wisconsin and then went to University of Oxford on a Rhodes Scholarship. After returning to the U.S., he attended and graduated from Harvard Law School and then went back to Wisconsin to begin a career as a lawyer in private practice.

While RUSS was a long-time political activist, having volunteered and worked on a number of election campaigns, he began his career in public service in 1982 when he was elected to serve the first of two terms in the Wisconsin State Senate. Ten years later, he was elected to serve in the U.S. Senate, and he has been here ever since.

I don't think it is any secret that RUSS and I tend to disagree on most issues. But, I have always admired his commitment to his principles and his devotion to his beliefs. Now, I may give Democrats a hard time every now and then with my criticism, particularly when I find myself at odds with their agenda. But, I have never been able to fault Senator FEINGOLD personally because I believe he is principled public servant who is simply trying to do what he believes is best for the country. He has been willing to do so even when it has been unpopular or when the majority of his own party was moving in a different direction.

RUSS has a reputation for being contrarian at times. To be honest, I think he is probably proud of that fact. While he has certainly earned that reputation, I have always believed his actions and his positions—including those I have strongly disagreed with—have been rooted in his sincerely held beliefs.

Throughout his time in the Senate, Senator FEINGOLD has been a fierce, articulate, and effective advocate for his ideals. While he and I have rarely been in agreement, he has always had my respect and admiration. I want to wish him the best of luck in any future endeavors.

CHRISTOPHER DODD

Mr. President, I rise today to offer some remarks on the departure of my good friend, the senior Senator from Connecticut. After five terms and 30 years in the Senate, Senator CHRISTOPHER DODD will be leaving us at the end of this session. He will most certainly be missed.

CHRIS was born in Willimantic, CT, in 1944. He was the fifth of six children born to his parents, Grace Mary Dodd and another Connecticut Senator, Thomas J. Dodd. Senator DODD graduated from Providence College and then spent 2 years in the Peace Corps. When he returned to the U.S., he enlisted in the Army National Guard and later served in the U.S. Army Reserves. After graduating from the University of Louisville School of Law in 1972, CHRIS practiced law in New London. However, just 2 years later, he would answer the call to public service. CHRIS was elected to the House of Representatives in 1974 and has represented the good people of Connecticut in Congress ever since. All told, Senator DODD spent three terms in the House before coming to the Senate in 1980.

Throughout his time in the Senate, CHRIS has been an unwavering presence. He's chaired the Rules Committee and the Banking Committee. He has been among the most prominent members of the HELP and Foreign Relations Committees. Over the years, our paths have crossed numerous times. Of course, most of the time, we have been on opposing sides. But, there have been a few times—some significant times—where we have been able to put our differences aside and work together.

Most recently, I worked with Senator DODD on passing the Edward M. Kennedy Serve America. CHRIS talks often of his service of the Peace Corps and the lessons he learned during that time. As a Senator, has been a tireless

advocate for the Peace Corps program and for volunteerism in general. In that regard, he and I have much in common. As a young man, I served a full-time mission for the Church of Jesus Christ of Latter-day Saints. I too learned much about the benefits of selfless, volunteer service while serving as a missionary and those 2 years were instrumental in my understanding of the world and instilled me with a desire to serve and help others. The Serve America Act was meant to embody these ideals and provide similar opportunities for others. It could have very easily been a purely Democratic endeavor. But, in the end, we were able to work together in drafting and passing this legislation. With CHRIS's help, the Serve America Act became one of very few bills passed during this Congress with a broad, bipartisan majority here in the Senate. It was, in my opinion, a piece of legislation that represents the best of what both parties have to offer. Fittingly, we named the bill after CHRIS and my mutual friend, the late Senator Ted Kennedy.

I want to wish Senator DODD and his wife Jackie the very best of luck going forward.

FOOD SAFETY MODERNIZATION ACT

Ms. KLOBUCHAR. Mr. President, I am here to recognize today's achievement of the passage of the landmark bipartisan Food Safety Modernization Act out of the Senate.

The first responsibility of government is to protect its citizens. Ensuring a rapid response to outbreaks of contaminated food is critical to maintaining public trust in our food supply. This bill will make necessary changes to help keep consumers safe, and I look forward to passage in the House and the bill being signed into law.

This food safety legislation is going to be a tremendous benefit to our Nation, and to protecting our citizens from foodborne illnesses, as well as potential acts of terrorism aimed at our food supply. I urge the Food and Drug Administration, FDA, to work very closely with the business community in the rulemaking process to be sure that we are not adding additional regulations that may already be covered and regulated under other areas, such as the Food and Drug Cosmetic Act and the Bioterrorism Act.

I want to thank my colleagues for their efforts to make this legislation strong, and to protect the American people while balancing the legitimate concerns that businesses have that do not over reach or over legislate in this bill. The rulemaking process must not be duplicative or attempt to regulate areas that already protect public safety in other areas of law, statute and regulation. It is my hope that the FDA will be practical in applying this legislation to manufacturers of ingredients such as food processing aids, and will direct their resources where the real food safety dangers occur and are occurring. The use of indirect food additives and processing aids have not been determined to be the source of food borne illness outbreaks and I believe it is important that the FDA continue to focus its scarce resources on the key elements that this legislation hopes to address in the Food Safety area.

ELDERLY HOUSING

Mr. KOHL. Mr. President, I rise today to praise the passage of S. 118, the section 202 Supportive Housing for the Elderly Act. Earlier this Congress, Senator SCHUMER and I introduced S. 118 to modernize and improve section 202 housing for seniors across the country. This piece of legislation will help ensure that seniors have accessible, safe and affordable housing so they can live independently and with dignity, while also saving the government money by keeping people out of expensive nursing homes.

HUD's senior housing program, also known as the section 202 program, provides capital grants to enable the development of supportive housing exclusively for the very low-income elderly population. Unfortunately, the 202 program has been unable to address the growing demand. For every available unit, there are ten seniors waiting to move in. Under the current law, the development and preservation of existing 202 communities can be time-consuming, bureaucratic and often require duplicative waivers and special permission from HUD to complete.

Additionally, the program provides rental subsidies and grants to fund supportive services for seniors, such as in-home care and transportation. Over one-third of the section 202 population is considered disabled enough to be at risk for being put in a nursing home. By reducing the need for costly nursing home stays, access to these types of services saves both seniors and the government money.

Modernizing the elderly housing program will promote the preservation and renovation of existing 202 developments. Many properties are in need of both rehabilitation and increased access to services that help seniors to remain in their homes. This legislation will help provide the modernization they desperately need.

I want to thank the American Association of Homes and Services for the Aging as well as the Wisconsin Association of Homes and Services for the Aging for being champions of this legislation and for working with us to develop a comprehensive bill that will help meet the growing need for senior housing in this Nation.

I also want to thank Senator DODD and his staff for all of his efforts to move this legislation. He has always been great to work with and he will be greatly missed next year. And I want to extend my appreciation to Senator SHELBY and his staff for working with us on this bill.

Senior citizens deserve to have housing that will help them maintain their independence. It is my hope that with the passage of S. 118, many more Americans have a place to call home during their golden years.

TRIBUTE TO DR. JANE GOODALL

Mr. UDALL of New Mexico. Mr. President, in July I introduced S. Res. 581, a resolution honoring the educational and scientific significance of Dr. Jane Goodall on the 50th anniversary of the beginning of her work in what is today Gombe Stream National Park in Tanzania. I would like to urge my colleagues to support this resolution, which also has a companion bill that was passed with unanimous support in the House of Representatives on July 28 of this year; and I would like to have printed in the RECORD the article printed in the October 2010 edition of National Geographic. The article, entitled ''Fifty Years at Gombe,'' describes Dr. Goodall's lifetime of dedication and contribution to our understanding of chimpanzees and the natural world, as well as her unique and heroic personality. As described in the article, Dr. Goodall ''made three observations that rattled the comfortable wisdoms of physical anthropology: meat eating by chimps—that had been presumed vegetarian—tool use by chimps—in the form of plant stems probed into termite mounds—and toolmaking—stripping leaves from stems—supposedly a unique trait of human premeditation. Each of those discoveries further narrowed the perceived gap of intelligence and culture between Homo sapiens and Pan troglodytes.''

As a leading researcher, conservationist, and humanitarian, Dr. Goodall has made remarkable contributions to our understanding of the species with whom we live. She has led by example in efforts to ensure that these species continue to thrive and to ensure that surrounding communities are also able to thrive.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I referred.

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

[From National Geographic Magazine, Oct. 2010]

FIFTY YEARS AT GOMBE

(By David Quammen)

In 1960 a spirited animal lover with no scientific training set up camp in Tanganyika's Gombe Stream Game Reserve to observe chimpanzees. Today Jane Goodall's name is synonymous with the protection of a beloved species. At Gombe—one of the longest, most detailed studies of any wild animal—revelations about chimps keep coming.

Most of us don't enter upon our life's destiny at any neatly discernible time. Jane Goodall did.

On the morning of July 14, 1960, she stepped onto a pebble beach along a remote stretch of the east shore of Lake Tanganyika. It was her first arrival at what was then called the Gombe Stream Game Reserve, a small protected area that had been

established by the British colonial government back in 1943. She had brought a tent, a few tin plates, a cup without a handle, a shoddy pair of binoculars, an African cook named Dominic, and—as a companion, at the insistence of people who feared for her safety in the wilds of pre-independence Tanganyika—her mother. She had come to study chimpanzees. Or anyway, to try. Casual observers expected her to fail. One person, the paleontologist Louis Leakey, who had recruited her to the task up in Nairobi, believed she might succeed.

A group of local men, camped near their fishing nets along the beach, greeted the Goodall party and helped bring up the gear. Jane and her mother spent the afternoon putting their camp in order. Then, around 5 p.m., somebody reported having seen a chimpanzee. ''So off we went,'' Jane wrote later that night in her journal, ''and there was the chimp.'' She had gotten only a distant, indistinct glimpse. ''It moved away as we drew level with the crowd of fishermen gazing at it, and, though we climbed the neighbouring slope, we didn't see it again.'' But she had noticed, and recorded, some bent branches flattened together in a nearby tree: a chimp nest. That datum, that first nest, was the starting point of what has become one of the most significant ongoing sagas in modern field biology: the continuous, minutely detailed, 50-year study, by Jane Goodall and others, of the behavior of the chimps of Gombe.

Science history, with the charm of a fairytale legend, records some of the high points and iconic details of that saga. Young Miss Goodall had no scientific credentials when she began, not even an undergraduate degree. She was a bright, motivated secretarial school graduate from England who had always loved animals and dreamed of studying them in Africa. She came from a family of strong women, little money, and absent men. During the early weeks at Gombe she struggled, groping for a methodology, losing time to a fever that was probably malaria, hiking many miles in the forested mountains, and glimpsing few chimpanzees, until an elderly male with grizzled chin whiskers extended to her a tentative, startling gesture of trust. She named the old chimp David Greybeard. Thanks partly to him, she made three observations that rattled the comfortable wisdoms of physical anthropology: meat eating by chimps (who had been presumed vegetarian), tool use by chimps (in the form of plant stems probed into termite mounds), and toolmaking (stripping leaves from stems), supposedly a unique trait of human premeditation. Each of those discoveries further narrowed the perceived gap of intelligence and culture between Homo sapiens and Pan troglodytes.

The toolmaking observation was the most epochal of the three, causing a furor within anthropological circles because ''man the toolmaker'' held sway as an almost canonical definition of our species. Louis Leakey, thrilled by Jane's news, wrote to her: ''Now we must redefine 'tool,' redefine 'man,' or accept chimpanzees as humans.'' It was a memorable line, marking a very important new stage in thinking about human essence. Another interesting point to remember is that, paradigm shifting or not, all three of those most celebrated discoveries were made by Jane (everyone calls her Jane; there is no sensible way not to call her Jane) within her first four months in the field. She got off to a fast start. But the real measure of her work at Gombe can't be taken with such a short ruler.

The great thing about Gombe is not that Jane Goodall ''redefined'' humankind but that she set a new standard, a very high standard, for behavioral study of apes in the wild, focusing on individual characteristics as well as collective patterns. She created a research program, a set of protocols and ethics, an intellectual momentum—she created, in fact, a relationship between the scientific world and one community of chimpanzees—that has grown far beyond what one woman could do. The Gombe project has enlarged in many dimensions, has endured crises, has evolved to serve purposes that neither she nor Louis Leakey foresaw, and has come to embrace methods (satellite mapping, endocrinology, molecular genetics) and address questions that carry far beyond the field of animal behavior. For instance, techniques of molecular analysis, applied to fecal and urine samples that can be gathered without need for capture and handling, reveal new insights about genetic relationships among the chimps and the presence of disease microbes in some of them. Still, a poignant irony that lies near the heart of this scientific triumph, on its golden anniversary, is that the more we learn about the chimps of Gombe, the more we have cause to worry for their continued survival.

Two revelations in particular have raised concern. One involves geography, the other involves disease. The world's most beloved and well-studied population of chimpanzees is isolated on an island of habitat that's too small for long-term viability. And now some of them seem to be dying from their version of AIDS.

The issue of how to study chimpanzees, and of what can be inferred from behavioral observations, has faced Jane Goodall since early in her career. It began coming into focus after her first field season, when Louis Leakey informed Jane of his next bright idea for shaping her life: He would get her into a Ph.D. program in ethology at Cambridge University.

This doctorate seemed a stretch on two counts. First, her lack of any undergraduate degree whatsoever. Second, she had always aspired to be a naturalist, or maybe a journalist, but the word ''scientist'' hadn't figured in her dreaming. ''I didn't even know what ethology was,'' she told me recently. ''I had to wait quite a while before I realized it simply meant studying behavior.'' Once enrolled at Cambridge, she found herself crosswise with departmental elders and the prevailing certitudes of the field. ''It was a bit shocking to be told I'd done everything wrong. Everything.'' By then she had 15 months of field data from Gombe, most of it gathered through patient observation of individuals she knew by monikers such as David Greybeard, Mike, Olly, and Fifi. Such personification didn't play well at Cambridge; to impute individuality and emotion to nonhuman animals was anthropomorphism, not ethology. ''Fortunately, I thought back to my first teacher, when I was a child, who taught me that that wasn't true.'' Her first teacher had been her dog, Rusty. ''You cannot share your life in a meaningful way with any kind of animal with a reasonably well-developed brain and not realize that animals have personalities.'' She pushed back against the prevailing view—one thing about gentle Jane, she always pushes back—and on February 9, 1966, she became Dr. Jane Goodall.

In 1968 the little game reserve underwent its own graduation, becoming Tanzania's Gombe National Park. By then Jane was receiving research funding from the National Geographic Society. She was married and a mother and famous worldwide, owing in part to her articles for this magazine and her comely, forceful presence in a televised film, Miss Goodall and the Wild Chimpanzees. She had institutionalized her field camp, in order to fund and perpetuate it, as the Gombe Stream Research Center (GSRC). In 1971 she published In the Shadow of Man, her account of the early Gombe studies and adventures, which became a best seller. Around the same time, she began hosting students and graduate researchers to help with chimp-data collection and other research at Gombe. Her influence on modern primatology, noisily bruited about by Leakey, is more quietly suggested by the long list of Gombe alums who have gone on to do important scientific work, including Richard Wrangham, Caroline Tutin, Craig Packer, Tim Clutton-Brock, Geza Teleki, William McGrew, Anthony Collins, Shadrack Kamenya, Jim Moore, and Anne Pusey. The last of those, Pusey, now professor and chair of evolutionary anthropology at Duke University, also serves the Jane Goodall Institute (established in 1977) as director of its Center for Primate Studies. Among other duties, she curates the 22 file cabinets full of field data—the notebooks and journal pages and check sheets, some in English, some in Swahili—from 50 years of chimp study at Gombe.

That 50-year run suffered one traumatic interruption. On the night of May 19, 1975, three young Americans and a Dutch woman were kidnapped by rebel soldiers who had come across Lake Tanganyika from Zaire. The four hostages were eventually released, but it no longer seemed prudent for the Gombe Stream Research Center to welcome expatriate researchers and helpers—as Anthony Collins explained to me.

Collins was then a young British biologist with muttonchop sideburns and a strong interest in baboons, the other most conspicuous primate at Gombe. In addition to his baboon research, he has continued to play important administrative roles in the Jane Goodall Institute and at GSRC itself, off and on, for almost 40 years. He recalls May 19, 1975, as ''the day the world changed, as far as Gombe was concerned.'' Collins was absent that night but returned promptly to help cope with the aftermath. ''It was not entirely bad,'' he told me. The bad part was that foreign researchers could no longer work at Gombe; Jane herself couldn't work there, not without a military escort, for some years. ''The good thing about it was that the responsibility for data collection went straightaway, the following day, to the Tanzanian field staff.'' Those Tanzanians had each received at least a year's training in data collection but still functioned partly as trackers, helping locate the chimps, identifying plants, and making sure the mzungu (white) researchers got back to camp safely each night before dark. Then came the kidnapping, whereupon the Tanzanians stepped up, and ''on that day the baton was passed to them,'' Collins said. Only one day's worth of data was missed. Today the chief of chimpanzee researchers at Gombe is Gabo Paulo, supervising the field observations and data gathering of Methodi Vyampi, Magombe Yahaya, Amri Yahaya, and 20 other Tanzanians.

Human conflicts overflowing from neighboring countries weren't the only sort of tribulation that affected Gombe. Chimpanzee politics could also be violent. Beginning in 1974, the Kasekela community (the main focus of Gombe research) conducted a series of bloody raids against a smaller subgroup called Kahama. That period of aggression, known in Gombe annals as the Four Year War, led to the death of some individuals, the annihilation of the Kahama subgroup, and the annexation of its territory by Kasekela. Even within the Kasekela community, struggles among males for the alpha position are highly political and physical, while among females there have been cases of one mother killing a rival mother's infant. ''When I first started at Gombe,'' Jane has written, ''I thought the chimps were nicer

than we are. But time has revealed that they are not. They can be just as awful.''

Gombe was never Eden. Disease intruded too. In 1966 came an outbreak of something virulent (probably polio, contracted from humans nearby), and six chimps died or disappeared. Six others were partially paralyzed. Two years later, David Greybeard and four others vanished while a respiratory bug (influenza? bacterial pneumonia?) swept through. Nine more chimps died in early 1987 from pneumonia. These episodes, reflecting the susceptibility of chimps to human-carried pathogens, help explain why scientists at Gombe are acutely concerned with the subject of infectious disease.

That concern has been heightened by landscape changes outside the park boundaries. Over the decades people in the surrounding villages have struggled to live ordinary lives—cutting firewood from the steep hillsides, planting crops on those slopes, burning the grassy and scrubby areas each dry season for fertilizing ash, having babies, and trying to feed them. By the early 1990s deforestation and erosion had made Gombe National Park an ecological island, surrounded by human impact on three sides and Lake Tanganyika on the fourth. Within that island lived no more than about a hundred chimpanzees. By all the standards of conservation biology, it wasn't enough to constitute a viable population for the long term—not enough to ensure against negative effects of inbreeding, and not enough to stand steady against an epidemic caused by the next nasty bug, which might be more transmissible than polio, more lethal than flu. Something had to be done, Jane realized, besides continued study of a fondly regarded population of apes that might be doomed. Furthermore, something had to be done for the people as well as for the chimps.

In a nearby town she met a German-born agriculturist, George Strunden, and with his help created TACARE (originally the Lake Tanganyika Catchment Reforestation and Education project), whose first effort, in 1995, established tree nurseries in 24 villages. The goals were to reverse the denudation of hillsides, to protect village watersheds, and maybe eventually to reconnect Gombe with outlying patches of forest (some of which also harbor chimpanzees) by helping the villagers plant trees. For instance, there's a small population of chimps in a patch of forest called Kwitanga, about ten miles east of Gombe. To the southeast, about 50 miles, an ecosystem known as Masito-Ugalla supports more than 500 chimps. If either area could be linked to Gombe by reforested corridors, the chimps would benefit from increased gene flow and population size. Then again, they might be hurt by sharing diseases.

By any measure, it's a near-impossible challenge. Proceeding carefully, patiently, Jane and her people have achieved some encouraging gains in the form of community cooperation, decreased burning, and natural forest regeneration.

On the second morning of my Gombe visit, along a trail not far above the house in which Jane has lived intermittently since the early 1970s, I encountered a group of chimpanzees. They were noodling their way cross slope on a relaxed search for breakfast, moving mostly on the ground, but occasionally up into a Vitex tree to eat the small purple-black berries, and were seemingly indifferent to my presence and that of the Tanzanian researchers. They included some individuals whose names, or at least their family histories, were familiar. Here was Gremlin (daughter of Melissa, a young female when Jane first arrived), Gremlin's daughter Gaia (with a clinging infant), Gaia's younger sister Golden, Pax (son of the notoriously cannibalistic Passion), and Fudge (son of Fanni, grandson of Fifi, great-grandson of Flo, the beloved, ugly-nosed matriarch famous from Jane's early books). Here also was Titan, a very large male, 15 years old, and still rising toward his prime. The rules at Gombe National Park say that you must not approach closely to a chimpanzee, but the tricky thing on a given day is to keep the chimps from approaching closely to you. When Titan came striding up the trail, burly and confident, we all squeezed to the edge and let him swagger past, within inches. A lifetime of familiarity with innocuous human researchers, their notebooks, and their check sheets, has left him blasé.

Another reflection of casualness: Gremlin defecated on the trail not far from where we stood, and then Golden too relieved herself. Once they had ambled away, a researcher named Samson Shadrack Pindu pulled on yellow latex gloves and moved in. He crouched over Gremlin's dollop of fibrous olive dung, using a small plastic scoop to transfer a bit into a specimen tube, which he labeled with time, date, location, and Gremlin's name. The tube contained a stabilizing liquid called RNAlater, which preserves any RNA (from, for instance, a retrovirus) for later genetic analysis. That tube and others like it, representing one fecal sample every month from as many chimps as possible, were destined for the laboratory of Beatrice Hahn at the University of Alabama in Birmingham, who for ten years has been studying simian immunodeficiency virus at Gombe.

Simian immunodeficiency virus in chimpanzees, known technically as SIVcpz, is the precursor and origin of HIV–1, the virus that accounts for most cases of AIDS around the world. (There is also an HIV–2.) Notwithstanding the name, SIVcpz had never been found to cause immune system failure in wild chimpanzees—until Hahn's expertise in molecular genetics converged with the long-term observational data available at Gombe. In fact, SIVcpz was thought to be harmless in chimps, an assumption that raised questions about how or why it has visited such a lethal pandemic upon humans. Had a few, fateful mutations changed an innocuous chimp virus into a human killer? That line of thought had to be modified after publication of a 2009 paper in the journal Nature, with Brandon F. Keele (then at Hahn's lab) as first author and Beatrice Hahn and Jane Goodall among the co-authors. The Keele paper reported that SIV-positive chimps at Gombe suffered between ten times and 16 times more risk of death at a given age than SIV-negative chimps. And three SIV-positive carcasses have been found, their tissues (based on lab work at the molecular level) showing signs of damage resembling AIDS. The implications are stark. An AIDS-like illness seems to be killing some of Gombe's chimps.

Of all the bonds, shared features, and similarities that link our species with theirs, this revelation is perhaps the most troubling. ''It's very scary, knowing the chimps seem to be dying at a younger age,'' Jane told me. ''I mean, how long has it been there? Where does it come from? How is it affecting other populations?'' For the sake of chimpanzee survival throughout Africa, those questions urgently need to be studied.

But this gloomy discovery also carries huge potential significance for AIDS research in humans. Anthony Collins pointed out that although SIV has been found elsewhere in chimp communities, ''none of them is a study population habituated to human observers; and certainly none of them is one which has genealogical information going right back in time; and none is so tame that you can take samples from every individual every month.'' After a moment, he added, ''It's very sad that the virus is here, but a lot of knowledge can come out of it. And understanding.''

The fancy new methods of molecular genetics bring more than just dire revelations about disease. They also bring the exciting, cheerful capacity to address certain longstanding mysteries about chimpanzee social dynamics and evolution. For instance: Who are the fathers at Gombe? Motherhood is obvious, and the intimate relations between mothers and infants have been well studied by Jane herself, Anne Pusey, and others. But because female chimps tend to mate promiscuously with many males, paternity has been far harder to determine. And the question of paternal identity relates to another question: How does male competition for status within the hierarchy—all that blustering effort expended to achieve and hold the rank of alpha—correlate with reproductive success? A young scientist named Emily Wroblewski, analyzing DNA from fecal samples gathered by the field team, has reached an answer. She found that the higher ranking males do succeed in fathering many chimps—but that some low-ranking males make out pretty well too. The strategy involves investing effort in a consortship—an exclusive period of spending time as a pair, traveling together, and mating—often with younger, less desirable females.

Jane herself had predicted this finding, from observational data, two decades earlier. ''The male who successfully initiates and maintains a consortship with a fertile female,'' she wrote, ''probably has a better chance of fathering her child than he would in the group situation, even if he were alpha.''

Impelled by broader imperatives, Jane ended her career as a field biologist in 1986, just after publication of her great scientific book, The Chimpanzees of Gombe. Since then she has lived as an advocate, a traveling lecturer, a woman driven by a sense of public mission. What's the mission? Her first cause, which arose from her years at Gombe, was improving the grim treatment inflicted on chimpanzees held in many medical research labs. Combining her toughness and moral outrage with her personal charm and willingness to interact graciously, she achieved some negotiated successes. She also founded sanctuaries for chimps who could be freed from captivity, including many orphaned by the bush-meat trade. That work led to her concerns about human conduct toward other species. She established a program called Jane Goodall's Roots & Shoots, encouraging young people around the world to become active in projects that promote greater concern for animals, the environment, and the human community. During this period she became an explorer-in-residence at the National Geographic Society. She now spends about 300 days a year on the road, giving countless interviews and schoolroom talks, lecturing in big venues, meeting with government officials, raising money to turn the wheels of the Jane Goodall Institute. Occasionally she sneaks away into a forest or onto a prairie, sometimes with a few friends, to watch chimps or sandhill cranes or blackfooted ferrets and to restore her energy and sanity.

Fifty years ago Louis Leakey sent her to study chimpanzees because he thought their behavior might cast light on human ancestors, his chosen subject. Jane ignored that part of the mandate and studied chimps for their own sake, their own interest, their own value. While doing that, she created institutions and opportunities that have yielded richly in the work of other scientists, as well as a luminous personal example that has brought many young women and men into science and conservation. It's important to

remember that the meaning of Gombe, after half a century, is bigger than Jane Goodall's life and work. But make no mistake: Her life and work have been very, very big.

ADDITIONAL STATEMENTS

PENNSYLVANIA VOLLEYBALL CHAMPIONS

• Mr. CASEY. Mr. President, today I congratulate the Pennsylvania State University's women's volleyball team on their fourth consecutive NCAA championship. With its December 18, 2010, sweep of the University of California, the Nittany Lions became the only team in division I women's volleyball history to win four consecutive national titles. Prior to this streak, no NCAA women's volleyball team had ever won consecutive national championships.

The team was led by Head Coach Russ Rose. Coach Rose has coached the Nittany Lions for the last 32 years. He coached Penn State to an NCAA championship in 1999, and together with the recent four consecutive championships, his five NCAA titles are more than any other coach in division I volleyball history. Coach Rose was aided by assistant coaches Dennis Hohenshelt and Kaleena Davidson, as well as director of Volleyball Operations Adam Hughes.

The team members have also distinguished themselves individually. Freshman Deja McClendon was named by the American Volleyball Coaches Association as the national freshman of the year. Her performance during the championship tournament led to her being named the Most Outstanding Player of the final four. Senior Blair Brown became the sixth straight Nittany Lion to be named the Big Ten Player of the Year. She was also recently named as a finalist for the 2010–11 Honda Sports Award. The award is given to the top female collegiate athlete in the sport. Brown, along with fellow seniors Arielle Wilson and Alyssa D'Errico were members of each of the four national championship teams, and have won 24 consecutive tournaments together.

Members of the 2010 championship team include: Ariel Scott, Katie Kabbes, Fatima Balza, Jessica Ullrich, Kristin Carpenter, Maddie Martin, Arielle Wilson, Erica Denney, Blair Brown, Darcy Dorton, Alyssa D'Errico, Megan Shifflett, Cathy Quilico, Maggie Harding, Katie Slay, Deja McClendon, Krosby Pabst, Mikinzie Moydell, and Ali Longo.

The hard work and dedication of these young women is exemplary. I congratulate them, their coaches, and the students, faculty, staff and alumni of the Pennsylvania State University on a record-setting season.•

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8561. A communication from the Acting Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Gypsy Moth Generally Infested Areas; Illinois, Indiana, Maine, Ohio, and Virginia'' (Docket No. APHIS–2008–0083) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8562. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, the 2009 Report on the Department's Operation and Financial Support for Military Museums; to the Committee on Armed Services.

EC–8563. A communication from the Associate General Counsel for Legislation and Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Conforming Changes to Applicant Submission Requirements; Implementing Federal Financial Report and Central Contractor Registration Requirements'' (RIN2501–AD50) received in the Office of the President of the Senate on December 13, 2010; to the Committee on Banking, Housing, and Urban Affairs.

EC–8564. A communication from the Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Department of Energy, transmitting, pursuant to law, the report of a rule entitled ''Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator–Freezers, and Freezers'' (RIN1904–AB92) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Energy and Natural Resources.

EC–8565. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's annual report on the administration of the Surface Transportation Project Delivery Pilot Program; to the Committee on Environment and Public Works.

EC–8566. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2010 Cumulative List of Changes in Plan Qualification Requirements'' (Notice 2010–90) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8567. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Definition of Omission from Gross Income'' (RIN1545–BI44) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8568. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2011 Section 1274A CPI Adjustments'' (Rev. Rul. 2010–30) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8569. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Requirement of a Statement Disclosing Uncertain Tax Positions'' (RIN1545–BJ54) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8570. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Farmer and Fisherman Income Averaging'' (RIN1545–BE23) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8571. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Standard Mileage Rate Procedures'' (Rev. Proc. 2010–51) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8572. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2011 Standard Mileage Rates'' (Notice 2010–88) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8573. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice: Tier 2 Tax Rates for 2011'' received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8574. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Jerome R. Vainisi and Deloris L. Vainisi v. Commissioner, 599 F.3d 567 (7th Cir. 2010), rev'g 132 T.C. No. 1 (2009)'' (AOD 2010–52) received in the Office of the President of the Senate on December 20, 2010; to the Committee on Finance.

EC–8575. A communication from the Director of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Amendments to Regulations Regarding Withdrawal of Applications and Voluntary Suspension of Benefits'' (RIN0960–AH07) received in the Office of the President of the Senate on December 16, 2010; to the Committee on Finance.

EC–8576. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to the export to the People's Republic of China of items not detrimental to the U.S. space launch industry; to the Committee on Foreign Relations.

EC–8577. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled ''Report to Congress on American Indian and

Alaska Native Head Start Facilities''; to the Committee on Health, Education, Labor, and Pensions.

EC–8578. A communication from the Staff Director, United States Commission on Civil Rights, transmitting, pursuant to law, a report entitled ''The Multiethnic Placement Act: Minorities in Foster Care and Adoption''; to the Committee on Health, Education, Labor, and Pensions.

EC–8579. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Employee Contribution Elections and Contribution Allocations; Uniformed Services Accounts; Methods of Withdrawing Funds from the Thrift Savings Plan; Death Benefits; Thrift Savings Plan'' (5 CFR Parts 1600, 1604, 1650, 1651, and 1690) received in the Office of the President of the Senate on December 16, 2010; to the Committee on Homeland Security and Governmental Affairs.

EC–8580. A communication from the Chairman, Merit System Protection Board, transmitting, pursuant to law, a report entitled ''Whistleblower Protections for Federal Employees''; to the Committee on Homeland Security and Governmental Affairs.

EC–8581. A communication from the Chief Information Officer, Department of Homeland Security, transmitting, the Department's 2010 Federal Information Security Management Act (FISMA) Report and Privacy Management Report; to the Committee on Homeland Security and Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DORGAN, from the Committee on Indian Affairs, without amendment:

H.R. 4445. A bill to amend Public Law 95–232 to repeal a restriction on treating as Indian country certain lands held in trust for Indian pueblos in New Mexico (Rept. No. 111–379).

From the Committee on Foreign Relations, with amendments and an amendment to the title and with an amended preamble:

S. Res. 680. A resolution supporting international tiger conservation efforts and the upcoming Global Tiger Summit in St. Petersburg, Russia.

By Mr. DORGAN, from the Committee on Indian Affairs, with an amendment:

S. 3235. A bill to amend the Act titled ''An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases'', approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 3973. A bill to amend the Energy Policy Act of 2005 to reauthorize and modify provisions relating to the diesel emissions reduction program.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

Army nomination of Brigadier General Robert M. Brown, to be Major General.

Navy nomination of Capt. Thomas E. Beeman, to be Rear Admiral (lower half).

Marine Corps nomination of Brigadier General Kenneth F. McKenzie, Jr., to be Major General.

Army nomination of Col. Benjamin F. Adams III, to be Brigadier General.

Army nominations beginning with Brigadier General Douglas P. Anson and ending with Colonel Ricky L. Waddell, which nominations were received by the Senate and appeared in the Congressional Record on August 3, 2010. (minus 1 nominee: Colonel Jody J. Daniels)

Army nomination of Gen. Carter F. Ham, to be General.

Army nomination of Col. Brian K. Balfe, to be Brigadier General.

Army nominations beginning with Colonel Bradley A. Becker and ending with Colonel Cedric T. Wins, which nominations were received by the Senate and appeared in the Congressional Record on September 20, 2010. (minus 1 nominee: Colonel Dominic J. Caraccilo)

Marine Corps nomination of Lt. Gen. John M. Paxton, Jr., to be Lieutenant General.

Army nomination of Lt. Gen. Michael D. Barbero, to be Lieutenant General.

Army nomination of Maj. Gen. Michael Ferriter, to be Lieutenant General.

Army nomination of Brig. Gen. Manuel Ortiz, Jr., to be Major General.

Army nominations beginning with Brigadier General Robert B. Abrams and ending with Brigadier General Larry D. Wyche, which nominations were received by the Senate and appeared in the Congressional Record on November 15, 2010.

Marine Corps nomination of Maj. Gen. Kenneth J. Glueck, Jr., to be Lieutenant General.

Navy nomination of Rear Adm. Gerald R. Beaman, to be Vice Admiral.

Army nomination of Col. Jeffrey L. Bailey, to be Brigadier General.

Army nomination of Col. Curt A. Rauhut, to be Brigadier General.

Army nomination of Col. Flora D. Darpino, to be Brigadier General, Judge Advocate General's Corps.

Army nominations beginning with Brigadier General Joseph L. Culver and ending with Colonel Kathy J. Wright, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Brigadier General Ricky G. Adams and ending with Colonel James E. Taylor, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010. (minus 1 nominee: Colonel Denise T. Rooney)

Navy nomination of Capt. James W. Crawford III, to be Rear Admiral (lower half).

Army nomination of Maj. Gen. Howard B. Bromberg, to be Lieutenant General.

Army nominations beginning with Brigadier General Gregory W. Batts and ending with Colonel Anthony Woods, which nominations were received by the Senate and appeared in the Congressional Record on December 8, 2010.

Navy nomination of Vice Adm. Richard W. Hunt, to be Vice Admiral.

Air Force nominations beginning with Colonel Donald J. Bacon and ending with Colonel Scott J. Zobrist, which nominations were received by the Senate and appeared in the Congressional Record on December 13, 2010.

Marine Corps nomination of Maj. Gen. Robert E. Milstead, Jr., to be Lieutenant General.

Air Force nominations beginning with Brigadier General Thomas P. Harwood III and ending with Brigadier General John T. Winters, Jr., which nominations were received by the Senate and appeared in the Congressional Record on December 15, 2010.

Air Force nominations beginning with Colonel Randall C. Guthrie and ending with Colonel Sheila Zuehlke, which nominations were received by the Senate and appeared in the Congressional Record on December 15, 2010.

Air Force nominations beginning with Brigadier General Frances M. Auclair and ending with Colonel Daniel J. Zachman, which nominations were received by the Senate and appeared in the Congressional Record on December 15, 2010.

Army nomination of Brig. Gen. Jon J. Miller, to be Major General.

Air Force nomination of Brig. Gen. Otis G. Mannon, to be Major General.

Air Force nomination of Brig. Gen. Richard T. Devereaux, to be Major General.

Air Force nomination of Maj. Gen. Charles R. Davis, to be Lieutenant General.

Air Force nomination of Brig. Gen. Michelle D. Johnson, to be Major General.

Air Force nomination of Brig. Gen. Brett T. Williams, to be Major General.

Air Force nomination of Brig. Gen. James M. Holmes, to be Major General.

Air Force nomination of Col. Wayne E. Lee, to be Brigadier General.

Air Force nomination of Col. Timothy T. Jex, to be Brigadier General.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Brian F. Abell and ending with Ray A. Zuniga, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 2010.

Air Force nomination of Joseph T. Fetsch, to be Colonel.

Air Force nomination of Suzanne M. Henderson, to be Lieutenant Colonel.

Air Force nominations beginning with Charles R. Cornelisse and ending with Gerald D. Mcmanus, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with Eneya H. Mulagha and ending with Claudia P. Zimmermann, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with Lena R. Haskell and ending with William A. Soble, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with Randon H. Draper and ending with Andrew S. Williams, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with Janelle E. Costa and ending with Jerome E. Wizda, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with William J. Annexstad and ending with Stacey J. Vetter, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nominations beginning with Ryan J. Albrecht and ending with Gabriel Matthew Young, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Air Force nomination of Paul L. Sherouse, to be Colonel.

Air Force nomination of Gabriel C. Avilla, to be Major.

Air Force nominations beginning with Nathan P. Christensen and ending with Sara A. Whittingham, which nominations were received by the Senate and appeared in the Congressional Record on November 18, 2010.

Air Force nominations beginning with Jessica L. Abbott and ending with Andrew J. Wynn, which nominations were received by the Senate and appeared in the Congressional Record on December 8, 2010.

Air Force nominations beginning with Edward R. Anderson III and ending with David H. Zonies, which nominations were received by the Senate and appeared in the Congressional Record on December 8, 2010.

Air Force nominations beginning with Michael J. Alfaro and ending with Sara M. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on December 8, 2010.

Air Force nominations beginning with Corey R. Anderson and ending with Son X. Vu, which nominations were received by the Senate and appeared in the Congressional Record on December 8, 2010.

Army nomination of Michael P. McGaffigan, to be Major.

Army nominations beginning with Edwin E. Ahl and ending with D002419, which nominations were received by the Senate and appeared in the Congressional Record on September 20, 2010.

Army nominations beginning with Diane J. Boese and ending with Philip N. Wasylina, which nominations were received by the Senate and appeared in the Congressional Record on September 29, 2010.

Army nomination of Robert C. Dorman, to be Colonel.

Army nomination of David A. Niemiec, to be Major.

Army nomination of William L. Vanasse, to be Major.

Army nomination of George A. Carpenter, to be Major.

Army nomination of Susan A. Castorina, to be Major.

Army nominations beginning with Theresa C. Cowger and ending with Marie N. Wright, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Paula S. Oliver and ending with Gary D. Riggs, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Joseph C. Carver and ending with Gary L. Paulson, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nomination of John E. Johnson II, to be Major.

Army nomination of Andrew S. Dreier, to be Lieutenant Colonel.

Army nominations beginning with Kevin D. Ellson and ending with Steven J. Olson, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Phillip R. Glick and ending with William G. Suver, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Kevin Acosta and ending with Robert K. Yim, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Mary E. Abrams and ending with D002043, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Timothy P. Albers and ending with G001187, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with Ellen J. Abbott and ending with Michael W. Young, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with John C. Allred and ending with D001821, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with John W. Aarsen and ending with Loren T. Zweig, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nominations beginning with John G. Feltz and ending with Louis W. Wilham, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Army nomination of Kathleen M. Flocke, to be Major.

Army nomination of Gary A. Vroegindewey, to be Colonel.

Army nominations beginning with Craig S. Brooks and ending with Bennie W. Swink, which nominations were received by the Senate and appeared in the Congressional Record on November 18, 2010.

Marine Corps nominations beginning with Brandon M. Bolling and ending with Wyeth M. Towle, which nominations were received by the Senate and appeared in the Congressional Record on November 18, 2010.

Navy nominations beginning with Patrick C. Daniels and ending with Thomas L. Edler, which nominations were received by the Senate and appeared in the Congressional Record on September 29, 2010.

Navy nomination of Matthew R. Fomby, to be Lieutenant Commander.

Navy nomination of Ronny L. Jackson, to be Captain.

Navy nomination of Frederick G. Panico, to be Captain.

Navy nominations beginning with Daniel J. Traub and ending with Wayne M. Burr, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2010.

Navy nominations beginning with Auntowhan M. Andrews and ending with Christopher W. Wolff, which nominations were received by the Senate and appeared in the Congressional Record on November 18, 2010.

Navy nominations beginning with Matthew A. Mcqueen and ending with Charles E. Varsogea, which nominations were received by the Senate and appeared in the Congressional Record on November 18, 2010.

Navy nomination of Brian L. Beatty, to be Lieutenant Commander.

Navy nomination of Jon C. Cannon, to be Commander.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CARDIN:

S. 4050. A bill to amend the Classified Information Procedures Act to improve the protection of classified information and for other purposes; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 1203

At the request of Mr. BAUCUS, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 1203, a bill to amend the Internal Revenue Code of 1986 to extend the research credit through 2010 and to increase and make permanent the alternative simplified research credit, and for other purposes.

S. 3363

At the request of Mr. CARDIN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 3363, a bill to amend the Water Resources Research Act of 1984 to reauthorize grants for and require applied water supply research regarding the water resources research and technology institutes established under that Act.

S. 3467

At the request of Mr. SCHUMER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 3467, a bill to require a Northern Border Counternarcotics Strategy.

S. 3913

At the request of Mr. ROCKEFELLER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 3913, a bill to amend title 10, United States Code, to enhance the roles and responsibilities of the Chief of the National Guard Bureau.

S. 4001

At the request of Mr. WEBB, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 4001, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Centennial of Marine Corps Aviation, and to support construction of the Marine Corps Heritage Center.

S. RES. 694

At the request of Mrs. FEINSTEIN, her name was added as a cosponsor of S. Res. 694, a resolution condemning the Government of Iran for its state-sponsored persecution of religious minorities in Iran and its continued violation of the International Covenant on Human Rights.

AMENDMENT NO. 4841

At the request of Mr. THUNE, the name of the Senator from Massachusetts (Mr. BROWN) was added as a cosponsor of amendment No. 4841 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. 4847

At the request of Mr. BROWN of Massachusetts, his name was added as a cosponsor of amendment No. 4847 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.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARDIN:

S. 4050. A bill to amend the Classified Information Procedures Act to improve the protection of classified information and for other purposes; to the Committee on the Judiciary.

Mr. CARDIN. Mr. President, the Classified Information Procedures Act, CIPA, was enacted in 1980 with bipartisan support to address the ''disclose or dismiss'' dilemma that arose in espionage prosecutions when a defendant would threaten the government with the disclosure of classified information if the government did not drop the prosecution. Previously, there were no congressionally mandated procedures that required district courts to make discovery and admissibility rulings regarding classified information in advance.

CIPA has worked reasonably well during the last 30 years, but some issues have arisen in a number of notable terrorism, espionage, and narcotics cases that demonstrate that reforms and improvements could be made to ensure that classified sources, methods, and information can be protected and to ensure that a defendant's due process and fair trial rights are not violated. In 2009, when the Congress enacted the Military Commissions Act, MCA, the Congress drew heavily from the manner in which the Federal courts interpreted CIPA when it updated the procedures governing the use of classified information in military commission prosecutions. At that time, however, the Congress did not update CIPA. Indeed, since its enactment in 1980, there have been no changes to the key provisions of CIPA.

As chairman of the Senate Judiciary's Terrorism and Homeland Security Subcommittee, I have chaired a number of hearings during which witnesses have testified about the capacity of our civilian courts to try alleged terrorists and spies. The first subcommittee hearing that I chaired was on July 28, 2009, and was entitled ''Prosecuting Terrorists: Civilian and Military Trials for GTMO and Beyond.'' The second Terrorism and Homeland Security Subcommittee hearing that I chaired was on May 12, 2010, and was entitled ''The Espionage Statutes: A Look Back and A Look Forward.'' The testimony I have heard in regard to terrorism, espionage, and our civilian courts has convinced me that while our courts have the capacity and the procedures in place to try alleged terrorists and spies, reforms and improvements could be made to CIPA to codify and clarify the decisions of the Federal courts.

As a result, today I am introducing the CIPA Reform and Improvement Act, CRIA, of 2010. CRIA contains reforms and improvements to ensure that the statute maintains the proper balance between the protection of classified sources, methods and information, and a defendant's constitutional rights. Among other things, this legislation, which includes the applicable changes that the Congress made when it enacted the Military Commissions Act of 2009, will codify, clarify, and unify Federal case law interpreting CIPA; ensure that all classified information, not just documents, will be governed by CIPA; ensure that prosecutors and defense attorneys will be able to fully inform trial courts about classified information issues; and will clarify that the civil state secrets privilege does not apply in criminal cases. CRIA will also ensure high-level DOJ approval before the government invokes its classified information privilege in criminal cases and will ensure that the Federal courts will order the disclosure and use of classified information when the disclosure and use meets the applicable legal standards. This legislation will also ensure timely appellate review of lower court CIPA decisions before the commencement of a trial, explicitly permit trial courts to adopt alternative procedures for the admission of classified information in accordance with a defendant's fair trial and due process rights, and make technical fixes to ensure consistent use of terms throughout the statute.

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

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

S. 4050

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

SECTION 1. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Classified Information Procedures Reform and Improvement Act of 2010''.

(b) IN GENERAL.—Section 1 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by redesignating subsection (b) as subsection (c); and

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

''(b) 'Disclosure', as used in this Act, includes the release, transmittal, or making available of, or providing access to, classified information to any person (including a defendant or counsel for a defendant) during discovery, or to a participant or member of the public at any proceeding.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 501(3) of the Immigration and Nationality Act (8 U.S.C. 1531(3)) is amended by striking ''section 1(b)'' and inserting ''section 1''.

SEC. 2. PRETRIAL CONFERENCE.

Section 2 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''At any time'';

(2) by adding at the end the following:

''(b) EX PARTE.—If the United States or the defendant certifies that the presence of both parties at a pretrial conference would harm the national security of the United States or the defendant's ability to make a defense, then upon request by either party, the court shall hold such pretrial conference ex parte, and shall seal and preserve the record of that ex parte conference in the records of the court for use in the event of an appeal.''.

SEC. 3. PROTECTIVE ORDERS.

Section 3 of the Classified Information Procedures Act (18 U.S.C. App) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''Upon motion'';

(2) by inserting ''use or'' before ''disclosure'';

(3) by inserting '', or access to,'' after ''disclosure of'';

(4) by inserting '', or any classified information derived therefrom, that will be'' after ''classified information'';

(5) by inserting ''or made available'' after ''disclosed''; and

(6) by adding at the end the following:

''(b) NOTICE.—In the event the defendant is convicted, the United States shall provide the defendant and the appellate court with a written notice setting forth each date that the United States obtained a protective order.''.

SEC. 4. DISCOVERY OF AND ACCESS TO CLASSIFIED INFORMATION BY DEFENDANTS.

Section 4 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting ''AND ACCESS TO'' after ''DISCOVERY OF'';

(2) by inserting ''(a) IN GENERAL.—'' before ''The court, upon'';

(3) in the first sentence—

(A) by inserting ''to restrict the defendant's access to or'' before ''to delete'';

(B) by striking ''from documents'';

(C) by striking ''classified documents, or'' and inserting ''classified information,''; and

(D) by striking the period at the end and inserting '', or to provide other relief to the United States.'';

(4) in the second sentence, by striking ''alone.'' inserting ''alone, and may permit ex parte proceedings with the United States to discuss that request.'';

(5) in the third sentence—

(A) by striking ''If the court enters an order granting relief following such an ex parte showing, the'' and inserting ''The''; and

(B) by inserting '', and the transcript of any argument and any summary of the classified information the defendant seeks to obtain discovery of or access to,'' after ''text of the statement of the United States''; and

(6) by adding at the end the following:

''(b) ACCESS TO OTHER CLASSIFIED INFORMATION.—If the defendant seeks access to nondocumentary information from a potential witness or other person through deposition under the Federal Rules of Criminal Procedure, or otherwise, which the defendant knows or reasonably believes is classified, the defendant shall notify the attorney for the United States and the court in writing. Such notice shall specify with particularity the nondocumentary information sought by the defendant and the legal basis for such access.

''(c) SHOWING BY THE UNITED STATES.—In any prosecution in which the United States seeks to restrict, delete, withhold, or otherwise obtain relief with respect to the defendant's discovery of or access to any specific classified information, the attorney for the United States shall file with the court a declaration made by the Attorney General invoking the United States classified information privilege, which shall be supported by a declaration made by a knowledgeable United States official possessing the authority to classify information that sets forth the identifiable damage to the national security that

the discovery of, or access to, such information reasonably could be expected to cause.

''(d) STANDARD FOR DISCOVERY OF OR ACCESS TO CLASSIFIED INFORMATION.—Upon the submission of a declaration of the Attorney General under subsection (c), the court may not authorize the defendant's discovery of, or access to, classified information, or to the substitution submitted by the United States, which the United States seeks to restrict, delete, or withhold, or otherwise obtain relief with respect to, unless the court first determines that such classified information or such substitution would be—

''(1) noncumulative, relevant, and helpful to—

''(A) a legally cognizable defense;

''(B) rebuttal of the prosecution's case; or

''(C) sentencing; or

''(2) noncumulative and essential to a fair determination of a pretrial proceeding.

''(e) SECURITY CLEARANCE.—Whenever a court determines that the standard for discovery of or access to classified information by the defendant has been met under subsection (d), such discovery or access may only take place after the person to whom discovery or access will be granted has received the necessary security clearances to receive the classified information, and if the classified information has been designated as sensitive compartmented information or special access program information, any additional required authorizations to receive the classified information.''.

SEC. 5. NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION.

Section 5 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting ''USE OR'' before ''DISCLOSE'';

(2) in subsection (a)—

(A) in the first sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by striking ''thirty days prior to trial'' and inserting ''45 days prior to such proceeding'';

(B) in the second sentence by striking ''brief'' and inserting ''specific'';

(C) in the third sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by striking ''brief'' and inserting ''specific''; and

(D) in the fourth sentence—

(i) by inserting ''use or'' before ''disclose''; and

(ii) by inserting ''reasonably'' before ''believed''; and

(3) in subsection (b), by inserting ''the use or'' before ''disclosure''.

SEC. 6. PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION.

Section 6 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (a)—

(A) in the second sentence, by striking ''such a hearing.'' and inserting ''a hearing and shall make all such determinations prior to proceeding under any alternative procedure set out in subsection (d).''; and

(B) in the third sentence, by striking ''petition'' and inserting ''request'';

(2) in subsection (b)(2) by striking ''trial'' and inserting ''the trial or pretrial proceeding'';

(3) by redesignating subsections (c), (d), (e), and (f), as subsections (d), (e), (f), and (g), respectively;

(4) by inserting after subsection (b) the following:

''(c) STANDARD FOR ADMISSIBILITY, USE AND DISCLOSURE AT TRIAL.—Classified information which is the subject of a notice by the United States pursuant to subsection (b) is not admissible at trial and subject to the alternative procedures set out in subsection (d), unless a court first determines that such information is noncumulative, relevant, and necessary to an element of the offense or a legally cognizable defense, and is otherwise admissible in evidence. Classified information may not be used or disclosed at trial by the defendant unless a court first determines that exclusion of the classified information from such use or disclosure would deprive the defendant of a fair trial or violate the defendant's right to due process.'';

(5) in subsection (d), as so redesignated—

(A) in the subsection heading, by inserting ''USE OR'' before ''DISCLOSURE'';

(B) in paragraph (1), by inserting ''use or'' before ''disclosure'' both places that term appears;

(C) in the flush paragraph following paragraph (1)(B), by inserting ''use or'' before ''disclosure''; and

(D) in paragraph (2)—

(i) by striking ''an affidavit of'' and inserting ''a declaration by'';

(ii) by the striking ''such affidavit'' and inserting ''such declaration''; and

(iii) by inserting ''the use or'' before ''disclosure'';

(6) in subsection (e), as so redesignated, in the first sentence, by striking ''disclosed or elicited'' and inserting ''used or disclosed''; and

(7) in subsection (f), as so redesignated—

(A) in the subsection heading, by inserting ''USE OR'' before ''DISCLOSURE'' both places that term appears;

(B) in paragraph (1)—

(i) by striking ''(c)'' and inserting ''(d)'';

(ii) by striking ''an affidavit of'' and inserting ''a declaration by'';

(iii) by inserting ''the use or'' before ''disclosure''; and

(iv) by striking ''disclose'' and inserting ''use, disclose,''; and

(C) in paragraph (2), by striking ''disclosing'' and inserting ''using, disclosing,''; and

(8) in the first sentence of subsection (g), as so redesignated—

(A) by inserting ''used or'' before ''disclosed''; and

(B) by inserting ''or disclose'' before ''to rebut the''.

SEC. 7. INTERLOCUTORY APPEAL.

Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by striking ''disclosure of'' both times that places that term appears and inserting ''use, disclosure, discovery of, or access to''; and

(2) by adding at the end the following: ''The right of the United States to appeal pursuant to this Act applies without regard to whether the order or ruling appealed from was entered under this Act, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such use, disclosure, or access. Whenever practicable, appeals pursuant to this section shall be consolidated to expedite the proceedings.''.

SEC. 8. INTRODUCTION OF CLASSIFIED INFORMATION.

Section 8 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (b), by adding at the end ''The court may fashion alternative procedures in order to prevent such unnecessary disclosure, provided that such alternative procedures do not deprive the defendant of a fair trial or violate the defendant's due process rights.''; and

(2) by adding at the end the following:

''(d) ADMISSION OF EVIDENCE.—(1) No classified information offered by the United States and admitted into evidence shall be presented to the jury unless such evidence is provided to the defendant.

''(2) Any classified information admitted into evidence shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.''.

SEC. 9. APPLICATION TO PROCEEDINGS.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to any prosecution pending in any United States district court.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4892. 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 4893. 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 4894. Mr. ALEXANDER submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4895. Mr. WICKER (for himself and 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 4896. 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 4897. 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 4898. 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 4899. 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 4900. Mr. MCCAIN (for himself and Mr. CORKER) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4901. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4902. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4903. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4904. Mr. CORKER submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra.

SA 4905. Mr. CORKER submitted an amendment intended to be proposed by him to

Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4906. Mr. CORKER submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4907. Mr. BARRASSO submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4908. Mr. LEMIEUX submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4909. Mr. THUNE (for himself and Mr. WICKER) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4910. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4911. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4912. Mr. KIRK submitted an amendment intended to be proposed to amendment SA 4900 submitted by Mr. MCCAIN (for himself and Mr. CORKER) and intended to be proposed to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4913. Mr. LIEBERMAN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to Treaty Doc. 111–5, supra; which was ordered to lie on the table.

SA 4914. Mr. REID (for Mr. KERRY (for himself and Ms. SNOWE)) proposed an amendment to the bill H.R. 81, to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

SA 4915. Mr. KERRY (for Mr. SCHUMER (for himself, Ms. COLLINS, Mrs. GILLIBRAND, and Mr. CONRAD)) proposed an amendment to the bill H.R. 4748, to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

SA 4916. Mr. LIEBERMAN (for Mr. KERRY (for himself and Ms. COLLINS)) proposed an amendment to the bill H.R. 1746, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

TEXT OF AMENDMENTS

SA 4892. 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 (9) of subsection (a), of the Resolution of Ratification add the following new subparagraph:

(C) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the President will submit on an annual basis the report required under section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84);

(ii) each such report will include, in addition to the elements required under subsection (a)(2) of such section—

(I) a detailed description of the plan to modernize and maintain the delivery platforms for nuclear weapons; and

(II) a detailed description of the steps taken to implement the plan submitted in the previous year;

(iii) in preparing each report, the President will consult with the Secretary of Defense and with the Secretary of Energy, who will consult with the directors of the nuclear weapons enterprise facilities and laboratories, including the Pantex Plant, the Nevada National Security Site, the Kansas City Plant, the Savannah River Site, Y-12 National Security Complex, Lawrence Livermore National Laboratory, Sandia National Laboratories, and Los Alamos National Laboratory on the implementation of and funding for the plans outlined under subparagraphs (A) and (B) of subsection (a)(2) of such section;

(iv) the written judgments received from the directors of the national nuclear weapons enterprise facilities and laboratories pursuant to clause (iii) will be included, unchanged, together with each report submitted under clause (i).

At the end of subsection (a), 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.

(12) DESIGN AND FUNDING OF CERTAIN FACILITIES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) accelerate the design and engineering phase of the Chemistry and Metallurgy Research Replacement (CMRR) building and the Uranium Processing Facility (UPF); and

(B) request full funding for the Chemistry and Metallurgy Research Replacement building and the Uranium Processing Facility upon completion of the design and engineering phase for such facilities.

At the end of subsection (b), 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.

At the end of subsection (c), 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 4893. 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) COVERS.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President has reached an agreement with the Government of the Russian Federation on the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting.

(12) TELEMETRY.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the United States has reached a legally-binding agreement with the Russian Federation that each party to the Treaty is obliged to provide the other full and unimpeded access to its telemetry from all flight-test of strategic missiles limited by the Treaty;

(13) 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 Treaty.

At the end of subsection (b), add the following:

(4) TYPE ONE INSPECTIONS.—The United States would consider as a violation of the deployed warhead limit in section 1(b) of Article II of the Treaty and as a material breach of the Treaty either of the following actions:

(A) Any Type One inspection that revealed the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile.

(B) Any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a Type One inspection.

SA 4894. Mr. ALEXANDER 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, add at the end of paragraph (9) the following:

''(C) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

''(i) the President will submit on an annual basis the report required under section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84);

''(ii) each such report will include, in addition to the elements required under subsection (a)(2) of such section –

''(I) a detailed description of the plan to modernize and maintain the delivery platforms for nuclear weapons; and

''(II) a detailed description of the steps taken to implement the plan submitted in the previous year;

''(iii) in preparing each report, the President will consult with the Secretary of Defense and with the Secretary of Energy, who

will consult with the directors of the nuclear weapons enterprise facilities and laboratories, including the Pantex Plant, the Nevada National Security Site, the Kansas Plant, the Savannah River Site, Y-12 National Security Laboratory, and the Sandia National Laboratory on the implementation of and funding for the plans outlines under subparagraphs (A) and (B) of subsection (a)(2) of such section; and

''(iv) the written judgments received from the directors of the national nuclear weapons enterprise facilities and laboratories pursuant to clause (iii) will be included, unchanged, together with each report submitted under clause (i).''.

SA 4895. Mr. WICKER (for himself and 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 provisions adopted in the Bilateral Consultative Commission that affect substantive rights or obligations under the Treaty are those that create new rights or obligations for the United States and must therefore be submitted to the Senate for its advice and consent.

SA 4896. 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 paragraph 2 of Article XIV of the Treaty, strike ''remain in force for 10 years'' and insert ''remain in force for 5 years''.

SA 4897. 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 Article XIII of the New START Treaty, strike the second sentence and insert the following: ''The parties shall not transfer strategic offensive arms subject to this Treaty to third parties, components to make these arms, or the knowhow to do such.''.

SA 4898. 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 paragraph 2 of Article XIV of the New START Treaty, strike all after the second sentence.

SA 4899. 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 (c) of the Resolution of Ratification, add the following:

(14) ARMS CONTROL TREATY VERIFICATION EXPERIMENTS.—It is the sense of the Senate that the United States needs to increase its numbers of arms control treaty verification experiments as well as a robust series of scaled experiments to ensure a reliable nuclear deterrent.

SA 4900. Mr. MCCAIN (for himself and Mr. CORKER) 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) MISSILE DEFENSE.—(A) The United States shall—

(i) fully deploy all four phases of the Phased Adaptive Approach for missile defense in Europe, on schedule, if not earlier, as outlined in the Department of Defense's Ballistic Missile Defense Review Report dated February 2010;

(ii) maintain the option as a technological and strategic hedge to deploy the European Mid Course Radar and two stage ground-based interceptors in a suitable location, consistent with the agreement of United States allies; and

(iii) continue modernization of the United States-based ground-based midcourse defense system.

(B) If the President determines that meeting the schedule described in subparagraph (A)(i) is not feasible, the President shall—

(i) report to the Senate within 30 days as to the reasons for any delay, provide a detailed plan to address any delays, and issue a revised schedule; and

(ii) submit an annual certification to the Senate that the schedule remains valid.

In subsection (b)(1), at the end of subparagraph (B), strike ''United States; and'' and all that follows through the end of subparagraph (C) and insert the following: ''United States;

(C) the April 7, 2010, unilateral statement by the Russian Federation on missile defense does not impose a legal obligation on the United States;

(D) pursuant to the National Missile Defense Act of 1999 (Public Law 106–38), it is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate), and the United States deployment of ballistic missile defense (BMD) systems, including all phases of the Phased Adaptive Approach to missile defense in Europe and programs to defend United States deployed forces, allies, and partners against regional threats, is consistent with that policy;

(E) the Phased Adaptive Approach to missile defense in Europe, as endorsed by President Barack Obama on September 17, 2009, and outlined in the Department of Defense's Ballistic Missile Defense Review (BMDR) dated February 2010, includes—

(i) Phase 1, in 2011, which will provide defense against the short and medium-range ballistic missile threat, using Aegis BMD-capable ships with SM-3 block IA interceptors and an AN/TPY-2 transportable radar deployed in Southern Europe;

(ii) Phase 2, in 2015, which will provide defense for NATO against short- and medium-range ballistic missile threats, by deploying at least 24 SM-3 block IB missiles in Romania as well as on Aegis BMD ships;

(iii) Phase 3, in 2018, which will extend defense to all NATO allies in Europe against short-, medium-, and intermediate-range ballistic missile threats by deploying at least 24 SM-3 block IIA missiles on land in Poland and additional missiles at sea on Aegis BMD ships;

(iv) Phase 4, not later than 2020, which will provide defense for Europe and the United States using the SM-3 block IIB interceptor, which will have an early intercept capability against medium- and intermediate-range ballistic missiles as well as potential ICBM threats, which will be deployed at sites in Europe, including Poland; and

(v) the continued improvement and modernization of the United States ground-based midcourse defense system, which includes two-stage interceptors that could be deployed in Europe if the Iranian ICBM threat emerges before Phase 3 and or 4 of the Phased Adaptive Approach is ready, and three stage ground-based interceptors in the United States; and

(F) while the United States cannot circumscribe the right of the Russian Federation to withdraw from the New START Treaty under paragraph 3 of Article XIV if the Russian Federation believes its supreme interests are jeopardized, the continued development and deployment of United States missile defense systems worldwide during the period that the New START Treaty is in effect, including qualitative and quantitative improvements to such systems, will not be an extraordinary event, but rather an anticipated event, fully disclosed to the Russian Federation at the time of entry into force of the New START Treaty.

At the end of subsection (b), 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 4901. Mr. DEMINT 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 paragraph 1. of Article II of the New START Treaty, strike ''700, for deployed

ICBMS, deployed SLBMs, and deployed heavy bombers'' and all that follows through the period at the end and insert the following: ''850, for deployed ICBMS, deployed SLBMs, and deployed heavy bombers;

(b) 1,550, for warheads on deployed ICBMs, warheads on deployed SLBMs, and nuclear warheads counted for deployed heavy bombers;

(c) 1,000, for deployed and non-deployed ICBM launchers, deployed and non-deployed SLBM launchers, and deployed and non-deployed heavy bombers.

SA 4902. Mr. DEMINT 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 paragraph 3 of Article V of the New START Treaty, strike ''For the purposes of counting toward'' and all that follows through the period at the end and insert ''Each Party shall not convert or use launchers of missile defense interceptors for placement of ICBMs and SLBMs therein.''.

In Part Three of the Protocol, add at the end of Section III the following:

(9) Conversion of an ICBM launcher to a missile defense interceptor launcher shall be carried out using procedures developed by the Party carrying out the conversion. Upon completion of the conversion procedures and provision of notification thereof, the Party receiving such notification shall have the right, within a 30-day period beginning on the date of provision of notification, to conduct an inspection of the converted silo launcher. Upon the expiration of the 60-day period following provision of such notification or upon the completion of the inspection, the silo launcher of ICBMs shall cease to be subject to the Treaty.

SA 4903. Mr. DEMINT 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 Article IV of the New START Treaty, add the following:

12. ICBMs shall not be deployed on bombers.

SA 4904. Mr. CORKER 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; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) EFFECTIVENESS AND VIABILITY OF NEW START TREATY AND UNITED STATES MISSILE DEFENSES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate, and shall communicate to the Russian Federation, that it shall be the policy of the United States that the continued development and deployment of United States missile defense systems, including qualitative and quantitative improvements to such systems, including all phases of the Phased Adaptive Approach to missile defenses in Europe maintaining the option to use Ground-Based Interceptors, do not and will not threaten the strategic balance with the Russian Federation. Consequently, while the United States cannot circumscribe the sovereign rights of the Russian Federation under paragraph 3 of Article XIV of the Treaty, the continued improvement and deployment of United States missile defense systems do not constitute a basis for questioning the effectiveness and viability of the Treaty, and therefore would not give rise to circumstances justifying the withdrawal of the Russian Federation from the Treaty.

At the end of subsection (b)(1)(C), strike ''United States.'' and insert the following: ''United States; and

(D) the eighth preambular clause of the New START Treaty does not impose a legal obligation on the United States.

SA 4905. Mr. CORKER 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)(1)(C) of the Resolution of Ratification, strike ''United States.'' and insert the following: ''United States; and

(D) the eighth preambular clause of the New START Treaty does not impose a legal obligation on the United States.

SA 4906. Mr. CORKER 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) EFFECTIVENESS AND VIABILITY OF NEW START TREATY AND UNITED STATES MISSILE DEFENSES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate, and shall communicate to the Russian Federation, that it shall be the policy of the United States that the continued development and deployment of United States missile defense systems, including qualitative and quantitative improvements to such systems, including all phases of the Phased Adaptive Approach to missile defenses in Europe maintaining the option to use Ground-Based Interceptors, do not and will not threaten the strategic balance with the Russian Federation. Consequently, while the United States cannot circumscribe the sovereign rights of the Russian Federation under paragraph 3 of Article XIV of the Treaty, the continued improvement and deployment of United States missile defense systems do not constitute a basis for questioning the effectiveness and viability of the Treaty, and therefore would not give rise to circumstances justifying the withdrawal of the Russian Federation from the Treaty.

SA 4907. Mr. BARRASSO 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) COMPLIANCE OF THE RUSSIAN FEDERATION.—The New START Treaty shall not enter into force until the President certifies to the Senate that all outstanding issues on verification and compliance in the START I Treaty by the Russian Federation prior to the expiration of the START I Treaty on December 5, 2009, have been resolved and submits to Congress a report detailing how each such issue was resolved.

SA 4908. Mr. LEMIEUX 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) TACTICAL NUCLEAR WEAPONS.—The President may not deposit the instrument of ratification until the President certifies to the Senate that—

(A) the United States and the Russian Federation will enter into negotiations within one year of ratification of the New START Treaty to address the disparity between the non-strategic (tactical) nuclear weapons stockpiles of the Russian Federation and of the United States and secure and reduce tactical nuclear weapons in a verifiable manner; and

(B) the negotiations will not include discussion of defensive missile systems.

SA 4909. Mr. THUNE (for himself and Mr. WICKER) 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) 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 4910. Mr. DEMINT 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:

On page 17 of the Resolution of Ratification, strike line 24 and all that follows through page 21, line 8, and insert the following:

(4) DEFENDING THE UNITED STATES AND ALLIES AGAINST STRATEGIC ATTACK.—It is the understanding of the United States that—

(A) a paramount obligation of the United States Government is to provide for the defense of the American people, deployed members of the United States Armed Forces, and United States allies against nuclear attacks to the best of its ability;

(B) policies based on ''mutual assured destruction'' or intentional vulnerability can be contrary to the safety and security of both countries, and the United States and the Russian Federation share a common interest in moving cooperatively as soon as possible away from a strategic relationship based on mutual assured destruction;

(C) in a world where biological, chemical, and nuclear weapons and the means to deliver them are proliferating, strategic stability can be enhanced by strategic defensive measures;

(D) accordingly, the United States is and will remain committed to reducing the vulnerability to attack by constructing a layered missile defense system capable of countering missiles of all ranges;

(E) the United States will welcome steps by the Russian Federation also to adopt a fundamentally defensive strategic posture that no longer views robust strategic defensive capabilities as undermining the overall strategic balance, and stands ready to cooperate with the Russian Federation on strategic defensive capabilities, as long as such cooperation is aimed at fostering and in no way constrains the defensive capabilities of both sides; and

(F) the United States is committed to improving United States strategic defensive capabilities both quantitatively and qualitatively during the period that the New START Treaty is in effect, and such improvements are consistent with the Treaty and do not constitute an extraordinary event, as described in paragraph 3 of Article XIV of the Treaty.

(c) DECLARATIONS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following declarations, which express the intent of the Senate:

(1) MISSILE DEFENSE.—(A) It is the sense of the Senate that—

(i) pursuant to the National Missile Defense Act of 1999 (Public Law 106–38), it is the policy of the United States ''to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate)'';

(ii) defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail; and

(iii) further limitations on the missile defense capabilities of the United States are not in the national security interest of the United States.

(B) The New START Treaty and the April 7, 2010, unilateral statement of the Russian Federation on missile defense do not limit in any way, and shall not be interpreted as limiting, activities that the United States Government currently plans or that might be required over the duration of the New START Treaty to protect the United States pursuant to the National Missile Defense Act of 1999, or to protect United States Armed Forces and United States allies from limited ballistic missile attack, including further planned enhancements to the Ground-based Midcourse Defense system and all phases of the Phased Adaptive Approach to missile defense in Europe.

(C) Given its concern about missile defense issues, the Senate expects the executive branch to offer regular briefings, not less than twice each year, to the Committees on Foreign Relations and Armed Services of the Senate on all missile defense issues related to the New START Treaty and on the progress of United States-Russia dialogue and cooperation regarding missile defense.

SA 4911. Mr. DEMINT 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:

On page 17 of the resolution of ratification, strike line 24 and all that follows through page 21, line 8, and insert the following:

(4) DEFENDING THE UNITED STATES AND ALLIES AGAINST STRATEGIC ATTACK.—It is the understanding of the United States that—

(A) a paramount obligation of the United States Government is to provide for the defense of the American people, deployed members of the United States Armed Forces, and United States allies against nuclear attacks to the best of its ability;

(B) policies based on ''mutual assured destruction'' or intentional vulnerability can be contrary to the safety and security of both countries, and the United States and the Russian Federation share a common interest in moving cooperatively as soon as possible away from a strategic relationship based on mutual assured destruction;

(C) in a world where biological, chemical, and nuclear weapons and the means to deliver them are proliferating, strategic stability can be enhanced by strategic defensive measures;

(D) accordingly, the United States is and will remain committed to reducing the vulnerability to attack by constructing a layered missile defense system capable of countering missiles of all ranges;

(E) the United States will welcome steps by the Russian Federation also to adopt a fundamentally defensive strategic posture that no longer views robust strategic defensive capabilities as undermining the overall strategic balance, and stands ready to cooperate with the Russian Federation on strategic defensive capabilities, as long as such cooperation is aimed at fostering and in no way constrains the defensive capabilities of both sides; and

(F) the United States is committed to improving United States strategic defensive capabilities both quantitatively and qualitatively during the period that the New START Treaty is in effect, and such improvements are consistent with the Treaty and do not constitute an extraordinary event, as described in paragraph 3 of Article XIV of the Treaty.

(c) DECLARATIONS.—The advice and consent of the Senate to the ratification of the New START Treaty is subject to the following declarations, which express the intent of the Senate:

(1) MISSILE DEFENSE.—(A) It is the sense of the Senate that—

(i) pursuant to the National Missile Defense Act of 1999 (Public Law 106–38), it is the policy of the United States ''to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate)'';

(ii) defenses against ballistic missiles are essential for new deterrent strategies and for new strategies should deterrence fail; and

(iii) further limitations on the missile defense capabilities of the United States are not in the national security interest of the United States.

(B) The New START Treaty and the April 7, 2010, unilateral statement of the Russian Federation on missile defense do not limit in any way, and shall not be interpreted as limiting, activities that the United States Government currently plans or that might be required over the duration of the New START Treaty to protect the United States pursuant to the National Missile Defense Act of 1999, or to protect United States Armed Forces and United States allies from limited ballistic missile attack, including further planned enhancements to the Ground-based Midcourse Defense system and all phases of the Phased Adaptive Approach to missile defense in Europe.

(C) Given its concern about missile defense issues, the Senate expects the executive branch to offer regular briefings, not less than twice each year, to the Committees on Foreign Relations and Armed Services of the Senate on all missile defense issues related to the New START Treaty and on the progress of United States-Russia dialogue and cooperation regarding missile defense.

SA 4912. Mr. KIRK submitted an amendment intended to be proposed to amendment SA 4900 submitted by Mr. MCCAIN (for himself and Mr. CORKER) and 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; which was ordered to lie on the table; as follows:

On page 6, strike lines 2 through 7 and insert the following:

(4) SENSITIVE INFORMATION ON MISSILE DEFENSE SYSTEMS.—It is the understanding of the United States that the United States will not provide the Russian Federation any access to United States sensitive data, including tracking, targeting, and telemetry data, technology, and common operational pictures, with respect to United States missile defense systems for the duration of the New START Treaty.

SA 4913. Mr. LIEBERMAN (for himself and Mr. BROWN of Massachusetts) 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 paragraph (1) of subsection (b) of the Resolution of Ratification, beginning in subparagraph (B), strike ''United States; and''

and all that follows through the period at the end of subparagraph (C) and insert the following: ''United States;

(C) the April 7, 2010, unilateral statement by the Russian Federation on missile defense does not impose a legal obligation on the United States;

(D) the eighth clause of the preamble of the New START Treaty, which recognizes ''the existence of the interrelationship between strategic offensive arms and strategic defensive arms,'' does not impose a legal obligation on the United States, nor does it limit the development and deployment of United States missile defense systems, including qualitative and quantitative improvements to such systems;

(E) although the United States cannot circumscribe the Russian Federation's sovereign rights under Article XIV(3) of the New START Treaty, it is the understanding of the United States that the development and deployment of United States missile defense systems do not and will not alter the strategic balance with the Russian Federation nor threaten its strategic nuclear force potential, and therefore do not constitute a basis for questioning the effectiveness and viability of the New START Treaty, and would not give rise to circumstances justifying Russia's withdrawal from the Treaty; and

(F) the development and deployment of United States missile defense systems is not dependent on the Russian Federation entering into or remaining a Party to the New START Treaty, as it is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate), including all phases of the European Phased Adaptive Approach, the continued modernization of the ground-based midcourse defense system, and other programs to defend the United States, its deployed forces, allies, and partners against ballistic missile threats.

SA 4914. Mr. REID (for Mr. KERRY (for himself and Ms. SNOWE)) proposed an amendment to the bill H.R. 81, to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—SHARK CONSERVATION ACT OF 2010

Sec. 101. Short title.
Sec. 102. Amendment of the High Seas Driftnet Fishing Moratorium Protection Act.
Sec. 103. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.
Sec. 104. Offset of implementation cost.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

Sec. 201. Short title.
Sec. 202. International Fishery Agreement.
Sec. 203. Application with other laws.
Sec. 204. Effective date.

TITLE III—MISCELLANEOUS

Sec. 301. Technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.
Sec. 302. Pacific Whiting Act of 2006.
Sec. 303. Replacement vessel.

TITLE I—SHARK CONSERVATION ACT OF 2010

SEC. 101. SHORT TITLE.

This title may be cited as the ''Shark Conservation Act of 2010''.

SEC. 102. AMENDMENT OF HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.

(a) ACTIONS TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i) is amended—

(1) in paragraph (1)—

(A) in subparagraph (D), by striking ''and'' at the end;

(B) in subparagraph (E), by inserting ''and'' after the semicolon; and

(C) by adding at the end the following:

''(F) to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea;'';

(2) in paragraph (2), by striking ''and'' at the end;

(3) by redesignating paragraph (3) as paragraph (4); and

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

''(3) seeking to enter into international agreements that require measures for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that are comparable to those of the United States, taking into account different conditions; and''.

(b) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—Subparagraph (A) of section 609(e)(3) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(e)(3)) is amended—

(1) by striking the ''and'' before ''bycatch reduction requirements''; and

(2) by striking the semicolon at the end and inserting '', and shark conservation measures;''.

(c) EQUIVALENT CONSERVATION MEASURES.—

(1) IDENTIFICATION.—Subsection (a) of section 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k) is amended—

(A) in the matter preceding paragraph (1), by striking ''607, a nation if—'' and inserting ''607—'';

(B) in paragraph (1)—

(i) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(ii) by moving clauses (i) and (ii) (as so redesignated) 2 ems to the right;

(C) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(D) by moving subparagraphs (A) through (C) (as so redesignated) 2 ems to the right;

(E) by inserting before subparagraph (A) (as so redesignated) the following:

''(1) a nation if—'';

(F) in subparagraph (C) (as so redesignated) by striking the period at the end and inserting ''; and''; and

(G) by adding at the end the following:

''(2) a nation if—

''(A) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

''(B) the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.''.

(2) INITIAL IDENTIFICATIONS.—The Secretary of Commerce shall begin making identifications under paragraph (2) of section 610(a) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826k(a)), as added by paragraph (1)(G), not later than 1 year after the date of the enactment of this Act.

SEC. 103. AMENDMENT OF MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.

(a) IN GENERAL.—Paragraph (1) of section 307 of Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

(1) by amending subparagraph (P) to read as follows:

''(P)(i) to remove any of the fins of a shark (including the tail) at sea;

''(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

''(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

''(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;''; and

(2) by striking the matter following subparagraph (R) and inserting the following:

''For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term 'naturally attached', with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.''.

(b) SAVINGS CLAUSE.—

''(1) IN GENERAL.—The amendments made by subsection (a) do not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) in that area of the waters of the United States located shoreward of a line drawn in such a manner that each point on it is 50 nautical miles from the baseline of a State from which the territorial sea is measured, if the individual holds a valid State commercial fishing license, unless the total weight of smooth dogfish fins landed or found on board a vessel to which this subsection applies exceeds 12 percent of the total weight of smooth dogfish carcasses landed or found on board.

(2) DEFINITIONS.—In this subsection:

(A) COMMERCIAL FISHING.—The term ''commercial fishing'' has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

(B) STATE.—The term ''State'' has the meaning given that term in section 803 of Public Law 103–206 (16 U.S.C. 5102).

SEC. 104. OFFSET OF IMPLEMENTATION COST.

Section 308(a) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(a)) is amended by striking ''2012.'' and inserting ''2010, and $2,500,000 for each of fiscal years 2011 and 2012.''.

TITLE II—INTERNATIONAL FISHERIES AGREEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ''International Fisheries Agreement Clarification Act''.

SEC. 202. INTERNATIONAL FISHERY AGREEMENT.

Consistent with the intent of provisions of the Magnuson-Stevens Fishery and Conservation and Management Act relating to international agreements, the Secretary of Commerce and the New England Fishery Management Council may, for the purpose of rebuilding those portions of fish stocks covered by the United States-Canada Transboundary Resource Sharing Understanding on the date of enactment of this Act—

(1) take into account the Understanding and decisions made under that Understanding in the application of section 304(e)(4)(A)(i) of the Act (16 U.S.C. 1854(e)(4)(A)(i));

(2) consider decisions made under that Understanding as ''management measures under an international agreement'' that ''dictate otherwise'' for purposes of section 304(e)(4)(A)(ii) of the Act (16 U.S.C. 1854(e)(4)(A)(ii); and

(3) establish catch levels for those portions of fish stocks within their respective geographic areas covered by the Understanding on the date of enactment of this Act that exceed the catch levels otherwise required under the Northeast Multispecies Fishery Management Plan if—

(A) overfishing is ended immediately;

(B) the fishing mortality level ensures rebuilding within a time period for rebuilding specified taking into account the Understanding pursuant to paragraphs (1) and (2) of this subsection; and

(C) such catch levels are consistent with that Understanding.

SEC. 203. APPLICATION WITH OTHER LAWS.

Nothing in this title shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary of Commerce under that Act concerning other species.

SEC. 204. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), section 202 shall apply with respect to fishing years beginning after April 30, 2010.

(b) SPECIAL RULE.—Section 202(3)(B) shall only apply with respect to fishing years beginning after April 30, 2012.

TITLE III—MISCELLANEOUS

SEC. 301. TECHNICAL CORRECTIONS TO THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT.

Section 503 of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6902) is amended—

(1) by striking ''Management Council and'' in subsection (a) and inserting ''Management Council, and one of whom shall be the chairman or a member of'';

(2) by striking subsection (c)(1) and inserting the following:

''(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.''; and

(3) by striking subsection (d)(2)(B)(ii) and inserting the following:

''(ii) shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.''.

SEC. 302. PACIFIC WHITING ACT OF 2006.

(a) SCIENTIFIC EXPERTS.—Section 605(a)(1) of the Pacific Whiting Act of 2006 (16 U.S.C. 7004(a)(1)) is amended by striking ''at least 6 but not more than 12'' inserting ''no more than 2''.

(b) EMPLOYMENT STATUS.—Section 609(a) of the Pacific Whiting Act of 2006 (16 U.S.C. 7008(a)) is amended to read as follows:

''(a) EMPLOYMENT STATUS.—Individuals appointed under section 603, 604, 605, or 606 of this title, other than officers or employees of the United States Government, shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.''.

SEC. 303. REPLACEMENT VESSEL.

Notwithstanding any other provision of law, the Secretary of Commerce may promulgate regulations that allow for the replacement or rebuilding of a vessel qualified under subsections (a)(7) and (g)(1)(A) of section 219 of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108–447; 188 Stat. 886-891).

SA 4915. Mr. KERRY (for Mr. SCHUMER (for himself, Ms. COLLINS, Mrs. GILLIBRAND, and Mr. CONRAD)) proposed an amendment to the bill H.R. 4748, to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Northern Border Counternarcotics Strategy Act of 2010''.

SEC. 2. NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

The Office of National Drug Control Policy Reauthorization Act of 2006 (Public Law 109–469; 120 Stat. 3502) is amended by inserting after section 1110 the following:

''SEC. 1110A. REQUIREMENT FOR NORTHERN BORDER COUNTERNARCOTICS STRATEGY.

''(a) DEFINITIONS.—In this section, the terms 'appropriate congressional committees', 'Director', and 'National Drug Control Program agency' have the meanings given those terms in section 702 of the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1701)).

''(b) STRATEGY.—Not later than 180 days after the date of enactment of this section, and every 2 years thereafter, the Director, in consultation with the head of each relevant National Drug Control Program agency and relevant officials of States, local governments, tribal governments, and the governments of other countries, shall develop a Northern Border Counternarcotics Strategy and submit the strategy to—

''(1) the appropriate congressional committees (including the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives);

''(2) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Indian Affairs of the Senate; and

''(3) the Committee on Armed Services, the Committee on Homeland Security, and the Committee on Natural Resources of the House of Representatives.

''(c) PURPOSES.—The Northern Border Counternarcotics Strategy shall—

''(1) set forth the strategy of the Federal Government for preventing the illegal trafficking of drugs across the international border between the United States and Canada, including through ports of entry and between ports of entry on the border;

''(2) state the specific roles and responsibilities of each relevant National Drug Control Program agency for implementing the strategy;

''(3) identify the specific resources required to enable the relevant National Drug Control Program agencies to implement the strategy; and

''(4) reflect the unique nature of small communities along the international border between the United States and Canada, ongoing cooperation and coordination with Canadian law enforcement authorities, and variations in the volumes of vehicles and pedestrians crossing through ports of entry along the international border between the United States and Canada.

''(d) SPECIFIC CONTENT RELATED TO CROSS-BORDER INDIAN RESERVATIONS.—The Northern Border Counternarcotics Strategy shall include—

''(1) a strategy to end the illegal trafficking of drugs to or through Indian reservations on or near the international border between the United States and Canada; and

''(2) recommendations for additional assistance, if any, needed by tribal law enforcement agencies relating to the strategy, including an evaluation of Federal technical and financial assistance, infrastructure capacity building, and interoperability deficiencies.

''(e) LIMITATION.—

''(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall not change the existing agency authorities and this section shall not be construed to amend or modify any law governing interagency relationships.

''(2) LEGITIMATE TRADE AND TRAVEL.—The Northern Border Counternarcotics Strategy shall be designed to promote, and not hinder, legitimate trade and travel.

''(f) TREATMENT OF CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—

''(1) IN GENERAL.—The Northern Border Counternarcotics Strategy shall be submitted in unclassified form and shall be available to the public.

''(2) ANNEX.—The Northern Border Counternarcotics Strategy may include an annex containing any classified information or information the public disclosure of which, as determined by the Director or the head of any relevant National Drug Control Program agency, would be detrimental to the law enforcement or national security activities of any Federal, State, local, or tribal agency.''.

SA 4916. Mr. LIEBERMAN (for Mr. KERRY (for himself and Ms. COLLINS)) proposed an amendment to the bill H.R. 1746, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Predisaster Hazard Mitigation Act of 2010''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The predisaster hazard mitigation program has been successful and cost-effective. Funding from the predisaster hazard mitigation program has successfully reduced loss of

life, personal injuries, damage to and destruction of property, and disruption of communities from disasters.

(2) The predisaster hazard mitigation program has saved Federal taxpayers from spending significant sums on disaster recovery and relief that would have been otherwise incurred had communities not successfully applied mitigation techniques.

(3) A 2007 Congressional Budget Office report found that the predisaster hazard mitigation program reduced losses by roughly $3 (measured in 2007 dollars) for each dollar invested in mitigation efforts funded under the predisaster hazard mitigation program. Moreover, the Congressional Budget Office found that projects funded under the predisaster hazard mitigation program could lower the need for post-disaster assistance from the Federal Government so that the predisaster hazard mitigation investment by the Federal Government would actually save taxpayer funds.

(4) A 2005 report by the Multihazard Mitigation Council showed substantial benefits and cost savings from the hazard mitigation programs of the Federal Emergency Management Agency generally. Looking at a range of hazard mitigation programs of the Federal Emergency Management Agency, the study found that, on average, $1 invested by the Federal Emergency Management Agency in hazard mitigation provided the Nation with roughly $4 in benefits. Moreover, the report projected that the mitigation grants awarded between 1993 and 2003 would save more than 220 lives and prevent nearly 4,700 injuries over approximately 50 years.

(5) Given the substantial savings generated from the predisaster hazard mitigation program in the years following the provision of assistance under the program, increasing funds appropriated for the program would be a wise investment.

SEC. 3. PREDISASTER HAZARD MITIGATION.

(a) ALLOCATION OF FUNDS.—Section 203(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(f)) is amended to read as follows:

''(f) ALLOCATION OF FUNDS.—

''(1) IN GENERAL.—The President shall award financial assistance under this section on a competitive basis and in accordance with the criteria in subsection (g).

''(2) MINIMUM AND MAXIMUM AMOUNTS.—In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—

''(A) is not less than the lesser of—

''(i) $575,000; or

''(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

''(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended to read as follows:

''(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

''(1) $180,000,000 for fiscal year 2011;

''(2) $200,000,000 for fiscal year 2012; and

''(3) $200,000,000 for fiscal year 2013.''.

(c) TECHNICAL CORRECTIONS TO REFERENCES.—The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended—

(1) in section 602(a) (42 U.S.C. 5195a(a)), by striking paragraph (7) and inserting the following:

''(7) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Emergency Management Agency.''; and

(2) by striking ''Director'' each place it appears and inserting ''Administrator'', except—

(A) in section 622 (42 U.S.C. 5197a)—

(i) in the second and fourth places it appears in subsection (c); and

(ii) in subsection (d); and

(B) in section 626(b) (42 U.S.C. 5197e(b)).

SEC. 4. PROHIBITION ON EARMARKS.

Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133) is amended by adding at the end the following:

''(n) PROHIBITION ON EARMARKS.—

''(1) DEFINITION.—In this subsection, the term 'congressionally directed spending' means a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

''(2) PROHIBITION.—None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.

''(3) CERTIFICATION TO CONGRESS.—The Administrator of the Federal Emergency Management Agency shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.''.

CONSUMER ASSISTANCE TO RECYCLE AND SAVE ACT

On Sunday, December 19, 2010, the Senate passed H.R. 2751, as amended, as follows:

H.R. 2751

Resolved, That the bill from the House of Representatives (H.R. 2751) entitled ''An Act 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.'', do pass with the following amendments:

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 in 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.

Amend the title so as to read: ''An Act to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.''.

ORDER OF PROCEDURE

Mr. KERRY. Mr. President, I ask unanimous consent that after any leader time on Tuesday, December 21, Senator ALEXANDER be recognized for up to 10 minutes; that following his remarks, the Senate then resume consideration of the House message with respect to H.R. 3082, and that the time until 10:15 a.m. be divided as follows: 10 minutes under the control of Senator INOUYE or his designee and 15 minutes under the control of Senator MCCAIN; that upon the use or yielding back of time, the Senate then proceed to vote on the motion to invoke cloture on the Reid motion to concur in the House amendment to the Senate amendment to H.R. 3082 with amendment No. 4885; further that upon the conclusion of the vote, Senator SPECTER then be recognized for his farewell speech; that any time utilized by Senator SPECTER count postcloture, if applicable.

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

ORDERS FOR TUESDAY, DECEMBER 21, 2010

Mr. KERRY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Tuesday, December 21; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that following any leader remarks, Senator ALEXANDER be recognized in morning business for up to 10 minutes; that following his remarks, the Senate resume consideration of the motion to concur with respect to the House message on H.R. 3082 as provided for under the previous order.

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

PROGRAM

Mr. KERRY. Mr. President, Senators should expect the first vote of the day to begin at approximately 10:15 a.m. tomorrow. That vote will be on the motion to invoke cloture on the motion to concur with respect to H.R. 3082 which is the vehicle for the continuing resolution. Following the vote, Senator SPECTER will deliver his farewell remarks to the Senate.

Upon disposition of the CR, the Senate will vote on the motion to invoke cloture on the New START treaty. We also have an agreement to consider the Pearson and Martinez nominations and we could debate and vote on those tomorrow afternoon.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. KERRY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 8:09 p.m., adjourned until Tuesday, December 21, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF TRANSPORTATION

ANN D. BEGEMAN, OF VIRGINIA, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD FOR A TERM EXPIRING DECEMBER 31, 2015, VICE CHARLES D. NOTTINGHAM, TERM EXPIRING.

DEPARTMENT OF STATE

NILS MAARTEN PARIN DAULAIRE, OF VIRGINIA, TO BE REPRESENTATIVE OF THE UNITED STATES ON THE EXECUTIVE BOARD OF THE WORLD HEALTH ORGANIZATION, VICE JOXEL GARCIA.

OVERSEAS PRIVATE INVESTMENT CORPORATION

TERRY LEWIS, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2011, VICE C. WILLIAM SWANK, TERM EXPIRED.

UNITED STATES INSTITUTE OF PEACE

JUDITH A. ANSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 19, 2011, VICE RON SILVER.

JUDITH A. ANSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM OF FOUR YEARS. (REAPPOINTMENT)

JOHN A. LANCASTER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES

INSTITUTE OF PEACE FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 19, 2011, VICE KATHLEEN MARTINEZ.

JOHN A. LANCASTER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM OF FOUR YEARS. (REAPPOINTMENT)

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:

JOSEPH CAMPBELL MOORE, OF WYOMING, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF WYOMING FOR THE TERM OF FOUR YEARS.

WILLIAM BENEDICT BERGER, SR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Monday, December 20, 2010:

DEPARTMENT OF JUSTICE

JOSEPH CAMPBELL MOORE, OF WYOMING, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF WYOMING FOR THE TERM OF FOUR YEARS.

WILLIAM BENEDICT BERGER, SR., OF FLORIDA, TO BE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF FOUR YEARS.

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 20, 2010 withdrawing from further Senate consideration the following nomination:

BEATRICE A. HANSON, OF NEW YORK, TO BE DIRECTOR OF THE OFFICE FOR VICTIMS OF CRIME, VICE JOHN W. GILLIS, WHICH WAS SENT TO THE SENATE ON DECEMBER 23, 2009.